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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36873]

Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk; Southern Corporation and Norfolk Southern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 21 in Docket No. FD 36873 Notice of Acceptance of Revised Application and a Related Filing; Holding Proceedings in Abeyance; Requiring Supplemental Information; and Ruling on a Communications Motion Related to the Proceedings.

SUMMARY: The Surface Transportation Board (the Board) is, among other things, accepting for consideration the revised, primary application filed on April 30, 2026 (the Revised Application), 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) (Union Pacific and Norfolk Southern collectively, Applicants). The Revised Application seeks Board approval for (i) the acquisition of control by UPC of NSC, and through NSC of NS and NS's 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. This proposal is referred to as the Transaction. The Board is also accepting a related application. This decision embraces Union Pacific Corp.—Control—Peoria & Pekin Union Railway, Docket No. FD 36873 (Sub-No. 1). However, the Board will hold both proceedings,

including the environmental review of the Transaction, in abeyance pending further Board order and will seek supplemental information from Applicants by July 27, 2026.

DATES: The effective date of this decision is May 28, 2026. Applicants must provide the information discussed below by July 27, 2026.

ADDRESSES: Any filing submitted in the primary or related proceeding, referring to Docket No. FD 36873, must be filed with the Board either via e-filing on the Board's website or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing must be sent (and may be sent by email only, if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) UP's representative, Michael L. Rosenthal, Covington & Burling LLP, One CityCenter, 850 Tenth Street, N.W., Washington, DC 20001; (4) NS's representative, Raymond A. Atkins, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005; (5) any other person designated as a Party of Record on the service list;[1] and (6) the assigned administrative law judge (ALJ), the Hon. Jenifer Soulikias, at alj.soulikias.inbox@stb.gov.

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[1] The Board has received numerous submissions through its e-filing system that do not include the required certificate indicating that parties of record have been served. Submissions without a certificate of service will not appear as filings and will not be considered by the Board. See Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 et al., slip op. at 1-2 (STB served Mar. 17, 2026). Commenters who need assistance with the Board's filing requirements may contact the Board's Rail Customer and Public Assistance service at rcpa@stb.gov or (202) 245-0238.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 915-3555. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: On July 30, 2025, Applicants filed a notice of intent to file their original application (the Application). By decision served August 28, 2025, the Board found the Transaction to be a "major" transaction under 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. UPC presently controls UP, a Class I railroad, and proposes to acquire common control of NS, also a Class I railroad. See Union Pac. Corp.—Control—Norfolk S. Corp. (Decision No. 3), FD 36873, slip op. at 2 (STB served Aug. 28, 2025). The Board took other actions in Decision No. 3 including (1) assigning Judge Soulikias as ALJ to provide initial resolution of discovery disputes and (2) requiring Applicants to file additional information, generally, concerning their systems, traffic, and interchange commitments. Id. at 2-4.

Applicants filed the Application on December 19, 2025, seeking authority for the Transaction. Stakeholders filed comments concerning completeness, and Applicants filed a response.

The Board rejected the Application in a decision served on January 16, 2026, finding that it was incomplete because it did not contain certain information required by the Board's regulations. See Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 9), FD 36873 et al., slip op. at 1 (STB served Jan. 16, 2026). Specifically, the Application was incomplete because the impact analyses proffered to satisfy 49 CFR 1180.7(b) did not contain market share projections for the entity to be created by

the Transaction that were consistent with the claims elsewhere in the Application that the new entity would experience growth by diverting traffic from trucks and other rail carriers. Id. at 1-2. The Application was also incomplete because it did not contain the entire merger agreement required by 49 CFR 1180.6(a)(7)(ii), including certain documents that were expressly defined to be part of the merger agreement and that defined Applicants' obligations under it. Id. at 2. The Board also rejected two related applications through which Applicants sought to acquire control of the Peoria and Pekin Union Railway Company (PPU) in Docket No. FD 36873 (Sub-No. 1) and the Terminal Railroad Association of St. Louis (TRRA) in Docket No. FD 36873 (Sub-No. 2). Id.

