BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

GRAND TRUNK CORPORATION'S COMMENTS ON COMPLETENESS OF UNION PACIFIC AND NORFOLK SOUTHERN'S APPLICATION

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INTRODUCTION AND SUMMARY

Pursuant to Decision No. 7,[1] Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries[2] (collectively, "CN"), respectfully submits its comments on the completeness of the application[3] filed by Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP") (collectively, "Union Pacific") and Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NS") (collectively, "Norfolk Southern," together with Union Pacific, "Applicants") for UPC to acquire control of NSC, and through NSC of NS and NS's rail carrier subsidiaries. Because the Application fails to meet the requirements

[1] *See* Decision No. 7, FD 36873 (STB served Dec. 19, 2025).

[2] Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

[3] UP-13/NS-11, FD 36873 (filed Dec. 19, 2025) (hereinafter the "Application").

of 49 C.F.R. part 1180, the Surface Transportation Board (the "Board") should reject the Application as incomplete and require Applicants to resolve those deficiencies.

Applicants seek approval from the Board for a proposed transaction they assert is an "unprecedented opportunity for our country" because it will purportedly "create America's first transcontinental railroad" and "transform the nation's supply chain."[4] Applicants are correct that their Application is unprecedented in at least one respect: they seek the Board's approval to undertake the first major transaction under the Board's new rules, which require Applicants to show that the proposed transaction would not only preserve, but *enhance* competition.[5] Yet they fail to provide the Board, or interested parties, the information that is required under 49 C.F.R. part 1180 and necessary to evaluate the profound impacts the proposed transaction would have on U.S. shippers. Applicants' failure to provide this required information is not a simple mistake. Rather, they have concealed the overlapping nature of the UP and NS networks in order to incorrectly portray the proposed transaction as "end-to-end."[6] At the same time, Applicants omit the information most essential to the Board's evaluation of the proposed transaction and its competitive effects, as well as for analyses by interested parties. In addition to failing to adequately disclose the competitive harms of the proposed transaction, Applicants fail to propose the required competition-enhancing conditions. These are not comments on the merits: the regulations require this information.

[4] Appl. Vol. 1 at 13-14.

[5] 49 C.F.R. § 1180.1(c); *see, e.g.*, *Major Rail Consol. Proc.*, 5 S.T.B. 539, 550 (2001) ("[W]e believe that offering some new or enhanced rail-to-rail competition or other competitive benefits is likely to be necessary to resolve substantial difficulties so as to tip the balance in favor of the public interest."); *Major Rail Consol. Proc.*, 5 S.T.B. at 554.

[6] Appl. Vol. 1 at 13, 24, 29, 51, 168, 285; Appl. Vol. 2 at 139, 576.

Incomplete Market Analyses: Applicants fail to provide the complete market analyses required by section 1180.7. Despite submitting seven verified statements purportedly describing the alleged impacts of the proposed transaction as their "market analyses" required by section 1180.7,[7] Applicants fail to comply with the specific requirements of that section and exclude key information necessary for the Board's evaluation of the proposed transaction. These are not small matters.

- **Failure to Identify 2-to-1 and 3-to-2 Points as Required:** Applicants omit the methodology and data used to determine the existence of the three 2-to-1 shippers Applicants identified as required by section 1180.7(a). Applicants additionally fail to identify all 2-to-1 points and 3-to-2 points as required by section 1180.7(b)(2). As the attached Verified Statement of Dr. Mary Coleman confirms, there are more 2-to-1 points in Illinois than Applicants have disclosed and are 3-to-2 points in Des Moines, Iowa and Danville, Illinois that Applicants ignore.[8]
- **Missing Projected Market Shares, Revenues, and Traffic Volumes:** Applicants do not provide projected market shares, revenues, and traffic volumes as required by section 1180.7(b)(2)-(4).
- **Incomplete Impact Analysis and Operating Plan Omitting Class I Traffic Tapes:** Applicants omit available traffic tape data from multiple Class I carriers from their impact analysis required by section 1180.7(a) and 1180.7(b), an error which carries over to their operating plan. Without incorporating these data—

[7] Applicants rely exclusively on verified statements for their market analyses and do not separately provide any such analyses. *See* Appl. Vol. 1 at 52-54.

[8] *See generally* Verified Statement of Dr. Mary Coleman (Dec. 29, 2025) (hereinafter "Coleman Statement") attached hereto as Exhibit 1.

which were readily available to Applicants—Applicants' diversion model is incomplete.

Incomplete Maps Omitting Applicants' Lines: The map Applicants cite for purposes of section 1180.6(6), Exhibit 1,[9] is incomplete in ways that are critical to evaluation of the competitive impacts of the proposed transaction. Exhibit 1 omits certain of Applicants' lines in relation to one another, including lines reflecting that Applicants have directly parallel or overlapping lines through trackage or haulage rights in the watershed states in which Applicants' networks overlap. This omission is repeated in some cases throughout their Application. The Application similarly fails to address the competitive impacts of these directly parallel or overlapping lines.

Incomplete Merger Agreement: Applicants fail to provide the full Merger Agreement[10] for the proposed transaction as required by section 1180.6(a)(7)(ii). Applicants omit the schedules, disclosures, and appendices to the Merger Agreement. Applicants' failure is not altogether surprising as they have been similarly deficient in producing the full Merger Agreement to CN in discovery. Because the regulations are clear that the agreement must be provided to the Board, the failure to provide portions of that agreement warrants finding the Application deficient.

Failure to Propose Competitive Enhancements: Finally, Applicants fail to propose conditions that not only preserve, but enhance competition, as required by the Board's regulations. Rather, Applicants claim that because the proposed transaction is "end-to-end" and has few horizontal overlaps, the proposed transaction itself is competition-enhancing and therefore no such conditions are required. Applicants' failure to propose conditions that would enhance competition

[9] Appl. Vol. 1 at 37, 71.

[10] "Merger Agreement" means that certain Agreement and Plan of Merger, dated as of July 28, 2025, by and among UPC, Ruby Merger Sub 1 Corporation, Ruby Merger Sub 2 LLC, and NSC, and any amendments or supplements thereto. *See* Appl. Vol. 4 at 5.

is compounded by their failure to correctly identify and address the competitive harms of the proposed transaction in the Application.

Accordingly, CN respectfully requests that the Board require Applicants to resolve each of these key deficiencies before deeming the Application complete. Until these core issues are resolved, both the Board and interested parties are severely limited in their ability to assess the merits of the Application, whether it enhances competition, and whether the proposed transaction is in the public interest.

ARGUMENT

I. Applicants' Market Analyses Are Incomplete in Multiple Critical Respects.

Applicants boldly assert that the proposed transaction "does not pose a risk of competitive harm"[11] because it is "end-to-end" with "little horizontal overlap."[12] Applicants rely extensively on this purportedly minimal overlap to assert that there is "limited scope for harm from the loss of horizontal competition between [Applicants]."[13] If Applicants' claims are accurate (they are not) and the proposed transaction truly poses no competitive concerns (it does), then it is inexcusable that Applicants have neglected to include complete market analyses in their Application. Yet Applicants have failed to satisfy even the minimum requirements of section 1180.7, including the identification of and methodology for determining 2-to-1 and 3-to-2 points. Omitting such necessary information serves only to frustrate the Board's ability to evaluate Applicants' claims and assess the proposed transaction's harms to competition, as well as interested parties.

[11] Appl. Vol. 1 at 26.

[12] Appl. Vol. 2 at 9, 18.

[13] Appl. Vol. 2 at 10.

The Board's rules are clear that, for major transactions, Applicants must submit market analyses "describing the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition[.]"[14] The Board further established specific minimum requirements to "ensure that applicants will supply the types of information that [the Board has] found most helpful in assessing harm to competition[.]"[15] These requirements are the heart of the new rules established in 49 C.F.R. § 1180.7, and reflect the minimum information the *Applicants* must provide because such information is necessary for the Board and interested parties to "properly analyze the competitive effects of" the proposed transaction.[16] These requirements were implemented specifically with a transaction like the current Application in mind.[17] In fact, the Board has already recognized the "fair degree of overlap" between eastern and western Class I railroads, rejecting arguments similar to those that Applicants now advance that competition will not be harmed by this alleged "end-to-end" transaction.[18]

Applicants' failure to provide the required components of the market analyses render those analyses, and thus the Application, incomplete.

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[14] 49 C.F.R § 1180.7(a).

[15] *Major Rail Consol. Proc.*, 5 S.T.B. at 599.

[16] *See* Decision No. 3, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472 et al., slip op. at 12 (STB served May 26, 2021).

[17] *See Major Rail Consol. Proc.*, 5 S.T.B. at 545 (explaining that the new rules were necessary in part to address "the prospect that 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").

[18] *See id.* at 556 ("A quick glance at a rail map confirms that the eastern and western railroads do not simply meet end-to-end . . . there is a fair degree of overlap.").

A. Applicants Fail to Identify 2-to-1 and 3-to-2 Points as Required by 49 C.F.R. § 1180.7.

Any applicants seeking approval for a major transaction must list in their market analyses "points where the number of serving railroads would drop from two to one and from three to two, respectively, as a result of the proposed transaction," also known as "2-to-1 points" and "3-to-2 points."[19] Additionally, Applicants' market analyses must "include underlying data," reflect "existing and potential competitive alternatives," demonstrate the "relevance of the markets and issues analyzed and the validity of their methodology," and clearly state "[a]ll underlying assumptions."[20] Here, Applicants have failed to meet these basic yet highly consequential requirements, because (1) Applicants fail to disclose the methodology and data used in connection with their incomplete 2-to-1 shipper analysis; (2) Applicants' witnesses state conflicting conclusions about how many 2-to-1 points exist (and the attached Coleman Statement demonstrates that Applicants have omitted 2-to-1 shippers[21]); and (3) Applicants fail to identify any 3-to-2 points. Each of these failings is sufficient to independently render the Application incomplete.

1. The Application is Incomplete Because the Applicants' Methodology Used to Identify 2-to-1 Shippers Is Hidden.

The Application does not provide the information required by section 1180.7(a). Applicants claim that there are only three 2-to-1 shippers,[22] but they fail to disclose *any* of the information required by section 1180.7(a) regarding the methodology or data used to identify those three shippers. Instead, Applicants state only that they "carefully reviewed their records and other

[19] 49 C.F.R. § 1180.7(b)(2).

[20] *See id.* § 1180.7(a).

[21] Coleman Statement at 5-9.

[22] Appl. Vol. 1 at 333.

available information."[23] Applicants do not specify what records or other available information they reviewed, how they identified "that these are the only such shippers," or how they "determined that competition would not be affected at other, undisclosed 2-to-1" locations as required.[24] The Board recently found the failure to include this information fatal to completeness for a significant transaction.[25] Unlike applicants in a major transaction, the rules grant applicants in a significant transaction "the greatest leeway to develop the best evidence" and do not require them to meet the minimum requirements in section 1180.7(b).[26] But the same leeway does not apply to applicants in a major transaction. Accordingly, Applicants' failure to describe the methodology used for identifying 2-to-1 shippers renders their market analyses incomplete.

2. Applicants Find Both That There Are Three 2-to-1 Shippers and No 2-to-1 Points—and They Omit Customers Who Are at 2-to-1 Points.

The Application includes a Verified Statement from Katherine Novak that identifies three 2-to-1 shippers and a Verified Statement from Dr. Elizabeth Bailey that finds no 2-to-1 points (under analyses focused on business economic areas ("BEAs")). This approach unnecessarily confuses the record for the Board and interested parties who must evaluate the competition impacts

[23] *Id.* Applicants exclusively rely on the Verified Statement of Katherine N. Novak for this analysis. *See* Appl. Vol. 2 at 44 (noting that Novak's Verified Statement "describes the analysis the Applicants undertook to identify instances in which UP and NS are the only railroads serving individual customers"). The Verified Statement of Elizabeth M. Bailey separately purports to identify 2-to-1 points and finds *no* 2-to-1 points exist, in conflict with the conclusion of the Novak Verified Statement that there are three 2-to-1 shippers, *see* Appl. Vol. 1 at 53, but as discussed below, *infra* Section I.A.2, that analysis fails to comply with the requirements of section 1180.7(b)(2).

[24] *See* Decision No. 3, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472 et al., slip op. at 9 (finding application incomplete, in part because applicants failed to disclose methodology used to identify 2-to-1 shippers).

[25] *See id.*

[26] *See id.*

of this proposed transaction. In any event, Applicants omit other customers who are at 2-to-1 points as demonstrated by the attached Coleman Statement.[27]

The Novak Verified Statement Finds Three 2-to-1 Shippers: Applicants assert that "there are very few places in which both UP and NS serve the same customer facilities" and claim that there are only *three shippers* served by both Applicants that would lose access to two railroads following the proposed transaction.[28]

As noted above, Applicants have not disclosed their methodology for identifying these 2-to-1 shippers. Additionally, Applicants omit 2-to-1 shippers from their list.[29] To the extent Applicants have limited their 2-to-1 analysis only to *active shippers*, their analysis falls short of what the regulations require. As the Board has explained, "a station can have many shippers beyond those who are actively using rail service."[30]

Applicants further fail to comply with the requirement that they provide a complete list of all 2-to-1 points, "both before and after applying proposed remedies for competitive harm."[31] In failing to list all 2-to-1 shippers and limiting their proposed remedy to only the three 2-to-1 shippers they do identify, the Application fails to distinguish between 2-to-1 shippers before and after any remedies.[32] Applicants thus propose ***no remedies*** for the additional 2-to-1 shippers that are omitted from the Application.

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[27] Coleman Statement at 5-9.

[28] Appl. Vol. 1 at 333.

[29] Coleman Statement at 5-9.

[30] *See* Decision No. 3, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472 et al., slip op. at 9.

[31] *See* 49 C.F.R. § 1180.7(b)(2).

[32] Appl. Vol. 1 at 333 ("Applicants commit to entering into agreements that would allow another existing Class I rail carrier to serve the three shipper facilities using haulage rates under established industry terms and conditions.").

Applicants even fail to specify what their proposed remedy would entail for the three 2-to-1 shippers they identify: Applicants appear to suggest a haulage agreement but also reference access via service, which would suggest trackage rights.[33] All of this information is necessary to satisfy the requirements of section 1180.7(a).[34] Failure to provide this information is not a mere technicality: The information is necessary for the Board "to make a determination about the adequacy of Applicants' proposed means of addressing the potential for competitive harm."[35] This omission further renders Applicants' market analyses incomplete.[36]

The Bailey Verified Statement Incorrectly Finds No 2-to-1 Points: In addition to Ms. Novak's analysis finding three 2-to-1 shippers, Dr. Bailey purports to address section 1180.7(b)(2)'s requirement to identify all 2-to-1 points and 3-to-2 points.[37] She concludes "[t]here are no **major** points where the number of Class I railroads serving the point changes from 2-to-1 or 3-to-2 as a result of the proposed merger," (emphasis added) and also concludes more generally that there are no 2-to-1 BEAs.[38] Neither analysis satisfies section 1180.7(b)(2)'s requirement to identify all 3-to-2 points and 2-to-1 points. And Dr. Bailey's analysis and conclusion is inconsistent with Applicants' separate identification of three 2-to-1 shippers in the Novak Verified Statement.

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[33] *See id.*

[34] *See* Decision No. 3, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472 et al., slip op. at 7-9.

[35] *Id.* at 9.

[36] *See id.* at 7-9, 12.

[37] Appl. Vol. 2 at 123, 125.

[38] *Id.* at 56-57, 125. Applicants define "major points" as points "that account for at least 80 percent of . . . [Applicants'] traffic by volume." Appl. Vol. 2 at 77. Applicants further limit the definition of "points" to BEAs, *see id.* at 11, 77, 123-125, for the reasons stated herein such a limitation is inconsistent with section 1180.7(b)(2)'s requirement.

In the end, Dr. Bailey's conclusions—that there are no "major points" that would experience a reduction in railroads from 2-to-1 or 3-to-2 and no 2-to-1 BEAs—masks the exact competitive impacts the new rules require Applicants to identify.

