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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

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

CSX TRANSPORTATION, INC.'S COMMENTS ON COMPLETENESS OF APPLICATION

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On December 19, 2025, Union Pacific Railroad Company ("UP"), Union Pacific Corporation ("UPC"), Norfolk Southern Railway Company ("NS"), and Norfolk Southern Corporation ("NSC") filed an application with the Board, seeking (i) the acquisition of control by UPC of NSC, and through NSC of NS and NS' rail carrier subsidiaries, and (ii) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. Railroad Control Application, *Union Pac. Corp. & Union Pac. R.R. Co.—Control—Norfolk S. Corp. & Norfolk S. Ry. Co.*, FD 36873 (UP-13/NS-11) (Dec. 19, 2025) (the "Application" or "App."). That same day, the Board issued a decision seeking comments by December 29, 2025 on the Application's completeness. *Union Pac. Corp. & Union Pac. R.R. Co. —Control—Norfolk S. Corp. & Norfolk S. Ry. Co. (Decision No. 7)*, FD 36873 (STB served Dec. 19, 2025). CSX Transportation, Inc. ("CSXT") respectfully submits the following comments in response.

Based on CSXT's review, the Application lacks certain important elements required by the Board's statute, consolidation procedures, and rules. The Application's deficiencies fall into two categories. The first consists of discrete but important omissions, including in the application for control of other railroads and the failure to include the complete merger agreement, which are addressed in Part I. In addition, the Application fails to meaningfully engage with fundamental requirements of the new rules adopted by the Board in 2001. *Major Rail Consolidation Procs.*, 5 S.T.B. 539 (2001) ("New Rules"). These deficiencies—namely, the Application's failure to identify and analyze the downstream effects of its proposed merger, to fully calculate the merger's net public benefits, and to provide evidence supporting its purported measures to enhance competition—are addressed in Part II.

Each of these deficiencies renders the Application incomplete as originally filed. 49 U.S.C. § 11325(a). CSXT is mindful that the Board will not engage with the merits of the Application at this threshold stage. Applicants' failure to include the information needed to satisfy all of the informational requirements of 49 C.F.R. § 1180 for a major transaction in their Application, however, makes it unfairly burdensome for non-applicants like CSXT to assess and respond to the impacts of the proposed UP/NS merger and, because of the lack of required information, unfairly complicates the evidentiary record-making process necessary for the Board to determine whether the merger would be in the public interest. These issues are compounded by Applicants' proposed procedural schedule, which combined with the

Application's deficiencies, would effectively leave non-applicants no opportunity to respond to what should be Applicants' *prima facie* case. These deficiencies render the Application incomplete and, as required by 49 U.S.C. § 11325(a), "the Board shall reject it." The Board should direct the Applicants to supplement their filing before accepting the Application as complete.

I. The Application's Deficiencies Must Be Corrected Before the Board Accepts It as Complete.

A. The Application Fails to Properly Seek Control of NPBL.

UP seeks authority to acquire control of NSC and, through it, NS and its rail carrier subsidiaries. App. Vol. 1 at 12. The Application identifies Norfolk and Portsmouth Belt Line Railroad Company (NPBL) among NS' subsidiaries, based on NS' ownership of 57.14% of NPBL (which has not been legally authorized as required by 49 U.S.C. § 11323(a)), in its corporate charts. App. Vol. 1 at 91 (Exhibit 11, Part 4A); *see also id.* at 82 (Table 6, NS U.S. Rail Carrier Applicants and Majority-Owned Rail Carrier Subsidiaries). Thus, it appears that UP seeks the Board's approval to control NPBL, by obtaining control of NS. But NS does not have Board approval to control NPBL. Thus, to the extent UP seeks control over NPBL, the Application is fundamentally incomplete because it fails to include a separate control application for NPBL. 49 U.S.C. § 11323(a).[1]