The Board stated that its rejection was without prejudice to Applicants filing a revised application. Id. The Board provided that, if Applicants were to refile, they must also clarify a number of smaller and technical issues not raised by commenters. Id. at 2 n.3, Technical App. The Board also noted that Applicants could make "additional changes to improve their Application now that they have received comments from other stakeholders." Id. at 12.

On March 18, 2026, the Board, among other things, sought transaction-related documents to facilitate its review. See Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 et al. (Decision No. 13), slip op. at 5-7 (STB served Mar. 18, 2026). Applicants filed responsive materials on April 7, 2026. BNSF Railway Company (BNSF) replied with a motion to enforce Decision No. 13, arguing that Applicants likely possess more documents responsive to Decision No. 13 than were produced, given the magnitude of the Transaction. (BNSF Mot. 2-3, Apr. 27, 2026.) Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC (CPKC) filed in

support of BNSF's motion on April 28, 2026. On May 8, 2026, Applicants replied in opposition to BNSF's motion and CPKC's response, arguing that they complied with Decision No. 13.

On April 30, 2026, Applicants filed the Revised Application, asserting that it contains the additional information requested in Decision No. 9 as well as supplemental analyses in response to comments received on the Application. (Rev. Appl. 1-12.)[2] On the same date, the Board issued a decision permitting comments, limited to whether the Revised Application contains the information required in 49 CFR part 1180, to be filed by May 8, 2026, and permitted Applicants to file a reply by May 12, 2026. See Union Pac. Corp.—Control—Norfolk S. Corp. (Decision No. 17), FD 36873 et al., slip op. at 2 (STB served Apr. 30, 2026).[3]

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[2] Citations to the Revised Application refer to the volume number and page number that appear on the bottom right-hand corner of each page. For example, "Rev. Appl. 1-12" refers to Revised Application, Volume 1, page 12. Citations to an entire component of the Revised Application refer to the Revised Application volume number and exhibit number, if applicable. For example, "Rev. Appl., Vol. 4, Ex. 7 (Form S-4)" refers to the entirety of exhibit 7.

While attempting to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. See Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 1 n.2 (STB served Jan. 11, 2018). In this case, the Board determined that it could not adequately present its findings with respect to the issues without disclosing certain information designated as confidential.

[3] The Board subsequently adjusted this comment deadline to a later time on May 8, 2026. See Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 et al. (STB served May 5, 2026).

The Transaction. As Applicants explain in the Revised Application, they are seeking approval under 49 U.S.C. 11323-25[4] for (i) the acquisition of control by UPC of NSC, and through NSC of NS and NS's 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. (Rev. Appl. 1-12.)

UP operates approximately 32,880 miles of railroad in 23 states, primarily in the western United States. (Id. at 1-68, 1-70.) It has eight principal routes. (Id. at 1-70.)[5] Three of these routes are anchored in Chicago, Ill., and extend between Chicago and Granger, Wyo., before branching to the ports and terminals of Seattle, Wash., and Portland, Or., in the Pacific Northwest; Oakland in northern California; and Los Angeles in southern California. (Id. at 1-70 to 1-71.) UP also has three routes anchored in Los Angeles including UP's main line between Los Angeles and El Paso, Tex., before branching to Chicago via Kansas City, Mo., and St. Louis, Mo.; Memphis, Tenn., via central Texas and Shreveport, La.; and New Orleans, La., via south Texas. (Id. at 1-71.) UP also has a route between border crossings in Mexico and Chicago via Memphis and St. Louis, and a route between Seattle and Los Angeles. (Id.)

UP also has secondary routes between Denver, Colo., and Salt Lake City, Utah; between Denver and Kansas City; and between Minnesota/Iowa and Texas. (Id.) Additionally, UP has a network of feeder lines in northern Iowa, Minnesota, and

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[4] These proceedings are governed by those provisions as well as the Board's regulations, including 49 CFR part 1180. See Major Rail Consol. Procs. (Major Merger Rules), 5 S.T.B. 539 (2001).

[5] Applicants provide a map indicating the lines of their respective systems, shortline connections, other rail lines in the territory, and the principal geographic points in the region traversed. (Id., Vol. 1, App. A (Ex. 1, Map); see Applicants Errata, May 13, 2026.)