First, section 1180.7(b)(2) mandates the disclosure of all 2-to-1 points and 3-to-2 points. It is not limited to only "major" points. Although section 1180.7(b)(2) contemplates that Applicants may provide *market shares* for "each major point" on the combined system, the requirement to identify 2-to-1 and 3-to-2 points does not contain the same limitation and specifically requires the identification of all "points."

Second, section 1180.7(b)(2) cannot be reasonably interpreted to limit major merger applicants' 2-to-1 and 3-to-2 disclosure requirement to *BEAs* that would lose access to Class Is, dropping from two to one or from three to two. The regulation allows "Applicants [to] define points as individual stations or as larger areas (such as Bureau of Economic Analysis statistical areas or U.S. Department of Agriculture Crop Reporting Districts) *as relevant* . . . ."[39] Applicants may believe BEA-level analysis is relevant to the market share requirement in the first sentence of section 1180.7(b)(2)—for "[a]ctual and projected market shares of originated and terminated traffic by railroad for each major point." But the only relevant definition of "points" for the second requirement of section 1180.7(b)(2), which requires identification of 2-to-1 and 3-to-2 points, is "individual stations."[40] Interpreting section 1180.7(b)(2) otherwise would be arbitrary and inconsistent with the Board's stated purposes in adopting the new rules, because it would substantially reduce scrutiny of merger impacts compared to the pre-2001 rules. In merger proceedings under the pre-2001 rules, the Board defined 2-to-1 points as "geographic locations at

[39] 49 C.F.R. § 1180.7(b)(2) (emphasis added).

[40] *E.g.*, Decision No. 3, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472 et al., slip op. at 9.

which at least one shipper/receiver had available to it, *either directly or from reciprocal switching*, service from both [applicants] but no other railroad."[41]

Redefining 2-to-1 and 3-to-2 points as BEAs would mean that many individual stations losing access to a railroad would no longer be considered in assessing merger impacts, because some other customers in the same BEA have access to one or more other Class I railroads—even if those other Class I railroads are not available at the station directly or by reciprocal switching (and therefore do not provide direct rail competition).[42] It is abundantly clear that the Board did not intend its adoption of the new rules to reduce scrutiny of competitive effects, especially in a major transaction, in such a significant way. For example, the Board determined "that future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest" and "upgrad[ed] the importance of competition" in applying the statutory criteria.[43]

Applicants Omit Customers Who Are At 2-to-1 Points. Applicants also fail to identify *all* 2-to-1 *shippers* as the attached Coleman Statement demonstrates.[44] The Application does not

[41] Decision No. 20, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Gen. Oversight)*, 5 S.T.B. 1159, 1161 (2001) (emphasis added) (describing this as "the definition of 2-to-1 points used in this merger proceeding and similar to that used in others"); *see also* Decision No. 44, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233, 390-91 (1996) (Union Pacific and its co-applicant "identified 2-to-1 points as those that can be served directly, or through reciprocal switching, by [applicants] but by no other Class I railroad").

[42] *See* Decision No. 44, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. at 372 (declining to "redefin[e] 2-to-1 points as those within some arbitrary proximity to two rail carriers (a BEA or 4-digit SPLC), and thus treat[] direct and indirect rail competition as equivalent").

[43] *Major Rail Consolidation Procs.*, 5 S.T.B. at 546, 552; *see also* Union Pacific's Opening Comments on Proposed Merger Rules at 14, *Major Rail Consol. Procs.*, EP 582 (Sub-No. 1) (Nov. 17, 2000) (recognizing that the revised rules address the Board's evaluation of "each '3-to-2' reduction in the number of railroads *serving a shipper* or corridor") (emphasis added).

[44] *See* Coleman Statement at 5-9.

even disclose all *actively served* 2-to-1 shippers—Applicants' own data confirms shippers were omitted from the Application.[45]

Applicants' omission of some 2-to-1 shippers is inexplicable given that public statements by Union Pacific's CEO Jim Vena indicate that more 2-to-1 shippers exist.[46] CN sought discovery months ago seeking information regarding the list of 2-to-1 shippers referenced in Mr. Vena's public statements,[47] and UP has repeatedly refused to produce such information on the basis that it would be provided in the Application.[48] Now the Applicants have refused to provide the information to the Board and interested parties, even though it is expressly required by section 1180.7(b)(2).

3. Applicants Wholly Omit 3-to-2 Points in Their Analyses.

As noted above, any applicants seeking approval for a major transaction must also identify 3-to-2 points as a result of the proposed transaction.[49] Here, Applicants fail to identify or provide *any* information regarding properly defined 3-to-2 points as required by section 1180.7(b)(2). Again, Applicants' use of BEAs to purportedly identify 2-to-1 and 3-to-2 points fails to account

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[45] *See id.*

[46] *See* Norfolk S. Corp. Earnings Call, July 29, 2025 ("fewer than 20 customers will go from having two rail providers to just one"); V. James Vena & Jennifer L. Hamann, Question and Answer Presentation at the Morgan Stanley 13th Annual Laguna Conference, (Sept. 10, 2025) (describing that there are "fewer than 10" 2-to-1 shippers).

[47] CN served its first set of discovery requests on Applicants on September 23, 2025, seeking narrow categories of priority data and documents ("First RFPs"). *See* Ex. 2 (Grand Trunk Corporation's First Set of Discovery Requests to Applicants served Sept. 23, 2025).

[48] *See* Ex. 3 (UP's Supplemental Responses to CN's First RFPs dated Oct. 31, 2025); Ex. 4 (Nov. 5, 2025 letter from A. Ellis to M. Rosenthal); Ex. 5 (Nov. 18, 2025 letter from K. Kelly to A. Ellis); Ex. 6 (Nov. 25, 2025 letter from A. Ellis to M. Rosenthal); Ex. 7 (Dec. 12, 2025 letter from K. Kelly to A. Ellis).

[49] 49 C.F.R. § 1180.7(b)(2).

for loss of direct rail competition at a customer's facility.[50] Nor does Applicants' use of "major points" comply with the requirements of the regulation, for the reasons stated above.

In fact, Mr. Vena conceded that Applicants did not include 3-to-2 points in their Application or even evaluate them.[51] Such failure not only renders their market analyses incomplete under the rules but severely hampers the Board's and interested parties' ability to evaluate the harmful impacts of the proposed transaction on competition.

Despite Applicants' repeated allegations of the proposed transaction's end-to-end nature, the transaction *would* impact such 3-to-2 points. As the attached Coleman Statement explains, for example, there are 3-to-2 customers in Danville, Ill. and Des Moines, Iowa, who have access to three Class I railroads, two of which are UP and NS.[52] Applicants' analysis ignores a significant reduction of competition for these customers.[53] Because Applicants have completely failed to identify 3-to-2 points or address them in their market analyses, as mandated by section 1180.7(b)(2), their market analyses are incomplete.

B. Applicants Omit Projected Market Shares by Traffic and Revenue as Required by 49 C.F.R § 1180.7(b).

The Board's rules require that Applicants' market analyses include actual and projected (i) "market shares of originated and terminated traffic by railroad for each major point on the

[50] *See* Decision No. 44, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. at 372; *see also id.* at 392 n.130. For this reason, Applicants' identification of a single BEA (Columbia, Missouri) as 3-to-2, *see* Appl. Vol. 2 at 56-57, is not germane to the requirement to list every 3-to-2 point.

[51] *See* Union Pacific Corp., Form 8-K, Ex. 99.2 (Dec. 19, 2025) (stating "we don't have handy a number of how many 4 to 3 or 18 to 17 or 3 to 2. . . . We just looked at the ones that were truly going to change and go from 2 to 1").

[52] *See* Coleman Statement at 9-11.

[53] *See id.*

combined system,"[54] (ii) "market shares of revenues and traffic volumes for major interregional or corridor flows by major commodity group,"[55] and (iii) revenues and traffic volumes of "traffic flows indicating patterns of geographic competition or product competition across different railroad systems."[56] In other words, Applicants should include projected shares, including for at least three years into the future, which is the timeframe over which the Applicants plan to complete their integration.[57]

The Verified Statement of Elizabeth M. Bailey and the associated Appendices included in the Application claim to address these requirements.[58] However, Dr. Bailey's analysis merely reflects Applicants' 2023 volumes, revenue, and/or corresponding shares added together.[59] Such a static analysis does not actually reflect any "projections" and does not satisfy the regulation's requirements. Indeed, these numbers cannot possibly reflect the Applicants' "projections," because the Application elsewhere projects that the proposed transaction will divert 442,000 carloads from other railroads to the Applicants and that Applicants' "post-merger market share . . . will increase by 15-26%, depending on service type."[60] Dr. Bailey's analysis also stands in contradiction to the remainder of the Application, which repeatedly asserts that the proposed transaction "is fundamentally about growth."[61] Notably, for example, Dr. Bailey's Appendix Table E2, which purports to reflect actual and projected rail traffic volumes by route by tons and

[54] *See* 49 C.F.R § 1180.7(b)(2).

[55] *See id.* § 1180.7(b)(3).

[56] *See id.* § 1180.7(b)(4).

[57] Appl. Vol. 1 at 20, 55; Appl. Vol. 2 at 508.

[58] Appl. Vol. 2 at 12-13.

[59] *See id.* (citing appendices D-F, which are highly confidential).

[60] Appl. Vol. 2 at 357, 405.

[61] Appl. Vol. 1 at 12; *see, e.g.*, *id.* at 16, 20-21, 24, 30.

shares for "major corridor-commodity combination," reflects no projected growth of market share by rail as compared to 2023.[62] This is entirely inconsistent with Applicants' claim that they "project the combined UP/NS will convert more than 2 million truckloads of traffic from long-haul trucking to rail."[63]

Applicants thus fail to include future projections in their market analyses as required, rendering their market analyses incomplete.[64]

C. Applicants Provide an Incomplete Impact Analysis and Operating Plan by Omitting Available Class I Traffic Tape Data.

Applicants' market analysis also suffers from other important and fatal flaws that render it incomplete. Applicants fail to satisfy the requirements of section 1180.7(b) by inexcusably omitting traffic tape data from multiple Class I carriers from their impact analyses, even though data had been made available to Applicants well in advance of their filing date. Applicants are required to describe "the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition," including a requirement for supporting data, and an "explanation as to how the lack of reliable and consistent data has limited applicants' ability to satisfy any of the requirements" of the impact analysis.[65] Applicants point to the Joint Verified Statement of David Hunt and Matthew Schabas to discuss the potential for the combined railroad to attract traffic from trucks ("truck-to-rail" diversions) and from other railroads ("rail-to-rail"

[62] Appl. Vol. 2 at 126-27.

[63] Appl. Vol. 1 at 14.

[64] In addition, 49 C.F.R. § 1180.6(b)(11) requires Applicants to "suggest additional measures that the Board might take if it approves the application and the anticipated public benefits identified by applicants fail to materialize in a timely manner." Applicants have not done so, other than to observe that their Committed Gateway Pricing proposal could in certain circumstances be extended.

[65] 49 C.F.R. § 1180.7(a) and (b).

diversions).[66] However, Applicants' impact analysis relies on incomplete data, as Messrs. Hunt and Schabas themselves acknowledge. As described in their Verified Statement, the analysis did not incorporate the full set of traffic data for CSX or CPKC, even though these data were available to the Applicants.[67]

Applicants Have Not Justified Their Omission of Available Traffic Tape Data from the Source Materials. The Applicants claim the data were unavailable "at the time this analysis was prepared,"[68] but that is no excuse. Applicants indicated on July 30 that they would "fil[e] their application on or before January 29, 2026,"[69] giving them six months to conduct the relevant analysis. CSX's 2023 traffic data was made available for exchange in late October[70], allowing over three months for the analysis to be updated accordingly. And while Messrs. Hunt and Schabas claim that CPKC did not provide any data,[71] these data became available on November 19 and

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[66] Appl. Vol. 1 at 52.

[67] Appl. Vol. 2 at 388 & n.101 ("BNSF and CN traffic tapes were both provided to Applicants' counsel in September. Although CSX later in October provided its 100% traffic tape, Oliver Wyman had already begun the process of consolidating waybills. CPKC did not provide its 100% traffic tape."). Though Messrs. Hunt and Schabas claim that CPKC did not provide data, this is not true. It was provided on November 19 and 21. *See* Appl. Vol. 2 at 46 & n.72.

[68] Appl. Vol. 2 at 388.

[69] UP-1/NS-1, FD 36873 at 2 (July 30, 2025).

[70] Appl. Vol. 2 at 388. Note that while Messrs. Hunt and Schabas acknowledge the availability of CSX's 2023 traffic data, Dr. Bailey contends she never received such data. *See* Appl. Vol. 2 at 92.

[71] *See supra* note 67. This is not the only instance in which Applicants erroneously claim they did not receive data. Applicants claim, in parts of the Application, that CN traffic tape data was only available from 2023, and not 2019-22 or 2024. *See* Appl. Vol. 2 at 46-48, 92 & n.1, 103, 388 & n.101. But in fact, CN sent its traffic tape data from 2019-22 and 2024 to counsel for Union Pacific and to Oliver Wyman on September 18, 2025, and counsel for Union Pacific acknowledged receipt on the same day. CN resent these materials to Oliver Wyman on September 25, 2025. To the extent Applicants' analyses are inaccurate or incomplete in relation to their failure to use CN traffic tape data for 2019-22 and 2024, or failure to use the full traffic tapes received from other Class Is (CSX and CPKC) as indicated in the Application, Appl. Vol. 2 at 46-48, 92 & n.1, 103, 388 &

21,[72] still allowing over two months to update the impact analyses. Instead, on December 5, Applicants amended their original notice of intent to update their anticipated filing date to December 19, 2025, shortcutting their analysis along the way, and providing no further explanation for why they could not have updated the impact analyses to account for the full set of available Class I traffic tapes under the original or the amended timeframe.

The Consequences of the Traffic Tape Data Omission Are Significant. Rather than analyzing the full set of traffic data for each Class I railroad, the diversion study instead only analyzed CSX's and CPKC's traffic data reported in the Board's Confidential Carload Waybill Sample ("CCWS"). As Messrs. Hunt and Schabas acknowledge, the CCWS is incomplete, and incorporating the full set of traffic data has "significant implications" when calculating diversions:

> We consolidated these [BNSF and CN] waybills with the CCWS to produce a 2023 traffic base of record that captured rail shipments more precisely than the CCWS alone. This increased fidelity comes in part from accurately capturing the full route of a shipment, even for Rule 11 shipments. In the CCWS, the full path of a shipment is not captured when Rule 11 is invoked (i.e., the shipment is rebilled); whereas in the actual waybills the true origin and destination are captured even if the shipment is rebilled. **Rule 11 has significant implications for calculating diversions**, since understanding the full path of a move is essential for determining if and how a shipment would theoretically divert in a post-merger state, as well as sizing the extent of interline traffic between carriers.[73]

n.101, those deficiencies are due to Applicants' error, and the Board should require the analyses to be updated as appropriate.

[72] Appl. Vol. 2 at 92. Dr. Bailey acknowledges that CPKC did in fact provide data, though she did not incorporate these data into her analyses. Messrs. Hunt and Schabas, on the other hand, do not acknowledge this fact. *See* Appl. Vol. 2 at 388 & n.101.

[73] Appl. Vol. 2 at 388 (emphasis added). Messrs. Hunt and Schabas note that updating to account for the full set of traffic data is "**especially important for a transcontinental merger**, since most rebills occur at the interchanges in the watershed region." *Id.* (emphasis added). In other words, the omission of available data is particularly significant in this case.

By failing to incorporate all the available supporting data, Applicants' diversion model does not meet the impact analysis requirements of section 1180.7(a) and (b).[74]

Applicants' Operating Plan Must Also Be Considered Incomplete. 49 C.F.R. § 1180.8(b) requires Applicants to submit an Operating Plan, which entails a "summary of the proposed operating plan changes, *based on the impact analyses*, that will result from the transaction. . . ." (emphasis added). By basing their Growth Operating Plan on the incomplete impact analysis conducted by Messrs. Hunt and Schabas[75], the Operating Plan is similarly incomplete.[76] The Board has previously recognized the link in deficiencies between the two.[77] The Board should therefore require Applicants to update their impact analysis to account for the additional Class I traffic tape data they have had since November 2025, roughly a month in advance of their accelerated filing date, and over two months in advance of the filing date listed in their original notice of intent.