[1] To the extent UP does not intend to seek control over NPBL even if it obtains approval to control NS, such ambiguity would constitute a deficiency in its Application's identification of each system's "Applicant carriers." In light of 49 C.F.R. § 1180.3(b) and the Board's recent precedent, *Norfolk S. Ry. Co.—Petition for Dec. Order*, FD 36522 (STB served June 17, 2022), slip op. at 13–14, Applicants are required to identify which affiliate carriers they are newly gaining control over, which carriers the new merged entity will have control or joint control

The Board has previously found that NS does not have the Board's approval to control NPBL. *Norfolk Southern Railway Company–Petition for Declaratory Order*, FD 36522, slip op. at 17 (STB served June 17, 2022). That means that approval of UP's acquisition of NS would not simply confer control of NPBL to UP. UP's request for such control would require a separate application so that the Board and the public are able to fully evaluate the impacts if UP were granted control over NPBL.

As the Board is well aware, NS' application for control of NPBL is the subject of ongoing proceedings. In those proceedings, CSXT has identified the clear, substantial anticompetitive effects that would result if such control is granted to NS. *See generally* CSX Trans., Inc.'s Evidence & Arguments in Opp. to the NS Control App., *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836 (CSXT-22) (Sept. 18, 2025). To the extent UP responds that its Application did not seek affirmative control of NPBL because it intends to abide by the Board's resolution of NS' separate application, that would not suffice to cure the Application's deficiencies.

NPBL is a critical terminal railroad that provides switching services in the Hampton Roads area and enables access to Norfolk International Terminals (NIT), one of the most important marine terminals on the East Coast. UP's control of NPBL would raise additional, distinct competitive concerns that are not being

authority over because either UP or NS independently already have obtained such authority, and those for which they do not have control authority.

adjudicated in NS' control proceeding. For example, UP control over access to NIT raises concerns about foreclosure of intermodal traffic currently originating or terminating at NIT and moved over NS for interchange at major western gateways to UP, BNSF, CPKC, or CN. UP cannot avoid regulatory review of these competitive concerns with respect to its own control of NPBL by relying on the Board's determination of NS' control petition, especially if it is denied or conditioned to the extent that NS decides not to control NPBL.

Although CSXT is currently foreclosed from providing competitive service to NIT shippers, interline movements involving NS still benefit from competition among BNSF, UP, CPKC and CN at the gateways. If UP gains control of NPBL it would have the incentive and ability to foreclose shippers' access to these rivals. As the Department of Justice has explained in the NS control proceeding, "[a]ny harm to competition in the handling and transportation of the intermodal containers carrying these goods has the potential to raise prices for American consumers both directly and indirectly as well as to disadvantage farmers and other exporters." Cmt. of the United States Dep't of Justice, FD 36836 (Aug. 27, 2025). This same concern extends to UP's control of NPBL. Nothing in the Application identifies, much less addresses, these competitive impacts.

The Board should require UP to submit a significant transaction application for control of NPBL that fully addresses the competitive impacts of such control, so the Board can fulfill its statutory duty to determine whether such control would be in the public interest. 49 U.S.C. § 11323(a); 49 C.F.R. § 1180.2(b).

B. A Significant Transaction Application Is Required for Control of TRRA.

UP's Application includes a Related Application for control of the Terminal Railroad Association of St. Louis (TRRA), treating it as a "minor transaction" (App. Vol. 2 at 1056) and omitting materials required in significant transactions by 49 C.F.R. §§ 1180.6(c), 1180.7, and 1180.8(b).

Under 49 C.F.R. § 1180.2(c), a transaction involving acquisition of control of a non-Class I railroad by a Class I railroad can be classified as "minor"—and thus not having regional or national transportation significance—only if one of two "determination[s] can clearly be made":

> (1) That the transaction clearly will not have any anticompetitive effects, or
>
> (2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

Id. § 11802(b). TRRA is one of the two terminal railroads operating the critical St. Louis gateway, and UP already wholly owns and controls the other, Alton & Southern (ALS). Common control of these two direct competitors alone precludes this being a "clearly" harmless transaction. Further, the transaction would give UP complete control of the St. Louis gateway on which CSXT and all other Class I railroads rely to compete, including both Mississippi River bridges, the two rail belts around East St. Louis, multiple joint use yards, and extensive track CSXT and

other carriers rely on to connect.[2] There is "clear" potential for anticompetitive effects from UP's control of these facilities.