Wisconsin, and feeder lines in Idaho and Montana, including a line to the Canadian border at Eastport, Idaho. (Id.)

NS operates approximately 19,200 route miles in 22 eastern states and the District of Columbia. (Id.) Three of its four principal routes form a triangle covering the eastern United States and extend between (1) Chicago and Atlanta, Ga.; (2) Atlanta/Chattanooga, Tenn., and the Northeast; and (3) the Northeast and Chicago. NS also has a route between Chicago and Norfolk, Va. (Id.) Furthermore, NS serves gateways that connect to these principal routes, including in New England and parts of the south and central United States. (Id.) Finally, NS has feeder routes that serve origins or destinations including Birmingham, Ala.; Mobile, Ala.; Charleston, S.C.; and Savannah, Ga. (Id.)

The Transaction involves UPC's acquisition and exercise of control of NSC and its direct and indirect rail carrier subsidiaries. (Id. at 1-29.) To carry this out, UPC, Ruby Merger Sub 1 Corporation (Merger Sub 1, a direct, wholly owned subsidiary of UPC), Ruby Merger Sub 2 LLC (Merger Sub 2, a direct, wholly owned subsidiary of UPC), and NSC are parties to a merger agreement, which they have included with the Revised Application. (Id. at 1-29; id., Vol. 4 Agreement and Plan of Merger.) Upon satisfaction of certain conditions and Board approval, the merger agreement calls for UPC to acquire NSC through the merger of Merger Sub 1 with and into NSC (First Merger). (Id. at 1-29.) NSC will survive the First Merger and become a direct, wholly owned subsidiary of UPC. (Id.) Upon completion of the First Merger, NSC will merge with and into Merger Sub 2, with Merger Sub 2 surviving as a direct, wholly owned subsidiary of UPC. (Id.)

Upon consummation of the Transaction, UP and NS rail operations will be consolidated as set forth in the Operating Plan and Service Assurance Plan, both included with the Revised Application. (Id. at 1-30; id., Vol. 2, Ex. 13, Operating Plan; id., Vol. 2, Service Assurance Plan.)

Terminal Railroads and TTX Company. Applicants note that they collectively own more than 50% of the shares of two terminal railroads, (a) PPU, which is owned 12.5% by UP and 40.64% by NS, and (b) TRRA, which is owned 42.84% by UP and 14.29% by NS. (Id. at 1-30.) Applicants filed related minor applications to control PPU and TRRA with the Application filed in December but, in Decision No. 9, the Board concluded that the related TRRA transaction should be classified as a "significant" transaction under the Board's regulations. Decision No. 9, FD 36873 et al., slip op. at 11. In that decision, the Board acknowledged that Applicants had stated their intention to divest NS's ownership interest in TRRA to reduce their collective ownership to below 50% but noted that Applicants did not offer to condition the transaction on such divestiture. Id.

In the Revised Application, Applicants again submit a "minor" application for control of PPU in Docket No. FD 36873 (Sub-No. 1).[6] Applicants explain that they still intend to divest as much of NS's ownership interests and governance rights in PPU as is required so that the combined UP/NS would not permanently have a controlling stake in PPU, unless PPU's other current owner declines to acquire the additional shares. (Rev. Appl. 1-32.) However, Applicants state that they might need authority to control PPU

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[6] The Board rejected the original application for control of PPU because it was purely incidental to the original Application that the Board rejected. See Decision No. 9, FD 36873 et al., slip op. at 2.

before divestiture can occur or if PPU's other current owner declines to acquire the necessary shares. (Id.) Applicants state that, if they are unable to divest shares before a decision permitting consummation of the Transaction, they are willing to accept conditions on their acquisition of control to ensure that (1) PPU's owners have equal access to PPU's rail lines and other facilities, (2) PPU is operated without discrimination toward any railroad, and (3) the acquisition of control would not otherwise have any anticompetitive effects. (Id. at 1-81.)