[74] In fact, Applicants have even more recent data at their disposal, but they continue to use 2023 as the base year for their impact analysis. As CSX noted in its comments on the proposed procedural schedule, full traffic tapes from 2024 are available, and the insistence on using 2023 as the base year means Applicants' impact analysis does not "reflect the most current market realities and operational performance available." *See* CSXT-3, FD 36873 at 13 (Nov. 19, 2025).

[75] Appl. Vol. 2 at 515 & n.12 ("Applicants' merger-related traffic growth expectations are described in the Joint Verified Statement of David T. Hunt and Matthew Schabas.").

[76] Applicants also design their Base Operating Plan using Dr. Bailey's 2023 traffic file, which similarly excludes CSX and CPKC data. *See* Appl. Vol. 2 at 511 & n.4 ("Dr. Elizabeth Bailey's team from Charles River Associates ("CRA") performed the work to create a combined 2023 traffic file."); Appl. Vol. 2 at 46 & n.72 ("Traffic tape data from CSX were not available. CPKC traffic tape data only became available on November 19, 2025, and November 21, 2025 and were therefore not incorporated into these analyses.").

[77] *See* Decision No. 3, *CSX Corp.—Control & Merger—Pan Am Sys., Inc.*, FD 36472 et al., slip op. at 7 & n.16 (STB served May 26, 2021).

II. Applicants Provide an Incomplete Network Map by Omitting Overlapping Lines in the Watershed Area.

The Board's rules require Applicants to include with their Application, "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."[78] Applicants, however, omit some of their lines from their section 1180.6(a)(6) map, Exhibit 1. Specifically, despite recognizing that their map should reflect trackage and haulage rights,[79] Applicants omit from Exhibit 1, and in some cases throughout their Application entirely, key trackage and haulage rights segments. Those omissions include rights that reflect parallel and even overlapping UP and NS lines in the watershed states in which Applicants' networks overlap.

Applicants Omit 2-to-1 Lines in the Watershed Area. Applicants, for example, omit from Exhibit 1 multiple lines reflecting Applicants' 2-to-1 lines, including between Springfield, Ill., and Kansas City, Mo.,[80] and between Sidney, Ill., and Salem, Ill.[81] These overlapping segments are shown in the map below.

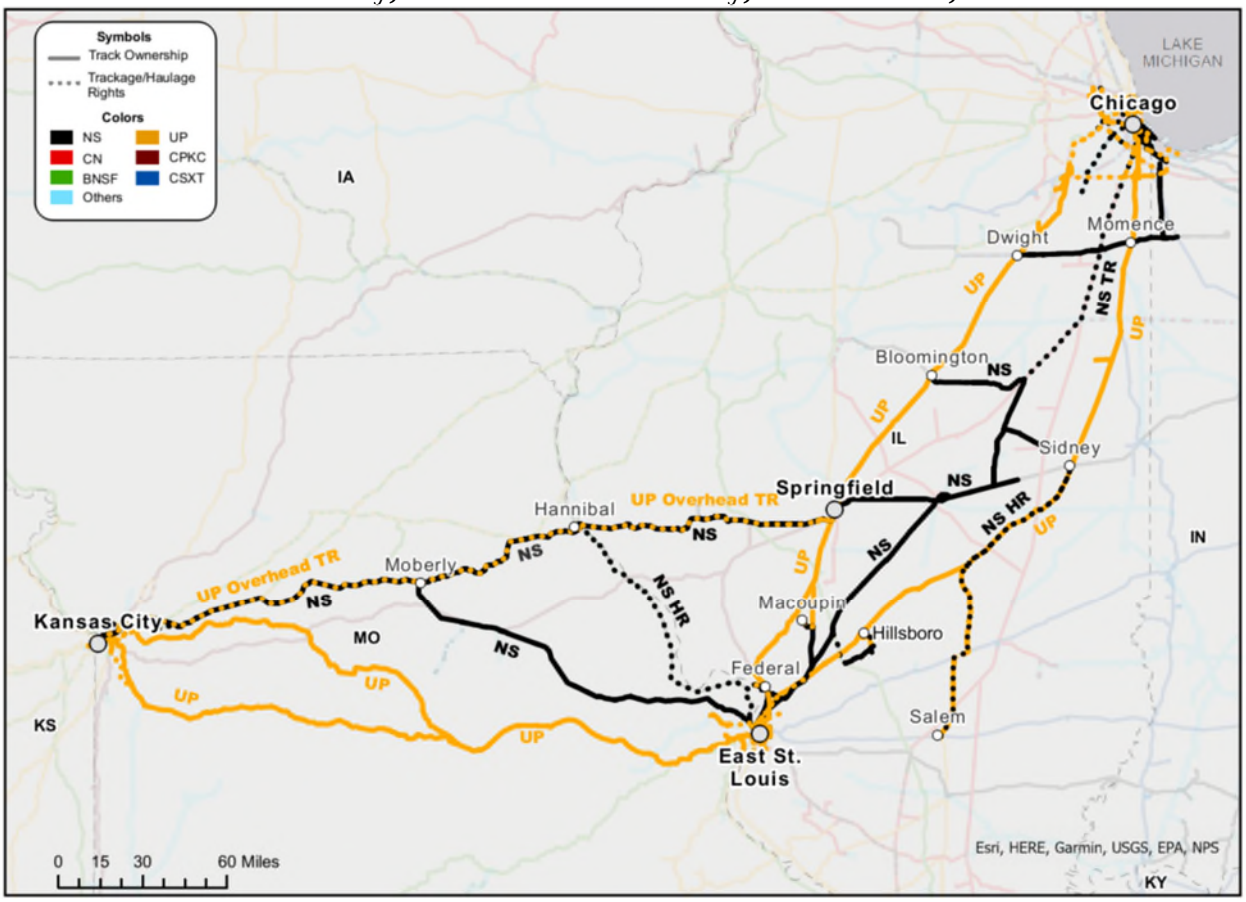
[78] 49 C.F.R. § 1180.6(a)(6).

[79] *See* Appl. Vol. 1 at 71 (purporting to include, as indicated in the legend, trackage/haulage rights).

[80] UP has trackage rights over NS's line between Springfield, Ill., and Kansas City, Mo. *See Union Pac. R.R.—Trackage Rts. Exemption—Norfolk S. Ry.*, FD 36290 (STB served Apr. 25, 2019). Like all Board-authorized trackage rights, these rights continue in effect until the Board authorizes discontinuance, notwithstanding any termination of the parties' agreement. *E.g.*, *Canadian Nat'l Ry.—Trackage Rts. Exemption—Bangor & Aroostook R.R.*, FD 34014 et al., slip op. at 9 (STB served June 25, 2002) (explaining that a tenant railroad's trackage rights remain in effect until discontinuance authority is granted). And neither Applicant has sought discontinuance authority.

[81] NS has trackage and/or haulage rights over UP's line between Sidney and Salem. *See* Norfolk Southern, *Our Rail Network*, https://www.norfolksouthern.com/content/dam/nscorp/pdf/our-railroad-network/2016-system-map-print.pdf (last visited Dec. 29, 2025).

Pre-Merger, Shippers May Use UP or NS to Move Traffic Between Springfield, Ill. and Kansas City, Mo. and Between Sidney, Ill. and Salem, Ill.[82]



Applicants' omission of lines, including overlapping 2-to-1 lines via trackage and/or haulage rights from both their maps and from discussion in the Application, reflects yet another attempt by Applicants to incorrectly portray their proposed transaction as end-to-end. There is no legitimate basis for Applicants' failure to reflect their lines "in their true relations to each other," as required by the regulations. This information is necessary for the Board and interested parties to accurately analyze the competitive effects of the proposed transaction. In fact, in prior merger

[82] Rail lines and trackage/haulage rights displayed are sourced from the U.S. Bureau of Transportation Statistics National Transportation Atlas ("NTAD") Database. The UP rights between Springfield, Ill. and Kansas City, Mo. and the NS rights between Sidney, Ill. and Salem, Ill., which are shown in the NTAD database, were further verified using public Board filings and the public NS system map. *See supra* notes 80-81.

proceedings, the Board has required conditions to remedy lines of applicants that are overlapping via trackage rights.[83] Yet here, Applicants omit these locations from their map and, in some cases throughout their Application altogether. For example, Applicants do not appear to include anywhere in their Application a discussion of UP's trackage rights over NS's line between Springfield, Ill., and Kansas City, Mo., and the associated competitive impacts from the transaction of those directly overlapping lines. Because Applicants omit lines from the map required by section 1180.6(a)(6), their Application should be deemed incomplete.

III. Applicants Provide an Incomplete Merger Agreement by Omitting Appendices, Schedules, and Disclosures.

One of the most basic requirements that must be met when seeking approval for a merger is furnishing a copy of the "contract or other written instrument entered into . . . pertaining to the proposed transaction."[84] Applicants fail at this basic step. They instead provide only part of the Merger Agreement with *none* of the related appendices, schedules, or disclosures. Such an omission should doom the Application before the Board, just as it would before other government agencies with jurisdiction to review proposed mergers.[85] It is impossible for the Board or the interested parties to evaluate the contents of the Merger Agreement without having all of it in hand for review. The Board should reject the Application as incomplete on this basis.

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[83] *Union Pac. Corp.—Control—Mo.-Kan.-Tex. R.R.*, 4 I.C.C.2d 409, 456 (1988) (requiring UP in its acquisition of Missouri-Kansas-Texas Railroad Company ("MKT") to reach a trackage rights agreement with another carrier for certain lines over which MKT had trackage rights).

[84] 49 C.F.R. § 1180.6(a)(7)(ii).

[85] The Federal Trade Commission, for example, requires the disclosure of all appendices, exhibits, and disclosures during Hart-Scott Rodino Act pre-merger reviews. *S*ee Bruce Hoffman, *"All" means All: Submit side agreements with an HSR filing*, Federal Trade Commission available at, https://www.ftc.gov/enforcement/competition-matters/2017/12/all-means-all-submit-side-agreements-hsr-filing.

A. Under Board Precedent, the Application is Deficient Without the Complete Merger Agreement.

Filing the Merger Agreement is not merely a technicality. Without disclosure of the substance of the transaction, all of which would be laid out in the agreement, neither the Board nor the participating parties can assess whether the proposed transaction enhances competition or is consistent with the public interest.[86] This is especially important where Applicants have requested a fairness determination,[87] which requires that the Board determine whether *all* of the terms of the proposed merger are fair to Applicants' shareholders. Indeed, a fairness determination from the Board exempts Applicants from state securities regulations that would otherwise govern the transaction.[88] Applicants should not be permitted to escape regulation on the basis of an incomplete record.

In *Canadian National Railway—Control—Kansas City Southern*,[89] CN was deemed deficient when it filed a motion for approval of a voting trust that referenced a merger agreement that was not included with the motion. The motion for approval of a voting trust was therefore denied as incomplete and CN was permitted to resubmit.[90] When CN then produced the agreement only in part, the Board again found the motion deficient and ordered CN to file the specific sections, debt letters, and written opinions referenced within the merger agreement.[91] If a motion for a voting trust can be deemed incomplete for failure to supply the complete contemplated merger

[86] *See* 49 U.S.C. § 11325(c).

[87] Appl. Vol. 1 at 23.

[88] *See* 49 U.S.C. § 10501(b).

[89] Decision No. 3, FD 36514, slip op. at 7 (STB served May 17, 2021).

[90] *Id.*

[91] Decision No. 4, *Canadian Nat'l Ry.—Control—Kan. City S.*, FD 36514, slip op. at 3 (STB served June 8, 2021).

agreement, certainly the proposed Application for control should be similarly deemed incomplete while allowing Applicants an opportunity to resubmit.[92]

B. There Is No Basis to Withhold Any Portion of the Merger Agreement from the Board.

It should be the simplest aspect of the Application to provide the full Merger Agreement. Indeed, Applicants have already produced a more complete version of the merger agreement to several interested parties in discovery. CN requested the "complete disclosure schedules, exhibits, and appendices to the Merger Agreement" as Request 1 in its First RFPs on Union Pacific on September 23, 2025.[93] In response to Request 1, except as noted below, Union Pacific produced the Merger Agreement—including schedules and disclosures it has withheld from the Board. There is no excuse, then, for Applicants' failure to include them with the Application.

1. Schedule 5.8 Must Be Disclosed.

Nonetheless, even in discovery Applicants still have not produced the Merger Agreement in full. Within the materials responsive to Request 1 of CN's First RFPs, Union Pacific redacted Section 5.8 of the Company Disclosure Schedules ("Schedule 5.8") with no explanation or justification for the redaction (*i.e.*, without stating the basis for the claim that it is privileged or otherwise not discoverable). While CN lacks clarity into the exact contents of Schedule 5.8, Union Pacific has represented that it contains conditions Applicants would and would not accept if required for the Application's approval.

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[92] The Board has also compelled the production of full transaction agreement documents even where the parties contended that they contained highly confidential information. *See, e.g.*, *Ind. & Ohio Ry.—Acquis. Exemption—Lines of Grand Truck W. R.R.*, FD 33180, slip op. at 1 (STB served Apr. 10, 1997).

[93] *See* Ex. 2. CN served similar requests for production on Norfolk Southern, to which Norfolk Southern responded that it was deferring to Union Pacific for the production of responsive documents. *See* Ex. 8 (Oct. 20, 2025 letter from A. Ellis to W. Mullins).

When asked for the basis of the redactions, after several meet and confers in which Union Pacific evaded the question, counsel eventually replied that Schedule 5.8 details Applicants' views as to what conditions they would be willing to accept from the Board, and as such "reflects the legal advice of counsel and attorney work product regarding potential settlement strategy" and are "further protected from discovery by the settlement privilege."[94] Even if Applicants attempt to remedy the broader deficiency by providing the Board with other merger agreement appendices, schedules, and disclosures, Applicants likely would remain deficient if they continue to withhold Schedule 5.8.[95]

Schedule 5.8 to the Merger Agreement Is Not Protected by Attorney Client Privilege or the Work Product Doctrine. Despite Union Pacific's faulty privilege claims, no possible privilege or work product doctrine attaches to Schedule 5.8. Final merger documents are business documents shared across and executed by the parties, not privileged communications. It is axiomatic that privilege does not attach to these types of materials. Merger agreements and their exhibits, appendices, and schedules, by their nature, are intended to be shared with an adverse party such that they are inherently not privileged.[96]

The work product doctrine also does not protect Schedule 5.8 from disclosure. At the outset, the schedules were shared across adverse parties, such that any work product protections

[94] *See* Ex. 5.

[95] For example, even if Applicants provide the appendices, schedules, and disclosures in their reply on January 2, 2026, the Application would still be deficient without the inclusion of Schedule 5.8.