Applicants do not acknowledge the potential for anticompetitive effects here. They propose to divest part of their ownership of TRRA to supposedly assuage concerns the Board may have. But Applicants nowhere commit to relinquish control of TRRA. Indeed, to the contrary, they expressly propose to "control four of the seven Director positions at TRRA" post-approval, with no indication that this would change upon divestiture of their ownership interest. App. Vol. 2 at 1050. As a result, the approval Applicants seek would permit permanent control.

Applicants nonetheless claim UP's control of the TRRA to be in the public interest for two reasons. *First*, they assert that TRRA bylaws and operating agreements would prohibit UP from using control of the Board to discriminate in its favor or harm rivals. *Id*.[3] Rules requiring appropriate behavior in corporate governance, contrary to a shareholder's interests, are presumed to be illusory remedies that cannot replace a control proceeding. *See United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 333-34 (1961). It certainly cannot be deemed "clear[]" with no analysis that such nondiscrimination rules are sufficiently effective

[2] The Application acknowledges the significance of St. Louis, as one of four key gateways between east and west. *See* App. Vol. 1, at 12; Verified Statement of Mark A. Israel ("Israel V.S") ¶ 9, App. Vol. 2 at 139. Because CSXT lacks a direct connection to Kansas City, St. Louis serves as its only such gateway between Chicago and Memphis, 500 miles to the south.

[3] Because approval of control of TRRA by UP would preempt local, state, and federal laws, UP may well claim approval of control confers the right to change these governing documents regardless of any law. 49 U.S.C. §§ 11321, 11323.

and enforceable to prevent all anticompetitive effects.[4] Moreover, the same voting provisions that Applicants invoke could give UP veto power over capital improvements and fee arrangements necessary to keep the interchange movements over the TRRA which other carriers rely on efficient and competitive[5]—all while the Application shows Applicants plan to greatly reduce their own reliance on and fee payments to TRRA.

Second, Applicants say the primary UP/NS transaction is in the public interest, so consolidating majority TRRA voting rights in a single entity for the first time is likewise in the public interest. *Id*. at 1048. This attempt at bootstrapping asks the Board to deem the public interest balance of the primary UP/NS transaction to be so immediately "clear[]" that the TRRA control application should be deemed a "minor" transaction. In the first major transaction since the New Rules heightened applicants' burden, the Board should decline that extraordinary request.

Because neither of Applicants' contentions allow the necessary determinations "clearly" to be made, UP's control of the TRRA is not a minor

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[4] *See St. Louis Sw. Ry. Co. – Purchase – Alton & S. R.R.*, 331 I.C.C. 515, 534-35 (1968) (explaining nondiscrimination conditions on solely-controlled terminal railroads are often "ineffective" and "impracticable with respect to enforcement"); Union Pac. R.R. Co.'s Cmts. at 48-50, *Can. Pac. Ry. Ltd. – Control – Kans. City So.*, FD 36500 (UP-10) (Feb. 28, 2022 (Board must not assume Mexican non-discrimination law is practically effective and enforceable).

[5] *See* TRRA Operating Agreement Art. IX, App. Workpaper (Sept. 21, 1914) (3/4 director vote required for improvements requiring member contributions); Merchants Bridge Rehabilitation Agreement § 9, App. Workpaper (Apr. 4, 2016) (unanimous director vote required for changes in rates or fees); Am. & Rest. By-Laws of the Terminal R.R. Ass'n of St. Louis Section X, App. Workpaper (June 21, 2013) (3/4 director vote required for changes to bylaws pertaining to expenditures for capital account).

transaction. Applicants must seek approval for control as a "significant" transaction, and their failure to do so renders the Application incomplete.