The Revised Application does not include a related application for authority to control TRRA. Instead, Applicants state that they are "definitively committing not to acquire control of TRRA." (Id. at 1-16.) Applicants indicate that they voluntarily commit to divest or otherwise relinquish control of sufficient ownership interests and governance rights in TRRA in connection with consummating the Transaction. (Id. at 1-31.) They ask that the Board expressly impose this "TRRA Commitment" as a condition on any approval authority, and to condition their consummation of the Transaction on the TRRA Commitment. (Id. at 1-31, 1-78, 1-79.)[7]

Applicants state that, through the Transaction, they would collectively own 50% of a third terminal railroad, Kansas City Terminal Railway (KCT). (Rev. Appl. 1-32.) They claim, however, that this change would not give them control of KCT and thus does not require a control application or other authorization. (Id. at 1-32, 1-84 to 1-86.)

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[7] Applicants state that TRRA has made clear that TRRA's management reserves all rights and takes no position at this time on the merits of the Transaction. (Rev. Appl. 1-79 n.76.)

Additionally, Applicants explain that while they would acquire more than 50% ownership of TTX Company (TTX), a noncarrier rail car-pooling entity jointly owned by Class I carriers, they have no interest in controlling TTX and therefore commit to divest sufficient shares of TTX to reduce their collective ownership to 49%. (Id. at 1-32 to 1-33.)

Financial Arrangements. Applicants explain that, under their merger agreement, UPC will acquire the outstanding stock of NSC in a stock and cash transaction. (Id. at 1-36.) NSC shareholders will be entitled to receive one share of UPC common stock and $88.82 in cash, without interest, for each share of NSC common stock they hold immediately prior to the completion of the First Merger. (Id.)[8]

Applicants add that, in the aggregate, approximately 72.2% of the consideration for the Transaction will be in the form of UPC stock and 27.8% in cash. (Rev. Appl. 1-36.) UPC will fund the stock portion of the consideration through an exchange of one share of UPC common stock (out of its treasury stock) for one share of NSC common stock. (Id.) The cash portion of the consideration, together with all related fees and expenses, is expected to total $20.1 billion, and UPC anticipates it will fund this amount through a combination of cash on hand and new debt. (Id.) It expects to raise the new debt by (a) issuing senior unsecured notes on substantially similar terms to its outstanding unsecured notes and (b) establishing one or more new credit or other facilities with various banks or other parties and/or certain existing credit facilities. (Id.)

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[8] Applicants ask the Board to find the terms under which UPC will acquire NSC's common stock are fair to the shareholders of UPC and NSC. (Rev. Appl. 1-37); see Schwabacher v. United States, 334 U.S. 182, 198-99, 201 (1948); Zatz v. STB, 149 F.3d 144, 147 (2d Cir. 1998).

Applicants state that the new debt will add "modestly" to UPC's fixed charges. (Id. at 1-37.) They anticipate, however, that UPC will have no difficulty absorbing these additional fixed charges and reference pro forma financial statements included with the Revised Application. (Id. at 1-37; id., Vol. 1, Exs. 16, 17, 18.)

Passenger Service Impacts.

National Railroad Passenger Corporation (Amtrak) Operations. Applicants' Operating Plan discusses several Amtrak services hosted by UP including the California Zephyr, Capitol Corridor, Cascades, Coast Starlight, Gold Runner, Lincoln (Illinois), Missouri River Runner and Lincoln/Missouri River Runner, Pacific Surfliner, Sunset Limited, Texas Eagle, and the Winter Park ski train. (Id. at 2-757 to 2-763 (Ex. 13, Operating Plan).)

NS also hosts Amtrak services including the Blue Water, Cardinal, Carolinian, Crescent, Floridian (a temporary combination of the Capitol Limited and Silver Star services), Lake Shore Limited, Mardi Gras, Pennsylvanian, Pere Marquette, Piedmont, Richmond/Newport News/Norfolk, Roanoke, and Wolverine. (Id. at 2-764 to 2-775 (Ex. 13, Operating Plan).)

Other Passenger Rail Operations. Applicants also host other passenger rail services including the Altamont Corridor Express, Caltrain, Metra, Metrolink, Trinity Railway Express, Rocky Mountaineer, and the Virginia Railway Express. (Id. at 2-775 to 2-780 (Ex. 13, Operating Plan).) Although Applicants plan to add freight trains to a number of these shared lines, they expect that the shared lines have sufficient capacity to handle the increase. (Id.)