[96] *See, e.g.*, *In re Grand Jury Subpoena*, 662 F.3d 65, 68-72 (1st Cir. 2011) (declining to find "closing statement, sales contract(s), and records of payment" to be privileged because they would have been "revealed at the closing and are, therefore, not confidential in nature"); *United States v. McDonald*, 313 F.2d 832, 833-35 (2d Cir. 1963) (finding "no basis" for claim that the attorney client privilege applies to closing statements and sales contracts because the "client necessarily contemplated divulging the information requested to other parties at the closing").

were waived.[97] In *Courtalert.Com*, for example, the Southern District of New York rejected the defendants' attempts at redacting portions of a merger agreement that discussed the litigation under a theory of work product protection.[98] It reasoned that the redacted provision in the agreement was "merely another business term in a merger agreement negotiated between two entities at arm's length" such that no possible privilege applied.[99] Here, too, Schedule 5.8 merely reflects business terms negotiated between Union Pacific and Norfolk Southern.[100] Moreover, the work product doctrine only covers materials created in anticipation of and for use in litigation.[101] Even if Schedule 5.8 was created for the purpose of preparing for the Board proceeding, "[i]t is of no moment that the parties may have been developing a business deal that included as a component the desire to avoid litigation."[102] Because Schedule 5.8 was not created for the purpose of communicating *legal advice* about getting the transaction approved—rather it represents the negotiations between Union Pacific and Norfolk Southern as to how they wanted the deal structured—no work product protection applies.[103] The Board should not permit Applicants to

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[97] *See Niagara Mohawk Power Corp. v. Stone & Webster Eng'g Corp.*, 125 F.R.D. 578, 587 (N.D.N.Y. 1989) ("[W]ork product protection is waived when documents are voluntarily shared with an adversary[.]"); *Bovis Lend Lease, Lmb v. Seasons Contracting Corp.*, 2002 U.S. Dist. LEXIS 23322, at *38 (S.D.N.Y. Dec. 4, 2002) (same).

[98] *Courtalert.Com, Inc. v. Am. Legalnet, Inc.*, 2024 U.S. Dist. LEXIS 206259, at *4 (S.D. N.Y. 2024).

[99] *Id.*

[100] *See also Medtronic Sofamore Danek, Inc. v. Michelson*, 2003 U.S. Dist. LEXIS 14054, at *6 (W.D. Tenn. 2003) (requiring the production of unredacted schedules to a merger agreement that were not protected by work product).

[101] *See In re Aftermarket Filters Antitrust Litig.*, 2010 U.S. Dist. LEXIS 117719, at *20 (N.D. Ill. Nov. 4, 2010).

[102] *Titan Inv. Fund II, LP v. Freedom Mortg. Corp.*, 2011 Del. Super. LEXIS 63, at *14 (Del. Super. Feb. 2, 2011).

[103] *See Chabot v. Walgreens Boots All., Inc.*, 2020 U.S. Dist. LEXIS 107547, at *26 (M.D. Pa. June 11, 2020).

conceal the terms of the transaction that is the subject of this proceeding.

Schedule 5.8 Is Not Protected by Common Interest Privilege. No common interest privilege attaches either, for "even if parties to an agreement share an interest between signing and closing," if that common interest is primarily for business reasons, as opposed to legal reasons, no privilege attaches to their communications or shared documents.[104] Schedule 5.8 represents Applicants' "shared commercial objective" in closing the transaction, which courts regularly find insufficient for invoking even common interest privileges.[105] This is also consistent with the Federal Trade Commission's ("FTC") guidance that *all* portions of a merger agreement should be submitted to the FTC's Premerger Notification Office as part of its merger review process, as no part of the agreement is "protected by a common interest privilege."[106] There is no basis for different treatment of a merger agreement in the Board's review. Accordingly, Schedule 5.8—which was shared between Union Pacific and Norfolk Southern as adverse parties during the merger negotiations—is not protected by a common interest privilege.

Section 5.8 Is Not Protected by Settlement Privilege. Neither is Schedule 5.8 protected by any settlement privilege. That privilege attaches only where the parties are offering or accepting consideration to compromise (or attempting to compromise) a dispute.[107] There was no relevant

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[104] *Am. Bottling Co. v. Repole*, 2020 Del. Super. LEXIS 225, at *10 (Super. Ct. May 12, 2020).

[105] *See id.* at *13 (declining to find privilege where communications related to merger negotiations); *Titan*, 2011 Del. Super. LEXIS 63, at *16-17 (declining to find privilege where documents related to capital funding); *U.S. Bank Tr. Co., Nat'l Ass'n v. DISH DBS Corp.*, 2025 U.S. Dist. LEXIS 226515, at *12 (S.D.N.Y. Nov. 18, 2025) ("The common interest doctrine does not cover communications regarding merger negotiations.").

[106] *See* Bruce Hoffman, *"All" means All: Submit side agreements with an HSR filing*, Federal Trade Commission, https://www.ftc.gov/enforcement/competition-matters/2017/12/all-means-all-submit-side-agreements-hsr-filing (explaining that "binding agreements or side letters negotiated between the merging parties that reflect the parties' antitrust review obligations, risk-sharing commitments, and potential remedial measures" are not privileged).

[107] *See* Fed. R. Evid. 408.

claim pending against Union Pacific by Norfolk Southern or vice versa at the time Schedule 5.8 was created, and as such Applicants had no settlement to negotiate. Furthermore, the protection for settlement negotiations only goes to the admissibility of the evidence at trial; it does not preclude discovery of relevant information.[108] Even if Schedule 5.8 were to represent settlement negotiations between Union Pacific and Norfolk Southern, it would not be immune from disclosure.[109]

Accordingly, Applicants' failure to satisfy even the most basic aspect of the Application requirements—without a valid basis for withholding the information—warrants finding the Application incomplete. The Board should require Applicants to submit the complete merger agreement, including unredacted Schedule 5.8.

IV. Applicants Fail to Propose Competitive Enhancements.

The Board's new regulations "significantly increase the burden on applicants to demonstrate that a proposed transaction would be in the public interest."[110] Consistent with this enhanced standard, any applicants seeking approval for a major transaction are expected to propose conditions that not only preserve, but *enhance* competition.[111] Here, Applicants make no real

[108] *See Gramercy Grp., Inc v. D.A. Builders, LLC*, 2017 U.S. Dist. LEXIS 185543, at *9 (D. Haw. Nov. 8, 2017) (granting motion to compel deposition testimony regarding a negotiated agreement because "FRE 408 . . . does not protect settlement negotiations from discovery").

[109] *See Canadian Nat'l Ry.—Control—Ill. Cent. Corp.*, FD 33556 (STB served Oct. 16, 1998) (affirming decision that a settlement agreement "must yield to the need for discovery" because the transaction contemplated in the settlement agreement was at issue in the proceeding).

[110] *Major Rail Consol. Proc.*, 5 S.T.B. at 604.

[111] 49 C.F.R. § 1180.1(c); *see, e.g.*, *Major Rail Consol. Proc.*, 5 S.T.B. at 550 ("[W]e believe that offering some new or enhanced rail-to-rail competition or other competitive benefits is likely to be necessary to resolve substantial difficulties so as to tip the balance in favor of the public interest."); *Major Rail Consol. Proc.*, 5 S.T.B. at 554.

efforts to address this requirement.[112] By failing to propose competition-enhancing conditions, Applicants attempt to shift the burden to demonstrate that their proposed transaction is in the public interest from Applicants, as contemplated by the regulations,[113] to the Board and interested parties.

Applicants cannot reasonably argue that they have proposed competitive enhancements in this Application. As an initial matter, Applicants' "Committed Gateway Pricing" proposal, which they claim will enhance competition, is only temporary[114] and extremely limited in its scope and would not even benefit any customers located on CN's lines.[115] Additionally, Applicants have completely removed $750 million in anticipated concessions to increase their projected synergies,[116] which is contrary to the notion that their Committed Gateway Pricing proposal (or anything else Applicants have proposed) provides meaningful relief or enhancement for anybody. Further, Applicants are now attempting to conceal the anticipated needed concessions by withholding the complete Merger Agreement, as detailed above.[117]

Rather than propose competition-enhancing conditions as required, Applicants claim that because the proposed transaction is "end-to-end" and has few horizontal overlaps the proposed transaction itself is competition-enhancing and therefore no such conditions are required.[118] But the Board has been clear that the transaction itself is not an answer to this regulatory requirement. On the contrary, in adopting its revised regulations the Board specifically rejected Applicants'

[112] Appl. Vol. 1 at 13, 24-26, 161, 285-87.

[113] 49 C.F.R. § 1180.6(b)(10).

[114] Appl. Vol. 1 at 314-16, 330-32.

[115] Appl. Vol. 1 at 316-17, 339-41; Appl. Vol. 2 at 197, 207.

[116] *See* Union Pacific Corp., Form 8-K, Ex. 99.2 at 8-9 (Dec. 19, 2025).

[117] *See supra* Section III.B.

[118] Appl. Vol. 1 at 13, 24-26, 161, 285-87.

argument.[119] Further, as detailed above, the UP and NS networks *do* significantly overlap, and the proposed transaction is *not* end-to-end as Applicants claim.[120]

Applicants' failure to propose conditions that would enhance competition is compounded by their failure to correctly identify and address the competitive harms of the proposed transaction. As noted above, Applicants omit 2-to-1 points and 3-to-2 points from their Application and thus propose no remedies for those anticompetitive effects of the proposed transaction. Applicants also omit overlapping lines in their networks, including for example overlapping lines between Springfield, Ill. and Kansas City, Mo. And Applicants propose a "voluntary" gateway condition that is identical to that imposed by the Board on the CP-KCS transaction under the pre-2001 rules.[121]

Accordingly, to the extent the Board requires Applicants to refile their Application to resolve the deficiencies detailed herein, or other deficiencies, the Board should require Applicants to supplement the Application to comply with 49 C.F.R. § 1180.6(b)(10) and propose conditions to enhance competition.

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[119] *Major Rail Consol. Proc.*, 5 S.T.B. at 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. . . . 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.").

[120] *See supra* Section II.

[121] Appl. Vol. 1 at 289-91.

CONCLUSION

For the reasons stated above, the Board should reject the Application and require Applicants to refile an application that rectifies the deficiencies and accurately reflects the proposed transaction.[122]

[122] As recognized in Decision No. 5, the procedural schedule is dependent on the Application being accepted for consideration. *See* Decision No. 5, FD 36873, slip op. at 2 & n.3 (STB served Sept. 26, 2025) ("F+30[,] Board notice of acceptance of primary application" and "Should the Board reject the primary application as incomplete . . . the remainder of the procedural schedule would be nullified."); 49 C.F.R. § 1180.4(c)(7)(ii). CN understands this to mean the statutory deadlines described in 49 U.S.C. § 11325 would also pause until Applicants refile and the Board accepts the application as complete. While, in CN's view, rejecting the Application would not necessarily require a new pre-filing notice period, CN suggests that if the Application is rejected, Applicants should be required to provide a new anticipated filing date for the revised application. *See, e.g.*, Decision No. 3, FD 36873, slip op. at 2 n.1 (STB served Aug. 28, 2025) (requiring Applicants to update their anticipated filing date if they planned to file earlier than January 29, 2026, the date originally provided by Applicants in their notice of intent to file an application).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of December 2025, I caused a true and correct copy of the foregoing Grand Trunk Corporation's Comments on Completeness of Union Pacific and Norfolk Southern's Application (CN-6) to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ *Andrew Bernstein*
Andrew Bernstein
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Exhibit 1

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

Verified Statement of Dr. Mary Coleman

December 29, 2025

I. QUALIFICATIONS, ASSIGNMENT, AND SUMMARY OF OPINIONS

A. QUALIFICATIONS

1. My name is Mary Coleman. I am a Senior Managing Director and Head of the U.S. Antitrust Practice at Compass Lexecon, which is a division of FTI, Inc. I received my Ph.D. in economics from Stanford University and my B.A. in economics from Stonehill College. My consulting practice specializes in the assessment of competitive effects arising from business conduct and transactions, as well as mergers and acquisitions, and litigation involving antitrust issues. My experience spans a wide range of industries and includes presentations before U.S. and foreign antitrust authorities as well as sworn deposition testimony and in court. I have published a number of articles addressing antitrust issues and the use of econometrics and other empirical methods in antitrust analysis. In addition, I have served as an advisor on antitrust and regulatory issues to many organizations, including the American Bar Association, the Department of Justice, and the Federal Trade Commission ("FTC").

2. During 2001-2004, I served as Deputy Director for Antitrust in the Bureau of Economics at the FTC. As Deputy Director for Antitrust, I supervised the economic analysis on all antitrust matters at the FTC, as well as provided advice to the FTC on the economic aspects of antitrust investigations and policy issues related to antitrust. The cases I supervised at the FTC covered a broad spectrum of industries and antitrust issues, including mergers, horizontal restraints, monopolization, and vertical restraints.

3. My *curriculum vitae*, which includes a complete list of my publications, is attached as Appendix A.

B. ASSIGNMENT

4. I have been asked by counsel for Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries[1] (collectively "CN") to assess the market analyses provided by

[1] Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

Union Pacific Corporation, Union Pacific Railroad Company ("UP"), Norfolk Southern Corporation, and Norfolk Southern Railway Company ("NS") (collectively, "Applicants") in their application seeking authority for the acquisition of control by Union Pacific Corporation of Norfolk Southern Corporation and, through it, NS (the "Application").[2] Specifically, I have been asked to opine on the completeness of the Application's Market Impact Analyses – Exhibit 12 [Section 1180.7][3] to address 49 C.F.R. § 1180.7(b)(2)'s requirement to "list points where the number of serving railroads would drop from two to one and from three to two, respectively, as a result of the proposed transaction (both before and after applying proposed remedies for competitive harm)."[4]

II. APPLICANTS' MARKET ANALYSES DO NOT IDENTIFY ALL 2-TO-1 OR 3-TO-2 SHIPPERS

A. 2-TO-1 SHIPPERS IDENTIFIED BY APPLICANTS

5. Applicants' identification of 2-to-1 shippers is provided by Katherine Novak in her Verified Statement, who claims:[5]

> Applicants carefully reviewed their records and other available information, and they identified just three 2-to-1 shipper facilities: AgRail LLC, at Bloomington, Illinois; Hillsboro Energy LLC, at Hillsboro, Illinois; and Macoupin Energy LLC, at Carlinville, Illinois. Macoupin Energy and Hillsboro Energy are both operated by Foresight Energy LLC. Operations at Macoupin are idled.

Importantly, Ms. Novak provides no details on the sources or methods surrounding Applicants' review of their records, does not identify which of the Applicants' employees or consultants performed their analysis, does not identify materials considered in identifying 2-to-1 shippers,

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2 UP-13/NS-11, FD 36873 (filed Dec. 19, 2025) [hereinafter "Appl."].

3 Appl. Vol. 1 at 52-54.

4 49 C.F.R. § 1180.7(b)(2).

5 Appl. Vol. 1, Verified Statement of Katherine Novak at ¶ 52 (Dec. 17, 2025) [hereinafter "Novak Statement"]. I use the term shipper to refer to any customer point at which goods are shipped or received via rail.

and supplies no information in her workpapers that supports Applicants' claim that there are only three such shippers.[6]

6. Applicants' claim is repeated by Dr. Elizabeth Bailey in her Verified Statement. Dr. Bailey states, "Applicants identified three customer facilities for which the number of serving railroads would decline from 2-to-1 following the proposed merger."[7] But Dr. Bailey's statement similarly lacks support. She identifies no methods or sources she used to test or verify that Applicants have identified all 2-to-1 shippers, she does not identify who performed the work, and she does not address Applicants' failure to provide a similar analysis identifying any 3-to-2 shippers.[8] Dr. Bailey quantifies the carloads from the 2-to-1 shippers identified by the Applicants, characterizes the traffic as "small," and concludes that "[i]f these commitments are effective at preserving horizontal competition for these customers, the affected shippers will not be harmed by the proposed merger."[9] Dr. Bailey's conclusion is tautological, and she provides no analysis to demonstrate the effectiveness of Applicants' commitments in preserving horizontal competition. Dr. Bailey's claim that Applicants identified three 2-to-1 customer facilities is also inconsistent with Dr. Bailey's analysis of "the options available to customers who wish to ship from a particular origin, regardless of the destination, or to receive shipments in a particular destination, regardless of origin," in which she finds "no BEA origins or destinations for which the number of railroads declines from 2-to-1" that could face potential horizontal harm.[10] The acknowledgement of the three 2-to-1 customer facilities is further inconsistent with Dr. Bailey's claim that "[t]here are no major points where the number of Class I railroads serving the point changes from 2-to-1 or 3-to-2 as a result of the proposed merger."[11]

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6 *See* Novak Statement and supporting workpapers.

7 Appl. Vol. 2, Verified Statement of Elizabeth M. Bailey, Ph.D., at ¶ 66 (Dec. 17, 2025) [hereinafter "Bailey Statement"].