C. The Application Fails to Include the Complete Merger Agreement.

Under 49 C.F.R. § 1180.6(a)(7)(ii), applicants in a major rail merger proceeding are required to "[s]ubmit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction." 49 C.F.R. § 11806.(a)(7)(ii); *see also id.* § 1180.0(a). This requirement is not a mere formality—it reflects the Board's core commitment to transparency and the development of a full, public record so that the Board can properly determine whether a major rail consolidation is in the public interest.

Despite this clear mandate, the Application omits material aspects of Applicants' agreement "pertaining to the proposed transaction." Specifically, while Applicants have filed a copy of the "Agreement and Plan of Merger," they have not included the "Company Disclosure Schedules" which are referenced by the filed portion of their agreement at least twenty-five times and are the only source of key defined terms incorporated into the Agreement and Plan of Merger. While Applicants have produced aspects of the disclosure schedules in discovery, they have withheld production of Section 5.8 of the disclosure schedules, claiming privilege. According to the Agreement and Plan of Merger (App. Vol. 4 at 74-75), that section defines what would constitute a "Materially Burdensome Regulatory Condition" that would allow UP to walk away from the merger. The withheld section thus presumably reflects Applicants' own assessments of the harmful

impacts their merger could cause and conditions that may be imposed to address them. Applicants' disclosure schedules, including Section 5.8, like the Agreement and Plan of Merger itself, clearly are "written instruments … pertaining to the proposed transaction," as required by § 1180.6(a)(7)(ii). They contain facts, commitments, and terms that may bear directly on the Board's assessment of the merger's terms, competitive impact, and alleged public benefits. To the extent Applicants believe that this information included in the disclosure schedules is competitively sensitive, Applicants should avail themselves of one of the confidentiality designations from the Protective Order.

The Board's regulations provide neither an exception nor a mechanism for shielding parts of the parties' transaction documents from public transparency. Selective disclosure undermines the regulatory process and impedes the Board's and interested parties' assessment of the merger's true character and public interest impact. Accordingly, the Board should require Applicants to comply with the Board's regulations and provide their full agreement, including their complete disclosure schedules.

II. The Application Fails to Address Key Elements of the Board's New Rules.

In addition to the specific omissions described in Part I, the Application fails to include the discussion and evidence required by key elements of the Board's New Rules. The Application's failure to engage with these Rules' new requirements renders it incomplete. 49 U.S.C. § 11325(a).

Failure to explain and provide "evidence" relating to downstream effects. The New Rules recognize that the Board "cannot evaluate the merits of a major transaction in isolation," and instead "must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination." 49 C.F.R. § 1180.1(i); *Major Rail Consolidation Procs.*, 5 S.T.B. at 582 (recognizing that any proposed Class I consolidation could lead to the permanent "end-game situation" for the U.S. rail industry). As a result, "the Board expects applicants to explain how additional Class I mergers would affect the eventual structure of the industry and the public interest." 49 C.F.R.§ 1180.1(i); *see also id.* § 1180.6(b)(12).

Importantly, the Board explained that it requires evidence from applicants on potential downstream effects so that the Board can meet its own responsibility to ensure a "final round of mergers" would serve the public interest:

> We can meet our responsibility only if applicants file their preliminary evidence about the evolving structure of the industry that would likely result from their proposal and others like it; if they address the merits of such a structure; if they provide their views on how to deal with potential problems that structure could cause to service, efficiency, and competition; and if other affected parties then come in and express their concerns on a full record.

5 S.T.B. at 582 (emphasis added). The Application does not adhere to these requirements. It provides no assessment beyond the conclusory assertion that an additional end-to-end merger would likewise create public benefits through expanded single-line service. *Id.* at 49-51. It provides no "evidence" of the structure that would likely result. So it does not address its merits or problems. And thus

there is no record on which other affected parties may come in and address their concerns.