8 *See* Bailey Statement.

9 Bailey Statement at ¶ 67.

10 Bailey Statement at ¶¶ 95-96.

11 Bailey Statement, App. D at ¶ 6.

B. MY REVIEW OF THE CASE MATERIALS AND PUBLICLY AVAILABLE INFORMATION IDENTIFIED AT LEAST SEVERAL ADDITIONAL 2-TO-1 SHIPPERS AT OTHER POINTS IN ILLINOIS

7. I am unable to evaluate Applicants' claim that these are the only three 2-to-1 shippers because Applicants have failed to explain the methods and sources used to identify those shippers. My review of case materials and publicly available information, however, has revealed several examples of likely additional 2-to-1 shippers at other points in Illinois. I have reviewed the UP and NS Traffic Data,[12] other railroads' traffic data used by the Applicants,[13] the STB Carload Waybill Sample ("CWS"),[14] the North American Centralized Station Master ("CSM"),[15] Serving Carrier/Reciprocal Switch ("SCRS") file,[16] and publicly available reciprocal switching tariff information.[17] Each of these sources can be useful in identifying shippers who would face a

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12 *See, e.g.*, "UPRR_Waybills_2019_to_2024_20250825.txt" ("UP Traffic Data") and "2019 NS Waybills With Flags.csv", "2020 NS Waybills With Flags.csv"," 2021 NS Waybills With Flags.csv", "2022 NS Waybills With Flags.csv", "2023 NS Waybills With Flags.csv", and "2024 NS Waybills With Flags.csv" (collectively "NS Traffic Data") contained within the Bailey Statement workpapers.

13 *See, e.g.*, "BNSF_2019_TrafficTapes_11122025.txt", "BNSF_2020_TrafficTapes_11122025.txt", "BNSF_2021_TrafficTapes_11122025.txt", "BNSF_2022_TrafficTapes_11122025.txt", "BNSF_2023_TrafficTapes_09242025_Highly Confidential.txt", "BNSF_2024_TrafficTapes_11122025.txt" (collectively "BNSF Traffic Data") and "WB Exc Canada Domestic 2023 Q1.xlsx", "WB Exc Canada Domestic 2023 Q2.xlsx", "WB Exc Canada Domestic 2023 Q3.xlsx", "WB Exc Canada Domestic 2023 Q4.xlsx" (collectively "CN Traffic Data") contained within the Bailey Statement workpapers.

14 *See* "WB2019_913_Unmasked.txt", "WB2020_913_Unmasked.txt", "WB2021_913_Unmasked.txt", "WB2022_913_Unmasked.txt", and "WB2023_913_Unmasked.txt" (collectively "CWS Data") contained within the Bailey Statement workpapers.

15 *See, e.g.*, "1-A-Raw_UPRR_AAR_Station_Master.txt" within the Bailey Statement workpapers.

16 Railinc maintains the SCRS file, which I understand is used by railroads and the customer information is available for purchase. *See Serving Carrier/Reciprocal Switch*, RAININC https://public.railinc.com/products-services/serving-carrierreciprocal-switch, (last visited Dec. 29, 2025); *see, e.g.*, "src_up.UPRR_SCRS_20250815_vMSM.csv.csv" contained within the workpapers supporting the Verified Statement of David T. Hunt and Matthew Schabas, (Dec. 18, 2025) [hereinafter "Hunt-Schabas Statement"].

17 *See, e.g.*, *NS 8001 Section 5 - Industries Open to Switching*, https://www.norfolksouthern.com/content/dam/nscorp/pdf/tariffs/11-3-2025/NS_8001_Section_5-Industries_Open_to_Switching.pdf (last visited Dec. 29, 2025).

reduction in the number of Class I railroads competing for their traffic if the proposed transaction is approved.[18] For example:

- Railroad Traffic Data details the traffic of specific customers and locations served by railroads;
- STB Carload Waybill Sample identifies sample traffic waybills across the railroad industry and can be used to identify locations served by individual railroads, including Class I and shortline railroads[19];
- North American Centralized Station Master identifies location information of rail carrier points of service that can be used to identify operating areas of each railroad throughout their network;
- Serving Carrier/Reciprocal Switch file identifies railroad-reported customer details and switch information, which can be used to identify the shippers that railroads can access;
- Reciprocal Switching Tariff Information may also identify railroad access for specific locations and shippers.

In my review of these materials, I identified additional shippers who would likely face a reduction in the number of railroads competing for their traffic if the proposed transaction is approved, including 2-to-1 shippers that would be left with only one railroad option post-transaction. I provide examples below of the shippers I have identified thus far, which are likely part of a larger group of impacted shippers.[20] I continue to analyze the potential loss in

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18 All of the referenced source materials in this verified statement are available in the Application back-up files submitted with the Bailey or Hunt-Schabas Statement workpapers, or otherwise rely on publicly available sources.

19 The CWS includes a sample of waybills from all railroads terminating 4,500 or more revenue carloads annually. See *Carload Waybill Sample*, SURFACE TRANSPORTATION BOARD, https://www.stb.gov/reports-data/waybill/ (last visited Dec. 19, 2025) for additional details.

20 Each of the customers listed in this verified statement can be identified through public sources such as the SCRS data and publicly available tariff information. *See e.g.*, *NS 8001 Section 5 - Industries Open to Switching*, *supra* note 17.

competition from the proposed transaction, and specifically for particular shippers, including information provided in the Application, and reserve the right to further update this analysis.

1. Mighty River Recycling in Federal, IL

8. Mighty River Recycling's facility in Federal, IL is one example of a shipper currently served only by UP and NS that would have service from only one railroad available following the proposed transaction unless remedies are provided. The Application does not identify Mighty River Recycling as a 2-to-1 shipper. Both UP and NS reported {{ }} for shipper Mighty River Recycling during the 2019-2024 period.[21] {{ }}.[22] According to the SCRS file, only UP and NS report access to shippers at Federal, IL, with NS reporting "MIGHTY RIVER RECYCLING LLC" as a shipper with local access for switching.[23] This information indicates that only two railroads—UP and NS—have access to that facility. This finding is further corroborated by Mighty River Recycling itself, which describes its "40-acre facility" as having "direct access to the NS and UP railroads."[24] If the proposed transaction were to proceed without any conditions remedying the loss of competition in Federal, IL, then Mighty River Recycling, along with other similarly situated shippers, would face a reduction in the number of railroads competing for their business from two to one.

2. Milano Railcar Services in Mt. Vernon, IL

9. Milano Railcar Services in Mt. Vernon, IL is another example of a likely 2-to-1 shipper that is omitted from the Application. UP and NS {{

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[21] {{

}}

[22] In the CWS data, I found that {{ }} at SPLC 396218 (Federal, IL).

[23] *See* SCRS data for Federal, IL, *supra* note 16.

[24] *About Us*, MIGHTY RIVER RECYCLING, https://www.mightyriverrecycling.com/about-us (last visited Dec. 29, 2025).

}} during the 2019-2024 period.[25] {{

}}.[26] According to the SCRS file, UP and NS report access to shippers at Mount Vernon, IL with NS reporting "MILANO RAILCAR SERVICES LLC" as a shipper with restricted access for switching with UP.[27] If the proposed transaction were to proceed without any conditions remedying the loss of competition in Mt. Vernon, IL, then Milano Railcar Services, along with other similarly situated shippers, would face a reduction in the number of railroads competing for their business from two to one.

3. Edmund Allen Lumber Co. in Momence, IL

10. Edmund Allen Lumber Co. in Momence, IL is also an example of a likely 2-to-1 shipper that is omitted from the Application. NS reported {{

}} during the 2019-2024 period.[28] I did not identify {{

}},[29] but switching agreements indicate that UP has access to serve that shipper.[30] In this case, {{

}} its access means that there are currently two competitive options for this shipper and that, post-transaction, this competition would be lost. If the proposed transaction were to proceed without any conditions remedying the loss of competition in Momence, IL, then Edmund Allen Lumber Co, along with other similarly situated

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25 {{

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26 In the CWS data, I found {{

}}.

27 *See* SCRS data for Mt Vernon, IL, *supra* note 16; *see also NS 8001 Section 5 – Industries Open to Switching*, *supra* note 17 at 7.

28 {{

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29 {{

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30 *See, e.g., NS 8001 Section 5 – Industries Open to Switching*, *supra* note 17, at 7.

shippers, would face a reduction in the number of railroads competing for their business from two to one.

C. MY REVIEW ALSO IDENTIFIED 3-TO-2 SHIPPERS AT OTHER POINTS THAT APPLICANTS OMITTED FROM THE APPLICATION

11. The Application does not attempt to identify 3-to-2 shippers for which the transaction would reduce competition. Dr. Bailey, who acknowledged commitments would be needed to preserve horizontal competition for 2-to-1 shippers,[31] is silent on the impact of the loss of horizontal competition for 3-to-2 shippers. Instead, she designs an analysis to "identify the [business economic areas ("BEAs")] that are most at risk because the proposed transaction will reduce the number of railroads that serve the BEA from 2-to-1 or from 3-to-2."[32] Although she finds one 3-to-2 BEA in Columbia, Missouri,[33] this analysis fails to identify situations in which individual shippers or stations would face a loss of competition from 3-to-2 railroads because additional railroads serve other parts of the BEA and are not accessible to shippers at those stations. These individual 3-to-2 shippers would thus not necessarily be identified by an analysis of BEA-level data. Using the data sources and methods described above, I have found examples of 3-to-2 shippers at points that would likely result from the proposed transaction; these 3-to-2 shippers are omitted from the Application.

1. Viscofan USA in Danville, IL

12. Viscofan USA in Danville, IL is likely a shipper for which the proposed transaction would reduce the available railroad options from three to two. In Danville, CSXT identifies Viscofan USA, along with several others, as a shipper with reciprocal switching agreements with

[31] Bailey Statement at ¶ 67.

[32] Bailey Statement at ¶ 95.

[33] Bailey Statement at ¶ 99.

UP and NS.[34] In addition to possible CSXT originations and terminations,[35] {{ }} during the 2019-2024 period.[36] If the proposed transaction were to proceed without any conditions in Danville remedying this loss of competition, then Viscofan, along with other similarly situated shippers, would face a reduction in the number of railroads competing for their business from three to two.

2. Cargill in Des Moines, IA

13. Cargill in Des Moines, IA is likely another shipper and point for which the proposed transaction would reduce the available Class I railroad options from three to two. UP, NS, and BNSF are the three Class I railroads serving shippers in Des Moines, IA.[37] NS reports {{ }} with switching access available to UP, BNSF, and IAIS.[38] {{ }} all reported originating and terminating carloads during the 2019-2024 period.[39] If UP and NS were to merge without any conditions remedying the loss of competition

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34 CSX's reciprocal switching tariff information is publicly available. *See* CSX, *CSXT 8101 Publication: Effective June 27, 2025*, 6, https://www.csx.com/share/wwwcsx15/assets/File/Customers/CSXT-8101-Publication-Effective-06-27-2025.pdf..

35 CSX traffic data is not available in the backup materials for the Bailey Statement. *See* Bailey Statement, note 72.

36 {{ }}

37 *See* SCRS Data for Des Moines, IA, *supra* note 16; NS's Glake Yard serves multiple customers where other rail carriers are responsible for their own switching. *See Glake Yard celebrates 15 years injury free*, NORFOLK SOUTHERN, August 4, 2024, https://www.norfolksouthern.com/en/newsroom/story-archive/2024/glake-yard-celebrates-15-years-injury-free; Iowa Interstate Railroad, LLC ("IAIS") is a shortline railroad. *See generally Ship with IAIS Overview*, IOWA INTERSTATE RAILROAD, LLC, https://iaisrr.com/ship-with-iais/what-where-how/ (last visited Dec. 29, 2025).

38 *NS 8001 Section 5 – Industries Open to Switching*, *supra* note 17, at 4.

39 {{ }}

in Des Moines, Cargill, along with other similarly situated shippers, would face a reduction in the number of Class I railroads competing for their business from three to two.[40]

III. CONCLUSION

14. Mighty River Recycling, Milano Railcar Services, Edmund Allen Lumber Co., Viscofan USA, and Cargill are examples of shippers that would likely face a reduction in competitive rail options if the proposed transaction were approved, with access reduced from 2-to-1 or 3-to-2 Class I rail options. The Application's Market Analyses do not identify these shippers for which the proposed transaction would reduce competition and provide no detail on the competitive effects of the proposed transaction for these—or other similarly situated—shippers. Nor does the Application propose remedies for these shippers.

[40] In this example, I have identified a shipper in which the number of Class I Railroads may drop from 3-to-2. There are other shippers in Des Moines in which UP, NS, and IAIS all have access to a shipper and the total number of railroads with access would drop from 3-to-2 and the number of Class I railroads would drop from 2-to-1. *See, e.g.,* Lumberman's Wholesale, Titan Tire Corp., Triple F Inc., and Wheeler Consolidated Inc at Des Moines, IA in *NS 8001 Section 5 – Industries Open to Switching*, *supra* note 17, at 4.

VERIFICATION

I, Mary Coleman, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 29th day of December, 2025.

Mary Coleman, Ph.D.

Appendix A

MARY COLEMAN

CONTACT

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Boston, MA 02109
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mcoleman@compasslexecon.com

EDUCATION

1990, *PhD in Economics*, Stanford University
Dissertation: "Movements in the Earnings-Schooling Relationship: 1940 – 1988"
Advisor: Professor John Pencavel, Department of Economics
1986, *BA in Economics, summa cum laude*, Stonehill College

PROFESSIONAL EXPERIENCE

2025 - Present, *Senior Managing Director and Head of US Antitrust Practice*, Compass Lexecon, Boston, MA
2013 - 2025, *Executive Vice President*, Compass Lexecon, Boston, MA
2009 - 2013, *Senior Vice President*, Compass Lexecon, Boston, MA
2004 - 2009, *Director/Managing Director of Mergers and Acquisitions Practices*, LECG, LLC, Washington, DC
2002 - 2004, *Deputy Director for Antitrust*, Bureau of Economics, Federal Trade Commission
2001 - 2002, *Associate Director for Competitive Analysis*, Bureau of Economics, Federal Trade Commission
2000 - 2001, *Practice Director, Mergers and Acquisitions Group*, LECG, LLC, Washington, DC
1999 - 2001, *Principal*, LECG, LLC, Washington, DC
1990 - 1993, *Economist*, Bureau of Economics, Federal Trade Commission, Washington, DC

TESTIMONY

- Trial and deposition testimony: *In re Carnival v. DeCurtis Corporation and DeCurtis LLC,* U.S. Dist. Court, Civil Action N. 20-22945-CIV-SCOLA.
- Deposition testimony: *In re Online DVD Rental Antitrust Litigation*, U.S. Dist. Court, M:09-cv-2029 PJH.
- Submission of expert affidavit in settlement hearing in *Shawn Sullivan et al v. DB Investments Inc., De Beers SA et al*, Civil Action Index No. 04-02819, United States District Court, District of New Jersey (2008).
- "'Oil Pipelines' Effects on Refined Products Prices," Federal Trade Commission Conference, *Factors that Affect Prices of Refined Petroleum Products,* August 2, 2001.

PUBLICATIONS AND PAPERS

"PBMs and Prescription Drug Distribution: An Economic Consideration of Criticisms Levied Against Pharmacy Benefit Managers," with Dennis W. Carlton, Nauman Ilias, Theresa Sullivan, and Nathan Wilson, research funded by Caremark, Express Scripts, and Optum Rx, October 2024.

"Economic Analysis of Merger Remedies," with David Weiskopf, jointly authored chapter Global Competition Review's *Guide to Merger Remedies, 2020*.

"Joint Purchasing: Efficiency Enhancing or Cause for Concern? It Depends?" with Jonathan Bowater, submission for ABA Antitrust Section Spring Meeting 2020.

"Summary of Selected Literature re: Product Hopping and REMS," with John Hore and David Weiskopf, submission for Antitrust in Healthcare Conference, May 2018

"Market Definition in Merger Analysis: Who Buys the Products and How They Are Purchased Matters" with Jonathan Bowater, submission for 2018 ABA Antitrust Section Spring Meeting, April 2018.

"Economic Analysis of Merger Remedies," with David Weiskopf, jointly authored chapter Global Competition Review's, *Guide to Merger Remedies, 2018*.

"Are Pharmaceutical Companies Product Hopping Down an Anti-Competitive Trail?", submission for Antitrust in Health Care Conference, May 2014.

"Buyer Power in Merger Review" with Dennis Carlton and Mark Israel, jointly authored chapter in *The Oxford Handbook of International Antitrust Economics* 529-550 (R. Blair and D. Sokol ed.), 2014.

Co-editor (with Bruce Hoffman) of ABA's Section of Antitrust Law, *Market Power Handbook*, 2012.

"Market Definition in Consumer Products Industries," with David Weiskopf, jointly authored chapter in ABA Section of Antitrust Law, *Market Definition Handbook*, 2012.

"Natural Experiments," with James Langenfeld, in 1 Issues in Competition Law and Policy 743 (ABA Section of Antitrust Law 2008).

"Key Issues in Proving Unilateral Effects after Oracle," *Antitrust*, Spring 2005, 19(2), p. 26-30.

"The Use of Economics by the European Commission and the U.S. Antitrust Agencies, with Henry Kahwaty, *International Antitrust Bulletin*, Spring/Summer 2004, p. 35-40.

"The Use of Natural Experiments in Antitrust Analysis," presented at ABA Fall Forum, November 2004, available upon request.

"Empirical Analyses of Potential Competitive Effects of a Horizontal Merger: the FTC's Cruise Ships Mergers Investigation," with David Meyer and David Scheffman, 2003, *Review of Industrial Organization*, 23, 121-155.

"Dialogue and Consultation Facilitates Convergence in Analyses of Mergers in the EU and US," *ABA M&A Committee Newsletter*, 2003, http://www.ftc.gov/be/convergence.pdf

"Quantitative Analyses of Potential Competitive Effects from A Merger," with David Scheffman, 2003, George Mason Law Review, Winter 2003, 12, p. 319-370.

"Best Practices for Interacting with the Federal Trade Commission, Re: Data and Empirical Analyses in Antitrust Investigations," *ABA Economics Committee Newsletter*, 2003, http://www.ftc.gov/be/bestpractices.pdf

"FTC Perspectives on the Use of Econometric Analyses in Antitrust Cases," with David Scheffman, 2002, http://www.ftc.gov/be/ftcperspectivesoneconometrics.pdf

"Current Economic Issues at the FTC" with David Scheffman, *Review of Industrial Organization*, 21: 357-371, 2002.

"Oil Pipelines' Effects on Refined Products Prices," with George Schink and James Langenfeld, presented Federal Trade Commission conference, *Factors that Affect Prices of Refined Petroleum Products*, August 2, 2001.

"The Meaning of Monopoly: Antitrust Analysis in High Technology Industries," with David Teece, *Antitrust Bulletin*, Fall/Winter 1998, p. 801-857.

The Merger Guidelines in the United States, Australia and New Zealand: An Economic Perspective," with Christopher Pleastsikas and David Teece, *Trade Practices Journal*, 6(3), September 1998, pp. 153 – 171.

"Antitrust Analysis and remedies in high-tech industries," with James Langenfeld, *Global Competition Review*, June/July 1998, pp. 42 – 43.

"Movements in the Earnings-Schooling Relationship: 1940-1988," *Journal of Human Resources*, July 1993, pp. 660 – 680.

"Trends in Market Work Behavior of Women Since 1940," with John Pencavel, *Industrial and Labor Relations Review*, July 1993, pp. 653 – 676.

"Changes in Work Hours of Male Employees Since 1940," with John Pencavel, *Industrial and Labor Relations Review*, January 1993, pp. 262 – 283.

"Small Children, Small Pay: Why Child Care Pays So Little," with Victor Fuchs, *American Prospect*, Winter 1990.

MEMBERSHIPS IN PROFESSIONAL SOCIETIES

Associate Member, Antitrust Section, American Bar Association (Vice Chair, Finance Committee, Former Chair Women.Connected Committee and Economics Committee)

AWARDS AND HONORS

Lexology (formerly *Who's Who Legal)*

Global Competition Review

Exhibit 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION, ET AL. – CONTROL –
NORFOLK SOUTHERN CORPORATION, ET AL.

GRAND TRUNK CORPORATION'S FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS

Pursuant to 49 C.F.R. Part 1114, Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries[1] (collectively "CN" as defined below) requests that NS (as defined below) and UP (as defined below) respond to the following discovery requests in accordance with the Surface Transportation Board's rules, and the Definitions and Instructions set forth below.

Responses from NS and UP should be served as soon as possible, and in no event later than fifteen days from the date of service hereof. NS and UP are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

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[1] Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company and Wisconsin Central Ltd.

DEFINITIONS

1. "CN" means Grand Trunk Corporation; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

2. "Communication" or "Communications" shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible. Requests to produce or identify Communications include, but are not limited to, text messages, emails, instant or direct messages on any platform, voicemails, electronic communications, agendas, notes, talking points, agreements, inquiries, memoranda, reports, face-to-face conversations and meetings, telephone conversations or conference calls, negotiations, and presentation slides, and include information that was displayed or shown to another party without being transmitted in writing to that party.

3. "Concerning" means relating to, referring to, describing, evidencing, constituting, or in any way pertaining to, in whole or in part, the subject matter or the Request.

4. "Document" or "Documents" is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), nonidentical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, including, without limitation: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected applications, Communications, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, "Post-It" or similar notes, stenographic notes, notes, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web

(whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

5. "Identify,"

   a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last- known position and employer of the individual;

   b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;

   c. when referring to a Document, means to give, to the extent known, the (i) type of document (e.g., letter, e-mail, memorandum, report, chart); (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) or recipient(s). Documents may be produced in lieu of being Identified;

   d. when referring to information, means to list or produce documents containing the specified information;

   e. when used in relation to an oral Communication or statement means to: identify the person making the Communication or statement and the person, persons, or entity to whom the Communication or statement was made; state the date and place of the Communication or statement; describe in detail the contents of the Communication or statement; and identify all Documents that refer to, relate to or evidence the Communication or statement.

6. "Including" means "including, but not limited to."

7. "Merger Agreement" means that certain Agreement and Plan of Merger, dated as of July 28, 2025, by and among Union Pacific, Ruby Merger Sub 1 Corporation, Ruby Merger Sub 2 LLC, and Norfolk Southern, and any amendments or supplements thereto.

8. "NS" means Norfolk Southern Corporation and Norfolk Southern Railway Company; their parent companies; subsidiaries; controlled, affiliated, and predecessor firms; departments; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

9. "Proposed Transaction" means the proposed combination of NS and UP for which NS and UP are seeking STB approval in Finance Docket No. 36873.

10. "UP" means Union Pacific Corporation and Union Pacific Railroad Company; their parent companies; subsidiaries; controlled, affiliated, and predecessor firms; departments; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

11. "You" and "Your" mean UP and/or NS, whichever is broader in the context in which it is used.

12. "RIA" or "Railroad Industry Agreement" means the Railroad Industry Agreement entered into by the American Short Line and Regional Railroad Association, on behalf Class II and III railroads, and the Association of American Railroads, on behalf of Class I railroads, on September 10, 1998, as amended on October 7, 2004.

INSTRUCTIONS

1. Responsive Documents to all requests should be produced to the undersigned counsel, not later than fifteen days after the date of service of these Requests. Production of Documents may be accomplished through electronic means such as a data room or file transfer if You prefer. Rolling production of relevant Documents during that fifteen-day period is requested.

2. These requests extend to any Documents or Communications in the possession, custody, or control of UP, its present and former directors, officers, employees, attorneys, and any other agents or representatives, or NS, its present and former directors, officers, employees, attorneys, and any other agents or representatives.

3. Unless a different time period is specified, these requests cover the period from January 1, 2019 to the present.

4. If NS and/or UP withhold Documents or Communications on the basis of a claimed privilege or attorney work product, then for each such document, NS and/or UP should Identify the Document or Communication and state the basis for the claim that it is privileged or otherwise not discoverable.

5. NS and/or UP should immediately contact Lindsey Bohl at (202) 636-5908 to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

6. Following prior discovery practice in merger proceedings, these requests are presented in a single list of requests. Requests that ask NS and/or UP to produce documents shall be responded to in accordance with 49 C.F.R. §

1114.30. Requests that ask NS and/or UP to Identify or describe information or that otherwise pose questions shall be responded to in accordance with 49 C.F.R. § 1114.26.

7. If NS and/or UP believe that information responsive to a particular discovery request has been already presented in their workpapers, Identify the specific workpaper or workpapers that they believe provides the requested information, including the specific sheets and cells where applicable.

8. Pursuant to 49 CFR § 1114.29, NS and UP are under a duty to supplement their responses with respect to any Request.

DOCUMENT REQUESTS

1. Produce complete disclosure schedules, exhibits, and appendices to the Merger Agreement.

2. Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.

3. Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced in response to discovery requests submitted by other participants in this proceeding.

4. Produce data and Documents concerning reciprocal switching for the period from January 1, 2019 through December 31, 2024, including but not limited to car-level movement records, switch lists, interchange logs, line-segment-level usage data, and any other records or communications reflecting reciprocal switching arrangements or traffic. To the extent not otherwise encompassed by this request, Your response should include: (1) waybill date, number, and identifiers associated with the switch operation; (2) the switching locations where the actual car switching between roads occur (FSAC, SPLC, Rule 260 junction code, station name, and state/province); (3) local customer information where the switched cars are picked-up or delivered in the switching terminal area (CIF, Parent Customer Name, FSAC, SPLC, station name, and state/province); (4) payment information for that switch; and (5) date of operation.

5. Produce Documents sufficient to show all interchange volumes with other carriers, broken down by line, location, and counterparty, together with any associated payments, settlements, or charges between carriers for haulage, switching, or other car handling (including waybill identifiers, car initials and numbers, dates and times, service type, payment types, and amounts),

for the period from January 1, 2019 through December 31, 2024, provided at the most disaggregated level maintained in the ordinary course of business.

6. Produce all rail line sale, lease, or interchange agreements to which You are a party that contain an interchange commitment, as defined in the Surface Transportation Board's August 28, 2025 order.

7. For each interchange commitment identified in Request 6, produce Documents concerning all instances in which You have granted a waiver, exception, or other form of consent permitting the tenant or purchasing railroad to interchange traffic with another carrier notwithstanding the interchange commitment. This includes waivers granted under the Railroad Industry Agreement or any other ad hoc or informal exceptions.

8. Identify the customers referenced in the following statements by UP's CEO Jim Vena at the Morgan Stanley 13th Annual Laguna Conference held on September 10, 2025 and the Norfolk Southern Corporation Earnings Call held on July 29, 2025:

    a. "We don't see any customer that degrades its service or capability to compete. And the few, very few and we're talking about less than 10 that through this transaction, because it's a bolt-on, would go 2:1."

    b. "A significant note, with this combination, fewer than 20 customers will go from having two rail providers to just one, and we intend to provide a competitive alternative."

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Dated: September 23, 2025

/s/ Sara Y. Razi

Sara Y. Razi
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Attorneys for CN

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2025, I have caused the foregoing "Grand Trunk Corporation's First Set of Discovery Requests to Applicants" to be served electronically or by first-class mail, postage pre-paid, on the service list for Finance Docket No. 36873.

/s/ Andrew Bernstein
Andrew Bernstein

Exhibit 3

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

UNION PACIFIC'S SUPPLEMENTAL RESPONSE AND OBJECTIONS TO GRAND TRUNK CORPORATION'S FIRST SET OF DISCOVERY REQUESTS

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Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

October 31, 2025

Union Pacific Railroad Company and Union Pacific Corporation (collectively, "Union Pacific") submit the following supplemental response and objections to the first set of discovery requests of Grand Trunk Corporation[1] served on September 23, 2025 ("CN's Requests" or "Document Requests" or "Requests").

GENERAL RESPONSES AND OBJECTIONS

Union Pacific incorporates in this supplemental response the General Responses and Objections that it asserted in its October 8, 2025 Responses and Objections to Grand Trunk Corporation's First Set of Discovery Requests.

SUPPLEMENTAL RESPONSE

REQUEST NO. 8

Identify the customers referenced in the following statements by UP's CEO Jim Vena at the Morgan Stanley 13th Annual Laguna Conference held on September 10, 2025 and the Norfolk Southern Corporation Earnings Call held on July 29, 2025:

a) "We don't see any customer that degrades its service or capability to compete. And the few, very few and we're talking about less than 10 that through this transaction, because it's a bolt-on, would go 2:1."
b) "A significant note, with this combination, fewer than 20 customers will go from having two rail providers to just one, and we intend to provide a competitive alternative."

Union Pacific Response (October 8, 2025)

Subject to and without waiving its General Objections, Union Pacific will produce information in its possession responsive to this Request.

[1] Per Grand Trunk Corporation's First Set of Discovery Requests to Applicants, Grand Trunk Corporation is seeking discovery on behalf of its itself and its U.S. rail operating subsidiaries, including Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company and Wisconsin Central Ltd. (collectively "CN").

Union Pacific Supplemental Response (October 31, 2025)

Subject to and without waiving its General Objections, Union Pacific further responds to this Request as follows:

The July 29, 2025 and September 10, 2025 statements by Mr. Vena that are referenced in this Request referred to an ongoing analysis Union Pacific and Norfolk Southern are conducting to identify the shipper facilities, if any, that are currently served by Union Pacific, Norfolk Southern, and no other railroad and that would be left without access to at least two Class I railroads after the proposed transaction if access to an alternative railroad were not provided ("2-to-1 shipper facilities"). The analysis referenced by Mr. Vena in his statement remains ongoing. Applicants will address the customers with 2-to-1 shipper facilities in their forthcoming application.

Respectfully submitted,

/s/ Michael L. Rosenthal
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Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

October 31, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2025, I have caused the foregoing Union Pacific's Supplemental Response and Objections to Grand Trunk Corporation's First Set of Discovery Requests to be served electronically on all parties of record in this proceeding.

/s/ Kevin M. Kelly

Exhibit 4

PUBLIC VERSION

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November 5, 2025

VIA ELECTRONIC MAIL

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Re: **Docket No. FD 36873**
Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Counsel:

We write on behalf of Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively, "CN"), regarding Union Pacific's ("UP") documentary and data production on October 31, 2025 ("UP's First Production") in response to Grand Trunk Corporation's First Set of Discovery Requests served on September 23, 2025 ("First RFPs"). While CN expressly reserves all rights and arguments to challenge the sufficiency of UP's production in response to the First RFPs, we write to confirm that we appear to be at impasse on two specific issues related to Document Request 1 ("RFP 1") and Document Request 8 ("RFP 8").

CN has taken every effort to cooperate with UP, meeting and conferring several times, agreeing to prioritize certain requests to lessen the burden on UP, and providing several opportunities for UP to comply with its discovery obligations. Indeed, CN agreed to prioritize RFP 1 and 8, in part to ease UP's burden.[1] Moreover, UP agreed not to object to producing documents responsive to the RFPs on the basis that the requests are premature to the filing of the Application.[2]

On October 31, 2025, over a month after CN served its RFPs, UP made its First Production, containing only 331 documents. UP's First Production falls short of what was promised. UP's reticence to produce materials that are limited in scope and easily attainable,

[1] *See* October 20, 2025 letter from CN to UP.

[2] *Id.*

and now flat-out refusal to produce certain of these documents, serves only to frustrate CN's ability to meaningfully participate in the matter and appears intended only to delay proceedings.