Applicants protest that they "cannot predict whether other Class I railroads may choose to pursue mergers in the future," or "assess whether a BNSF-CSX combination . . . is 'likely' within the meaning of § 1180.6(b)(12)." App. Vol. 1 at 50. The Board fielded these same objections in 2001 (5 S.T.B. at 582 ("[M]any railroads indicate that it would be extremely speculative for them to forecast the precise actions of their competitors in response[.]")), but nonetheless noted: "Given the relatively small number of remaining Class I carriers, there is now a limited range of responsive proposals that could be triggered by any particular transaction." *Id*. The Board should require applicants to cure these deficiencies by submitting evidence addressing the potential downstream effects attributable to their unprecedented Application.

Failure to calculate public benefits. Under 49 C.F.R. § 1180.6(b)(11), merger applicants "must enumerate and, where possible, quantify the net public benefits their merger would generate (if approved)." 49 C.F.R. § 1180.6(b)(11). The Application fails to include two key elements of that calculation:

(1) *Applicants do not identify "additional measures" if claimed benefits do not materialize*. Section 1180.6(b)(11) requires that merger "applicants *must* 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." *Id*. § 1180.6(b)(11) (emphasis added). This "additional measures"

requirement is mandatory, and it is not trivial. It is a "regulatory mechanism" intended "to provide applicants with the proper incentives to identify more cautiously and, if approved, to secure more certainly the public benefits that they project for their merger proposals." 5 S.T.B. at 560. The need for such incentives was "particularly important," because further major transactions like a UP/NS merger would likely "present closer calls in which any individual claim for a particular merger-related benefit or harm might be dispositive." *Id.* at 561. The Board imposed this new requirement "acutely aware that, as we approach the 'end-game,' the price for any failure would be high." *Id.* at 560.

The Application contains no suggestion for additional measures if their claimed benefits do not materialize. None. It states that Katherine Novak's Verified Statement addresses such measures (App. Vol. 1 at 49), but it does not. No such suggestion is apparent anywhere else in the Application.

(2) *The Application does not identify which of its claimed benefits are achievable through means "short of merger."* Section 1180.6(b)(11) requires applicants, as part of their calculation of net public benefits—to "discuss whether the particular benefits they are relying upon could be achieved short of merger." 49 C.F.R. § 1180.6(b)(11). This discussion serves to inform the Board's "evaluat[ion of] the public interest," in which it "will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation," consistent with its belief that "other private-sector initiatives, such as joint marketing agreements and interline partnerships, can produce many of the

efficiencies of a merger while risking less potential harm to the public." *Id.* § 1180.1(c). The Application lacks the analysis required to inform the Board's evaluation, instead assuming in conclusory fashion that UP and NS could achieve none of their claimed benefits through greater efforts at interline collaboration with each other.

The Board explicitly recognized that while consolidations "may permit applicants to gain substantial benefits that are not otherwise achievable . . . this does not mean that all of the claimed benefits require a merger for their accomplishment." 5 S.T.B. at 559. For that reason,

> We need to have a full awareness of which of the claimed benefits are obtainable only through a merger so that we can fairly weigh them against potential harms. Accordingly, we believe that it is appropriate for us to require applicants to address the question of whether the particular merger benefits on which they are relying could be achieved by means short of merger.

Id. (emphasis added). The Application acknowledges throughout, explicitly and implicitly, that not all of the claimed benefits necessarily require a merger. For example, Dr. Elizabeth Bailey, one of Applicants' expert economists, states that "the benefits from the improved incentives are unlikely to be achieved *in full* without the proposed merger." Verified Statement of Elizabeth M. Bailey, Ph.D. ("Bailey V.S. ¶ 36(a), App. Vol. 2 at 29-30 (emphasis added). "Independent firms"—*e.g.*, interlining railroads—can, she claims, "attempt to coordinate activities using a contract that specifies the obligations of each and allocates the benefits from *better coordination*." Bailey V.S. ¶ 52, i*d.* at 38-39 (emphasis added). However, "evidence and economic theory show that UP and NS could not achieve *all* the potential benefits of the

combined railroad." *Id.* (emphasis added)*; see also* Verified Statement of V. James Vena ¶ 49, App. Vol. 1 at 178 ("Any recent partnerships with UP/NS will get *even better* post-merger") (emphasis added).