Request for Production 1

With regard to **RFP 1,** which seeks production of complete disclosure schedules, exhibits, and appendices to the Merger Agreement between UP and Norfolk Southern ("Merger Agreement"), UP agreed in its October 8, 2025 Responses and Objections to produce all disclosure schedules, exhibits, and appendices to the Merger Agreement subject to any claims of attorney-client privilege, the attorney work product doctrine, or any other applicable privileges or immunities including related to the potential settlement of this proceeding. During our meet and confers on October 10, 2025 and October 23, 2025, CN objected to any claim of privilege over these materials, noting that there was no legitimate basis to withhold any portion of the Merger Agreement.[3] We also asked that UP explain the basis for its assertions of privilege over these materials. UP has declined to do so and instead indicated that it would do so only at a later date, despite the fact that UP clearly understood that it would be asserting a claim of privilege and had all information available to it to explain any such claim of privilege.

UP's First Production contains the Merger Agreement and portions of the disclosures, appendices, and exhibits. However, Section 5.8 of the Company Disclosure Schedules is redacted in full.[4] UP has still refused to explain the basis of its privilege claim or when it will disclose the basis of its privilege claim for these redactions, or otherwise provide any accompanying privilege log. We reiterate our position that there is no legitimate basis to withhold any part of the Merger Agreement or its disclosure schedules, exhibits, or appendices. It is clear that UP knows what its claim of privilege is and has the information necessary for explaining that basis at no incremental burden, so any refusal to disclose it now can only be intended to cause further delay.

Request for Production 8

With regard to **RFP 8,** which seeks the identification of the "2-to-1" customers referred to by UP CEO Jim Vena in public statements on September 10, 2025 and July 29, 2025, UP agreed in its Responses and Objection to produce documents responsive to RFP 8. UP further reiterated its agreement to produce these responsive materials during meet and confers. But On October 31, 2025, UP served Supplemental Responses and Objections that now indicate, for the first time, that the information requested in RFP 8 "referred to an ongoing analysis Union Pacific and Norfolk Southern are conducting to identify [2-to-1 shipper facilities]" and that because the aforementioned analysis remains ongoing, RFP 8 will be addressed in UP's and NS's forthcoming application.

[3] *See* October 20, 2025 letter from CN to UP at 5 (noting that there is no legitimate basis for withholding the Merger Agreement).

[4] *See* UP_0000067, UP_0000068.

UP's position mischaracterizes RFP 8 and offers no basis to refuse the production of documents or information responsive to RFP 8. RFP 8 seeks the identity of those customers ***already*** referenced by Mr. Vena in ***previously*** made public statements. The fact that UP may also be undertaking an "ongoing analysis" of a similar issue does not in any way relate to the information sought or requested by RFP 8. Indeed, UP may supplement or revise its productions in response to RFP 8 as its analyses continue, but a related but ongoing analysis is not a basis to refuse producing what information it currently has on hand now. That this list may be different from what the application ultimately contains is not at issue here.

Furthermore, the burden of producing these responsive materials, if any, is minimal—the parties have been reviewing the impacted customers since the merger was announced clearly have some frame of reference for these customers such that Mr. Vena felt comfortable enough to publicly disclose the numbers including in statements to investors.[5] All told, we see no burden in simply identifying those entities that Mr. Vena was referring to.

* * *

As an unfortunate result of UP's refusal to cooperate, we are now at impasse on RFPs 1 and 8. Absent a commitment to imminently produce documents that are responsive to RFPs 1 and 8—i.e., the specific 2-to-1 customers publicly referenced by UP's CEO and all unredacted disclosure schedules, appendices, and exhibits to the Merger Agreement—CN will seek the appropriate relief from the Surface Transportation Board.

CN's review of UP's production remains ongoing and CN expressly reserves all rights and arguments, including the right to later supplement this letter or further identify deficiencies in UP's First Production.

Very truly yours,

/s/ Abram J. Ellis
Abram J. Ellis

Cc:
Sara Razi – sara.razi@stblaw.com
Lindsey Bohl – lindsey.bohl@stblaw.com

[5] We are confident Mr. Vena does not make a habit of making statements to investors without specific and detailed evidence to substantiate those statements.

Exhibit 5

COVINGTON

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By Email

November 18, 2025

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Re: Docket No. FD 36873, *Union Pacific Corp., et al. - Control - Norfolk Southern Corp., et al.*

Dear Counsel:

We write on behalf of Union Pacific Railroad Company and Union Pacific Corporation (collectively, "Union Pacific") in response to the November 5, 2025 letter from Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively, "CN") regarding Union Pacific's responses to CN's Document Requests 1 and 8.

As an initial matter, your description of the parties' past interactions regarding CN's discovery requests is incomplete and mischaracterizes Union Pacific's responses. Union Pacific has undertaken diligent efforts to collect and produce an expansive array of data and information in response to CN's exceedingly broad discovery requests. As a result of those efforts, Union Pacific made an initial production on October 31, 2025 of more than **10 gigabytes** of responsive documents and data. Of course, Union Pacific has also raised legitimate objections to portions of CN's discovery requests. To narrow the scope of any disputes regarding these objections, Union Pacific has engaged constructively with CN, and remains committed to further conferring to resolve any remaining disputes, including with respect to CN Requests 1 and 8.

With respect to CN Requests 1 and 8, CN's claims that its ability to meaningfully participate in the matter has been frustrated by Union Pacific's responses to the requests and that it has been deprived of "what was promised" by Union Pacific are not supported by the record.

I. CN Request 1

In response to CN Request 1, which sought disclosure schedules, exhibits, and appendices to the Merger Agreement between Union Pacific and Norfolk Southern, Union Pacific made a production of responsive documents on October 31, 2025. The production included approximately 80 pages of disclosure schedules. Consistent with its objections to CN Request 1, Union Pacific redacted 2 pages of the disclosure schedules that contain privileged material.

As Sections 5.8(b) and 5.8(c) of the Merger Agreement describe, the redacted portions of the disclosure schedules contain descriptions of the terms and conditions that Union Pacific and Norfolk Southern would potentially be willing to accept to settle or otherwise resolve anticipated legal challenges to the proposed transaction. The redacted content reflects the legal advice of counsel and attorney work product regarding potential settlement strategy, which were shared between Union Pacific and Norfolk Southern pursuant to a common legal interest, and are further protected from discovery by the settlement privilege.

II. CN Request 8

CN Request 8 sought information regarding the customers referenced in the following statements by Union Pacific CEO Jim Vena:

1. "We don't see any customer that degrades its service or capability to compete. And the few, very few and we're talking about less than 10 that through this transaction, because it's a bolt-on, would go 2:1."

2. "A significant note, with this combination, fewer than 20 customers will go from having two rail providers to just one, and we intend to provide a competitive alternative."

In its October 8, 2025 response to CN Request 8, Union Pacific stated that it would produce information responsive to the request. In its October 31, 2025 supplemental response to CN Request 8, Union Pacific explained that the statements by Mr. Vena that are referenced in the request referred to an ongoing analysis to identify 2-to-1 shipper facilities. The continuing nature of the analysis is apparent from Mr. Vena's reliance in his statements on ranges of potential customers implicated, *i.e.*, "about less than 10" or "fewer than 20." Although CN interprets Mr. Vena's statements differently, and concludes that he must have been describing specific customers that he had in mind—as opposed to describing his understanding of the range of customers implicated by Union Pacific's ongoing analysis—that opinion is unsupported by the record and does not provide a basis for challenging the sufficiency of Union Pacific's response.

Nonetheless, to the extent CN would like to revise its Request to seek information regarding the customers that Union Pacific identifies as a result of the ongoing analysis that Mr. Vena referenced, Union Pacific has already stated that the identities of those customers will be addressed in applicants' forthcoming application.

* * *

Please let me know if you have any questions. Union Pacific remains willing to meet and confer regarding any remaining disputes.

Sincerely,

/s/ Kevin M. Kelly

Kevin M. Kelly

Exhibit 6

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November 25, 2025

VIA ELECTRONIC MAIL

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Re: **Docket No. FD 36873**
Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Counsel:

We write on behalf of Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively, "CN"), regarding Union Pacific's ("UP") documentary productions on October 31, 2025 ("UP's First Production") in response to Grand Trunk Corporation's First Set of Discovery Requests served on September 23, 2025 ("First RFPs") and Grand Trunk Corporation's Second Set of Discovery Requests served on October 23, 2025 ("Second RFPs," together with the First RFPs, the "RFPs"). We write (1) regarding specific deficiencies related to Document Request 1 ("RFP 1") and Document Request 6 ("RFP 6"), (2) confirmation regarding UP's position on Document Request 8 ("RFP 8"), (3) to request an update on the status of future productions responsive to the RFPs, and (4) to request a meet and confer regarding the Second RFPs. CN expressly reserves all rights and arguments to challenge the sufficiency of UP's productions in response to the RFPs.

I. RFP 1

As explained in our previous correspondence, upon review of UP's First Production, CN found the enclosed documents to be deficient in response to RFP 1 due to redactions to Section 5.8 of the Company Disclosure Schedules.[1] We appreciate that UP has identified the

[1] *See* Letter from A. Ellis to M. Rosenthal (November 5, 2025).

basis of its redactions.[2] However, we disagree with UP's assertion of privilege and work product protections and reiterate our position that there is no legitimate basis to withhold any part of the Merger Agreement or its disclosure schedules, exhibits, or appendices. **We write to confirm that we appear to be at impasse on this issue related to RFP 1.**

II. RFP 6

Upon review of UP's Productions, CN has found the enclosed documents to be deficient in response to RFP 6. RFP 6 seeks **all** rail line sale, lease, or interchange agreements to which UP is a party that contain an interchange commitment. Although UP has now produced many of the agreements identified in UP's response to the Board's August 28, 2025 order, UP has failed to provide **all** agreements that contain interchange commitments as required by RFP 6.[3] Specifically, UP has failed to provide the following agreements, which it has acknowledged, *see id.*, contain interchange commitments:

- Lease Agreement between Union Pacific and Arkansas-Oklahoma RR, interchanging at Howe, OK; Oklahoma City, OK; and Shawnee, OK.
- Lease Agreement between Union Pacific and Colorado Pacific Rio Grande RR.
- Lease Agreement between Union Pacific and Missouri Eastern RR.
- Lease Agreement between Union Pacific and Portland & Western RR.

Additionally, we received the Lease Agreement between Union Pacific and Dallas, Garland & Northeastern but, upon review, it did not contain the relevant interchange commitment. Under the terms of RFP 6, UP must produce **all** agreements that contain interchange commitments. The burden to produce these remaining agreements is minimal, if any, and there is therefore no basis for UP to refuse to produce them. **Please confirm that UP will produce these additional agreements and provide a date certain for their production.**

III. RFP 8

RFP 8 seeks the identification of the "2-to-1" customers referred to by UP CEO Jim Vena in public statements on September 10, 2025 and July 29, 2025. On October 31, 2025, UP served Supplemental Responses and Objections indicating that the information requested in RFP 8 "referred to an ongoing analysis Union Pacific and Norfolk Southern are conducting to identify [2-to-1 shipper facilities]" and that because the aforementioned analysis remains ongoing, RFP 8 will be addressed in UP's and NS's forthcoming application. On November 18, 2025, UP claimed that UP CEO Jim Vena's public statements on September 10, 2025 and July 29, 2025 were not based on any specific list of customers or otherwise verifiable information.[4] **Please confirm that UP is asserting that UP CEO Jim Vena made public statements to investors regarding the existence of 2-to-1 customers without any specific**

[2] *See* Letter from K. Kelly to A. Ellis (November 18, 2025).

[3] *See* Letter from T.J. Litwiler to M. Rosenthal and R. Atkins (October 6, 2025).

[4] *See* Letter from K. Kelly to A. Ellis (November 18, 2025).

facts to support those statements. To the extent UP is asserting that CEO Jim Vena had no specific 2-to-1 customers in mind, please confirm that also.

IV. Outstanding Items

CN has taken several steps to cooperate with UP, including meeting and conferring several times. On October 31, 2025, over a month after CN served its RFPs, UP made its First Production, containing only 331 documents responsive only to RFPs 1 and 6. UP has failed to produce documents responsive to all RFPs. Specifically, UP has failed to produce any documents responsive to RFPs 2, 3, 4, 5, and 7. **Please confirm that UP is gathering additional documents responsive to the RFPs and provide a date certain for their production.**

CN also requests a meet and confer regarding the Second RFPs to discuss UP's responses and objections.

CN's review of UP's First Production remains ongoing and CN expressly reserves all rights and arguments, including the right to later supplement this letter or identify further deficiencies in UP's First Production.

Very truly yours,

/s/ Abram J. Ellis
Abram J. Ellis

Cc:
Sara Razi – sara.razi@stblaw.com
Lindsey Bohl – lindsey.bohl@stblaw.com

Exhibit 7

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By Email

December 12, 2025

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Re: Docket No. FD 36873, *Union Pacific Corp., et al. - Control - Norfolk Southern Corp., et al.*

Dear Counsel:

We write on behalf of Union Pacific Railroad Company and Union Pacific Corporation (collectively, "Union Pacific" or "UP") in response to the November 25, 2025 letter from Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively, "Canadian National" or "CN") regarding Union Pacific's responses to Canadian National's discovery requests.

I. CN Request 1

The sole issue you raise with respect to Request 1 is Union Pacific's redactions to Section 5.8 of the Company Disclosure Schedules, which were produced in response to the request. As you acknowledge in your letter, Union Pacific has previously identified the basis for its redactions. We explained that the redacted sections contain descriptions of the terms and conditions that Union Pacific and Norfolk Southern would potentially be willing to accept to settle or otherwise resolve anticipated legal challenges to the proposed transaction.[1] This content reflects the legal advice of counsel and attorney work product regarding potential settlement strategy, which were shared between Union Pacific and Norfolk Southern pursuant to a common legal interest, and are further protected from discovery by the settlement privilege.[2]

CN has stated that it disagrees with Union Pacific's position, but has offered no explanation for why it believes Union Pacific's privilege claims are not valid beyond conclusory arguments that there can be no legitimate basis for withholding the requested material. If Canadian National has authority to support its position or an explanation of its basis for contesting Union Pacific's privilege claims, please provide it so we may consider Canadian National's arguments.

---

[1] Letter from K. Kelly to A. Ellis (November 18, 2025) at 2.

[2] *Id.*

II. CN Request 6

With respect to Request 6, Canadian National acknowledges that Union Pacific has already produced many of the agreements containing interchange commitments that it requested, but has identified a small subset that it believes were not previously produced. Canadian National specifically identified four agreements that you believe should have been produced. We address each below.

A. Lease Agreement between Union Pacific and Arkansas-Oklahoma RR, interchanging at Howe, OK; Oklahoma City, OK; and Shawnee, OK

Union Pacific has collected responsive documents and will produce them.

B. Lease Agreement between Union Pacific and Colorado Pacific Rio Grande RR

Contrary to CN's assertions, Union Pacific does not acknowledge that a lease agreement between Union Pacific and Colorado Pacific Rio Grande RR ("CXRG") with an interchange commitment exists. Although CXRG has argued that an interchange commitment exists in Walsenburg, Colorado,[3] it is mistaken. Union Pacific has further addressed this claim in its reply to CXRG's petition.[4]

C. Lease Agreement between Union Pacific and Missouri Eastern RR

Union Pacific previously produced a document responsive to this request at UP_0002796. Union Pacific has also performed a supplemental search and identified one additional document for production.

D. Lease Agreement between Union Pacific and Portland & Western RR

Based on your description, it is unclear which specific documents you are referencing, but Union Pacific has identified the following produced documents that might be responsive: UP_0001505, UP_0002938, UP_0002941, UP_0002946, UP_0002953, UP_0002959, UP_0002962, UP_2978, UP_0002978, UP_0002981, UP_0002989, UP_0002991, UP_0002995.

Union Pacific further notes that some of the filenames (as kept in the normal course of business) for these produced documents do not align with the document content. If Canadian

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[3] Petition for Order Directing Union Pacific to Supplement Its Response to Decision No. 3 (CXRG-2).

[4] Union Pacific's Reply to CXRG's Petition for Order Directing Union Pacific Union to Supplement Its Response to Decision No. 3 (UP-12).

National only reviewed the filenames and did not review each document's content, it would have failed to locate the responsive material.

E. Lease Agreement between Union Pacific and Dallas, Garland & Northeastern

Union Pacific has undertaken a supplemental search and identified one additional document for production.

III. CN Request 8

Your letter mischaracterizes Union Pacific's prior responses, including its November 18, 2025, letter. As we have previously stated, Mr. Vena's statements referred to an ongoing analysis to identify 2-to-1 shipper facilities, and is consistent with describing his understanding of the range of customers implicated by Union Pacific's ongoing analysis. Nonetheless, Union Pacific has confirmed that the identities of the 2-to-1 customers that it identifies as a result of that analysis will be addressed in applicants' forthcoming application, which Applicants' anticipate filing in less than two weeks.[5]

IV. Other Items

Setting aside your general mischaracterization of Union Pacific's discovery efforts, your specific claim that Union Pacific has failed to produce documents responsive to CN Requests 3, 4, 5, and 7 is false, and misleading with respect to CN Request 2. Union Pacific has produced more than 10 gigabytes of responsive documents and data, including expansive reciprocal switching and interchange volume data, agreements containing interchange commitments, and schedules to its merger agreement; and its collection efforts are ongoing. Union Pacific's efforts to respond to pre-application discovery requests in this proceeding are not only reasonable, but go above and beyond what is required by the merger rules.[6]

For Request 3, Union Pacific previously responded that it would "provide CN with a copy of or access to Union Pacific's future responses to discovery requests in this proceeding that are served by other participants in this proceeding."[7] The only such materials to date are Union Pacific's responses to BNSF's Discovery Requests, which Union Pacific provided to Canadian National when it served them.[8] Consistent with its prior response, Union Pacific will continue to

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[5] *See* Amendment to Notice of Intent to File Application (UP-10/NS-9).

[6] *See Major Rail Consol. Procs.*, 5 S.T.B. 539, 591 (2001) (explaining that the Board was "not proposing" that applicants be subject to "broad pre-application discovery," which would "impede the prospective applicants in the preparation of their application").

[7] Union Pacific's Responses to CN's First Set of Discovery Requests.

[8] *See* K. Kelly email to S. Razi, et al. (October 16, 2025).

provide Canadian National with access to Union Pacific's future discovery responses and productions.

For Request 4, Union Pacific responded that it would "produce nonprivileged data regarding reciprocal switch movements in its possession and responsive to this Request for the period January 1, 2019 to December 31, 2024."[9] Union Pacific has produced the following documents containing or defining data responsive to this request: UP_0003598, UP_0003599, UP_0003600, UP_0003601, UP_0003602, UP_0003603, UP_0003604, UP_0003605, UP_0003606, UP_0003607, UP_0003608, UP_0003609, UP_0003610, UP_0003611, UP_0003612, UP_0003613, UP_0003614, UP_0003615, UP_0003616, UP_0003617, UP_0003618, UP_0003619, UP_0003620, UP_0003621, UP_0003622, UP_0003623.

For Request 5, Union Pacific responded that it would "produce nonprivileged data regarding interchange volumes with other carriers in its possession and responsive to this Request."[10] Union Pacific has produced the following documents containing or defining data responsive to this request: UP_0003624, UP_0003625, UP_0003626, UP_0003627, UP_0003628, UP_0003629, UP_0003630, UP_0003631, UP_0003632, UP_0003633, UP_0003634, UP_0003635, UP_0003636, UP_0003637, UP_0003638.

For Request 7, Union Pacific responded that it would "produce documents sufficient to show waivers, exceptions, or other forms of consent responsive to this Request."[11] Union Pacific has produced the following documents responsive to this request: UP_0000079, UP_0000080, UP_0000081, UP_0000082, UP_0000083, UP_0000084, UP_0000085, UP_0000086, UP_0000087, UP_0000088, UP_0000089, UP_0000090, UP_0000092, UP_0000093, UP_0000094, UP_0000095, UP_0000096, UP_0000097, UP_0000098, UP_0000099, UP_0000100, UP_0000101, UP_0000102, UP_0000103, UP_0000104, UP_0000105, UP_0000106, UP_0000107, UP_0000108, UP_0000109, UP_0000110, UP_0000111, UP_0000112, UP_0000113, UP_0000114, UP_0000115, UP_0000116, UP_0000117, UP_0000118, UP_0000119, UP_0000120, UP_0000121, UP_0000122, UP_0000123, UP_0000124, UP_0000125, UP_0000126, UP_0000127, UP_0000128, UP_0000129, UP_0000130, UP_0000131, UP_0000132, UP_0000133, UP_0000134, UP_0000135, UP_0000136, UP_0000137, UP_0000138, UP_0000139, UP_0000143, UP_0000147, UP_0000151, UP_0000152, UP_0000153, UP_0000154, UP_0000155.

For Request 2, Union Pacific previously responded that it would "produce nonprivileged materials in its possession that it made available to a federal government agency, state attorneys general, or any other state government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction in response to the request of such entity or in response to Union Pacific's legal obligations to provide such information," but further explained that it had "not identified any such materials in its possession, other than the materials

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[9] UP's Responses to CN's First Set of Discovery Requests.

[10] *Id.*

[11] *Id.*

accessible to CN through this proceeding."[12] Union Pacific subsequently informed Canadian National that it was "evaluating whether there are any additional documents regarding the proposed transaction that Union Pacific produced to the Board, Department of Justice, or other regulatory agencies in response to requests (whether formal or informal) that can be located through a reasonable search."[13] Union Pacific has not identified any additional responsive material to date, other than material that has been made available to Canadian National through this proceeding.[14]

* * *

Please let me know if you have any questions. Union Pacific remains willing to meet and confer regarding any remaining disputes.

Sincerely,

/s/ Kevin M. Kelly

Kevin M. Kelly

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[12] *Id.*

[13] Letter from K. Kelly to A. Ellis (October 24, 2025).

[14] For example, Union Pacific has provided to Canadian National copies of materials produced to the Board in response to supplemental data requests. *See, e.g.,* Response to Supplemental Request from Board Staff (UP-11).

Exhibit 8

PUBLIC VERSION

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October 20, 2025

VIA ELECTRONIC MAIL

William A. Mullins
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Re: **Docket No. FD 36873**
Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Counsel:

We write on behalf of Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively, "CN"), in response to Norfolk Southern's ("NS") Responses and Objections ("Responses") to Grand Trunk Corporation's First Set of Discovery Requests served on September 23, 2025 ("RFPs") and to memorialize our October 10, 2025 meet and confer. CN expressly reserves all rights and arguments.

I. Discovery Protocol

As we explained, CN believes a discovery protocol detailing the timing and processes for discovery in this proceeding is necessary, in light of the expedited timeframe for review of the proposed transaction. Such a protocol would be helpful, for instance, if the parties reach impasse on discovery issues following good faith conferrals and need to raise those issues to the ALJ for timely resolution. Such a discovery protocol is consistent with longstanding STB precedent.[1] You confirmed that NS is considering such a protocol. Please confirm that NS is preparing a discovery protocol. Alternatively, CN will prepare and circulate its proposed discovery protocol.

[1] *See* Decision No. 10, FD 33388 (STB served June 27, 1997); Decision No. 4, FD 33556 (STB served Nov. 4, 1998).

II. NS's General Responses and Objections

Relevant Time Period: NS's Responses state that NS will search for and provide information up to July 29, 2025. During our meet and confer, you stated that you were not sure why July 29, 2025 was selected as the end of the relevant time period, but that you believe it is because that is the date on which NS's Notice of Intent was filed. However, CN's position is that materials created after the Applicants filed their Notice of Intent would be highly relevant. Notwithstanding the foregoing, as discussed CN is willing to negotiate a reasonable cutoff date for certain categories of materials that are more burdensome to search for and produce on a request-by-request basis. You confirmed during our meet and confer that you would evaluate that proposal. CN proposes that the RFPs can be organized into the below categories:

Requests for which the relevant time period is already detailed in the request or for which a cutoff period is not necessary, as these requests are "go-gets":

- RFP 1
- RFP 4
- RFP 5
- RFP 6
- RFP 7
- RFP 8

Requests that do not have a cutoff date and are ongoing in nature:

- RFP 2
- RFP 3

CN reserves the right to revise this proposal as necessary and does not agree that this proposal applies to any future discovery requests. Further, this proposal does not limit NS's obligation, pursuant to 49 CFR § 1114.29, to supplement its responses with respect to any RFP.

Timeliness of the Requests: NS's Responses state that NS objects to the RFPs as "premature to the extent that CN seeks discovery (including information, documents, or communications) regarding a Proposed Transaction for which no Application has yet been filed[.]" NS confirmed, however, that it is not refusing to collect and produce materials responsive to the RFPs prior to the filing of its application on the basis of that objection and that it is currently reviewing and collecting materials responsive to the RFPs.

With respect to timing of productions, NS confirmed that it would have a sense of timing by the end of the week following our meet and confer. Please provide an update on when NS will begin to make productions. Specifically, materials responsive to RFPs 1 & 8 should have already been produced given the relatively minimal burden involved. We address those specific RFPs below, but we continue to see no reason why those documents have yet to be produced. ***We ask that NS produce such documents no later than October 23, which is a month after CN served its initial set of Discovery Requests on September 23, 2025.***

Settlement Communications: NS's Responses include an objection to producing "documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding, in whole or in part." During our meet and confer, we asked you to confirm whether NS intends to withhold ordinary course documents solely on the basis of this objection. Indeed, documents created outside the context of settlement negotiations in the ordinary course of business and shared with the Board, or agreements or communications with a third-party, do not become privileged simply because they were appended to a settlement communication or were mentioned during a settlement discussion. You confirmed that NS does not intend to withhold ordinary course documents pursuant to this objection merely because they were included in settlement discussions or communications.

Similarly, NS objected to producing documents or information "relating to" settlement. It is not appropriate to withhold documents solely because they may conceivably relate to NS's settlement communications. For example, communications or documents discussing or referencing potential agreements with third parties should not be subject to NS's objection to producing settlement communications simply because those third-party agreements might somehow relate to a settlement proposal or settlement communication between NS and the Board. You confirmed that you are not aware of any documents relating to a third party that NS intends to withhold at this time pursuant to this objection.

To the extent NS withholds such materials in the future, we intend to dispute the appropriateness of withholding such documents on an expedited basis as necessary to ensure that CN has ample time to review those materials and move to compel. You also indicated that there may be confidentiality protections in certain agreements with third parties that prevent you from producing such documents and that certain agreements may require the parties to seek an exception to the confidentiality provisions from the Administrative Law Judge ("ALJ"). Should such an issue arise, NS should promptly notify CN so that the parties can raise the issue on an expedited basis as necessary with the ALJ to ensure CN has adequate time to review those materials.

Relevance: NS's Responses include an objection to the RFPs "to the extent they purport to seek information and/or documents that are not relevant and are not likely to lead to the discovery of evidence related to the issues raised in the above-captioned proceeding." You confirmed that you are not aware of any documents that NS intends to withhold at this time pursuant to this objection. Should NS withhold documents on this basis, NS should promptly notify CN so that the parties can raise the issue on an expedited basis as necessary with the ALJ to ensure CN has adequate time to review those materials.

Redacting Non-Responsive Information: NS's Responses include an objection to the RFPs "to the extent they prohibit NS from redacting information that might reveal NS's commercially sensitive or corporate strategies and is not relevant to this proceeding" and that "NS will redact any such information and reserves the right to redact any non-responsive information from otherwise responsive documents produced in response to the CN Requests." CN disagrees that the redaction of information or material for this purpose is appropriate. There is a comprehensive protective order in place to protect confidential

information produced in this proceeding.[2] CN expressly reserves the right to argue that any such redactions made in the future are inappropriate. You stated that NS does not necessarily intend to withhold documents or information at this time. Given that NS is not presently aware of any intention to withhold documents or information, we agree to defer further discussions until such time that these types of redactions are made.

To the extent NS makes such redactions in the future, we intend to dispute the appropriateness of such redactions on an expedited basis as necessary to ensure that CN has ample time to review such redactions and move to compel.

Communications: NS's Responses object to the definition of "Communications" "especially to the extent that it seeks information on "face-to-face conversations and meetings." You confirmed that this language relates solely to the form of such communications and that NS would produce oral communications and meetings if they were reduced to writing. You also confirmed that e-mail serves as the main method of communication at NS (as opposed to an electronic messaging system for example).

Union Pacific and NS Definitions: NS's Responses include objections to the definitions of both UP and NS. You confirmed that NS does not intend to withhold documents on the basis that they relate to some other affiliated entity that is being carved out of these definitions. We understand that this objection refers to the fact that NS may not have documents for certain historic predecessors.

Document Database: NS's Responses include an objection indicating that "documents and information produced by NS in this proceeding shall be maintained in a distinct database, separate from any other documents, including those produced by NS or any other party in a separate proceeding." However, you stated that the Applicants are considering whether there should be a joint repository that multiple parties have access to. ***Please confirm whether NS continues to object on this basis and if so, what NS's position is with respect to this objection.***

Litigation: NS's Responses include an objection to the RFPs "to the extent that they seek information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation." As we discussed, it is not clear to CN what NS anticipates would be covered by this objection that is not already covered by its objection to producing material that is privileged and/or attorney work product. You stated that you would consider that and confirm. ***Please confirm whether NS continues to object on this basis and if so, what NS's position is with respect to this objection.***

III. NS's Specific Responses and Objections

RFP 1: With respect to RFP 1, you represented that NS intends to defer to UP's production of these materials. As we discussed, there may be reasons why NS is in a better position to produce these materials, however, we understand that UP is planning to produce these materials. We reserve all rights to further seek this information from NS if necessary.

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[2] *See* Decision No. 1, FD 36873 (STB served Aug. 5, 2025).

RFP 2: You confirmed that you are not aware of any documents that NS intends to withhold on the basis of its objections with respect to RFP 2. You were not sure yet whether NS currently has documents responsive to this request that were not filed publicly with the STB. ***Please confirm whether NS is aware of any documents responsive to this request, and if so, when NS plans to produce them.***

Additionally, it is CN's position that RFP 2 is an ongoing request and that to the extent any documents are produced to the entities detailed in RFP 2 during this proceeding that are responsive to RFP 2 they should be produced to CN.

RFP 3: There do not appear to be any current issues with respect to RFP 3. We understand that NS will produce documents responsive to RFP 3 and will do so on an ongoing basis throughout this proceeding.

RFP 4 & RFP 5: You confirmed that NS does not intend to withhold documents based on its objections to RFPs 4 & 5 and it intends to produce documents responsive to these requests.

RFP 6: NS's Responses state that NS will produce "current versions" of any interchange agreements. As discussed, it is not appropriate for NS to limit its search and production to only those agreements currently in effect. NS should search for and produce all agreements that were in effect during the relevant time period.

Further, NS's response should not be limited to only those interchange commitments identified in NS's response to the Board's August 28, 2025 order. As you're aware CN has already identified a number of deficiencies with that initial list, and NS has already supplemented the list accordingly. NS should produce any interchange commitments responsive to RFP 6 regardless of whether it included them in its submission.

RFP 7: With respect to NS's objections to RFP 7, you stated that you would confirm whether NS is distinguishing between formal and informal waivers, exceptions, or other forms of consent. CN does not believe it is appropriate to make such a distinction as both are clearly relevant. ***Please confirm whether NS intends to distinguish between formal and informal waivers, exceptions, or other forms of consent in its responses to RFP 7.***

RFP 8: With respect to RFP 8, you represented that NS intends to defer to UP's production of these materials. As we discussed, there may be reasons why NS has responsive materials separate and apart from UP. For example, to the extent NS analyzed the information responsive to RFP 8. However, we understand that to the extent information responsive to RFP 8 was present in another document that NS would not withhold that document on the basis that it was deferring to UP with respect to this RFP.

*** * ***

We appreciate NS's agreement to continue to meet and confer on these issues, but absent a commitment to begin imminently producing documents that are readily available and can be produced with no incremental burden, CN will feel compelled to seek adjudicative relief.

Very truly yours,

/s/ Abram J. Ellis
Abram J. Ellis