The Application, however, makes no effort to identify which of the claimed benefits could only be achieved by the merger, and which could instead be achieved through closer, "better" interline collaboration. The latter cannot be included as claimed benefits of the merger. Without this important element of the equation addressed, the Board will be unable to fairly weigh the true benefits of the merger against its very real potential harms, and the Application's calculation of the merger's purported "net" public benefits is incomplete.

Failure to Provide Evidence of Enhanced Competition. A central element of the New Rules is the requirement that applicants "propose measures" that "enhance[] competition." 49 C.F.R. § 1180.6(b)(10). The Board's focus is on measures that create new competition between railroads. *See*, *e.g.*, 5 S.T.B. at 554 (identifying as potential competitive enhancements those that would enhance "intramodal (rail-to-rail competition)," including "the granting of trackage rights, the establishment of shared or joint access areas, the removal of 'paper' and 'steel' barriers, and other techniques that would enhance railroad-to-railroad competition"). *See also* 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[.]"). The two aspects of their proposed merger that Applicants claim will enhance competition—general efficiencies of single-line service and the Committed

Gateway Pricing (CGP) mechanism—even if credited for the purpose of the completeness determination, do not fulfill Applicants' obligation to identify competitive enhancements.

(1) *Applicants do not explain how single-line service enhances rail-to-rail competition.* Applicants' primary claim of competitive enhancement is that the transaction is an end-to-end combination that will improve service through efficiencies such as cost savings, interchange reductions, and single-line rates, and divert traffic from truck to rail. *See* Verified Statement of Katherine N. Novak ("Novak V.S.") ¶ 8, App. Vol. 1 at 13, 27, 53, and 316; Israel V.S. ¶ 93, *id.* Vol. 2 at 179. Enhanced efficiency and enhanced competition, however, are not synonyms: The New Rules consider enhanced competition separately from benefits of "greater economic efficiency" such as improved service or cost savings. 49 C.F.R. § 1180.1(a); *see also id.* §§ 1180.1(c), 1180.6(b)(11). In promulgating the New Rules, the Board emphasized they distinguish "greater economic efficiency and improved service" from "enhanced competition." *Major Rail Consolidation Procs.*, 5 S.T.B. at 551; *id.* at 547-48 n.8 (noting the two occur separately in time). And, the competitive assessment required by the statute is of "competition among rail carriers"—rail-to-rail competition—and this analysis cannot be supplanted by truck-to-rail competitive analysis. 49 U.S.C. § 11324(b)(5).

(2) *The Application provides no evidence that the CGP proportional rate mechanism will "enhance competition."* Applicants' other claim is that their CGP proportional rate mechanism enhances competition. But the only way they claim it

does so cannot satisfy that requirement. The competitive enhancement Applicants claim from the CGP mechanism is that it "shar[es] the transaction's benefits with customers shipping traffic on routes that otherwise would not directly benefit from the merger's single-line service." App. Vol. 1 at 48; Novak V.S. ¶ 9, *id.* at 53; Israel V.S. ¶ 135, *id.* Vol. 2 at 196 ("rates that reflect … improved pricing incentives and cost reductions"). But the Application provides no evidence that the CGP mechanism would create or strengthen rail-to-rail competition. There is no analysis, no case study, no simulation demonstrating its competitive impact.[6] With such an absence of support, Applicants are improperly shifting the burden of this required analysis to non-merging entities.

III. The Board Should Require Applicants to Cure These Deficiencies and File a Complete Application.

These deficiencies render the Application incomplete. 49 U.S.C. § 11325(a). CSXT's experience with its recent control application for Pan Am Systems and related railroads is instructive. First, the Board rejected CSXT's request that the Board treat that transaction as "minor," while permitting it to perfect its application by supplementing its original submission with the information required for a "significant" transaction, deferring the statutory review period in the meantime. *See CSX Corp. & CSXT—Control—Pan Am Systems, Inc. et al (Decision*

[6] For example, it is unclear whether application of the CGP played any role in the Applicants' diversion analysis. If it did play a role, the impact was not explained. CSXT and its customers are entitled to understand how Applicants' CGP will "enhance" competition. Without such a showing, Applicants are only speculating, which effectively shifts the analytical heavy lifting to non-merging entities in the first instance.

No. 3), FD 36472, slip op. at 2 (STB served May 26, 2021). After CSXT's supplemental submission, the Board concluded that certain limitations in the evidence, analyses, and explanations provided—far less serious than the deficiencies here, and in a transaction with far less significance for the future of the U.S. rail network—rendered CSXT's application incomplete. *Id.* The Board again rejected CSXT's application, directed it to file a revised application correcting those deficiencies within three months, and again deferred the statutory review period. *See id.* at 16-17; *see also Canadian Pac. Ry. Ltd.—Control—Kansas City S. (Decision No. 17)*, FD 36500 et al., slip op. at 4 (STB served Apr. 27, 2022) (staying proceedings, directing applicants to re-file their application, and amending procedural schedule, to address application's failure to explain rationale and methodological choices for baseline data used to support its impact analyses).

The Board should take a similar approach to the incomplete Application here. A finding that the Application is incomplete need not reset the Applicants' filing window pursuant to their pre-filing notification. As in *CSX/Pan Am*, the Board can extend the filing window to allow Applicants to cure and re-file a complete Application, while deferring the statutory review period in all other respects—*e.g.*, non-Applicants should not be penalized by the determination that an Application is incomplete and should be afforded their full statutory time to respond and make their case.

The deficiencies addressed in Part I are specific, clear, and important for public participation in these proceedings and to the Board's public interest review.

The Board should direct Applicants to supplement their Application by filing: (a) a related application for UP control over NPBL, addressing the additional competitive harm that would result from UP control; (b) a significant application for control of TRRA addressing the significant anticompetitive effects of such control; and (c) the complete agreement between the Applicants pertaining to the proposed transaction, including those aspects withheld from public disclosure.

The deficiencies identified in Part II go to the heart of the Board's review under its never-applied New Rules of the proposed combination of UP and NS. These deficiencies likewise warrant rejection of the Application. Because these issues (downstream effects, the calculation of net public benefits, and enhanced competition) will be central to these proceedings, non-applicants like CSXT will also necessarily have to address them in their own responses, even where Applicants have failed to. Absent relief, this approach would set up an unfair and untenable dynamic that would subvert the Board's Rules and process: Applicants will have effectively shifted their burden to non-applicants to address these core elements in the first instance, for Applicants to then do their real work in rebuttal. This will leave non-applicants no opportunity to respond to what should be Applicants' *prima facie* case.

This dynamic requires, at a minimum, that the Board hold Applicants to the *prima facie* case on these elements as contained in their Application. It also confirms the importance of ensuring that the procedural schedule utilizes the full statutory period and allows the parties to respond to all evidence and arguments

presented. *See* Cmts. of CSX Trans., Inc. on Proposed Procedural Schedule at 4-8, 8-9 (CSXT-3) (Nov. 19, 2025). In particular, it counsels in favor of the proposal by BNSF and CPKC that the Board provide for a supplemental round of evidence from non-applicants (BNSF Cmts. on Proposed Procedural Schedule at 4-8 (BNSF-4) (Nov. 13, 2025); CPKC Cmts. on Proposed Procedural Schedule at 15-21 (CPKC-5) (Nov. 13, 2025)), to prevent the improper gamesmanship that could occur if Applicants defer their real analyses on the core elements of the New Rules until rebuttal.

Respectfully submitted,

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Dated: December 29, 2025

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of December 2025, I caused a true and correct copy of the foregoing CSX Transportation, Inc.'s Comments on Completeness of Application to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ *Kent A. Gardiner*

Kent A. Gardiner