Discontinuances/Abandonments. Applicants do not contemplate any abandonments, discontinuances, or line divestitures. (Id. at 1-540, V.S. Parkerson 4.)

Public Interest Considerations and Applicants' Claims Concerning Enhanced Competition.

Public Benefits. According to Applicants, the Transaction would create a transcontinental railroad and "drive growth" by merging two "complementary networks," one anchored in the West (UP) and one anchored in the East (NS). (Id. at 1-12.) Currently, UP and NS have central interchange gateways in Chicago, St. Louis, Memphis, and New Orleans, but the Transaction would eliminate those interchanges. (Id. at 1-13.) The new service would span coast-to-coast and connect major metropolitan areas and approximately 100 ports in the United States. (Id. at 1-60.) It would also provide "single-line service opportunities for more than 88,000 county-to-county lanes nationwide, including 45,000 lanes in the watershed" region. (Id. at 1-38.)[9]

According to Applicants, single-line service would eliminate operational and commercial frictions between carriers. (Id. at 1-38.) Applicants assert that the more streamlined service stemming from the Transaction would therefore reduce transit time and delay, improve reliability, and lower logistics costs. (Id.) They also claim that these benefits would be attractive to customers and hence increase competition between rail carriers. (Id.) Applicants expect to attract additional traffic by optimizing existing train and blocking plans and offering new train services that take advantage of service and efficiency made possible by the Transaction. (Id. at 1-60.)

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[9] Applicants define the "watershed" region as any county within approximately 250 miles of Chicago, St. Louis, Memphis, and New Orleans. (Id. at 1-13; id. at 2-406 to 2-407, V.S. Hunt 19-20.)

Furthermore, Applicants assert that the Transaction would be attractive to those who currently "default" to trucking goods in the watershed markets due to rail service and pricing inefficiencies. (Id. at 1-44.) The Transaction, according to Applicants, would give those shippers access to single-line service and open new markets with what Applicants assert is a lower-cost and safer option. (Id. at 1-45.) They estimate that shippers will divert 2.1 million truckloads and save approximately $3.5 billion annually. (Id. at 1-14.)

Applicants acknowledge that they would need to expand capacity. (Id. at 1-59.) They anticipate that the cost of capacity expansion and other measures necessary to implement the Transaction would exceed $2 billion. (Id.) Nonetheless, they believe the new entity would have no difficulty in financing the investment. (Id.)

At bottom, according to Applicants, the Transaction would create a more accessible, sustainable, and lower-cost supply chain option for shipping numerous goods, including food products, petroleum products, and building materials. (Id. at 1-14, 1-50; see also id. at 1-309 to 1-325, V.S. Rocker/Elkins 35-51.) Applicants anticipate that the Transaction would therefore aid in American industrial development and help American manufacturers compete internationally. (Id. at 1-48.) Manufacturers in the eastern U.S. would gain single-line access to West Coast ports and western border crossings, and manufacturers in the western U.S. will gain access to East Coast ports and eastern border crossings. (Id. at 1-48 to 1-49.) Additionally, Applicants expect environmental benefits due to diverting trucks from highways. (Id.) According to Applicants, the reduction in

truck traffic would also lead to less highway congestion and lower repair costs. (Id. at 1-20.)

In total, Applicants estimate public benefits would be approximately $6.385 billion in a normal year, including $1.784 billion in net revenues from traffic attracted from trucks and other rail carriers, $965 million in operating efficiencies and cost savings to Applicants, $133 million in capital savings, and $3.504 billion in shipper truck-to-rail savings. (Id. at 1-35; see id. at 1-120 (App. B, Summary of Benefits Ex.); see also id. at 1-497 to 1-498, V.S. Janke 2-3 (listing nonquantifiable benefits).) They also argue that the public benefits cannot be achieved without a merger. (Id. at 1-41; id. at 1-338 to 1-339, V.S. Rocker/Elkins 64-65; id. at 2-188 to 2-189, V.S. Israel 8-9.) For example, they assert that an alliance with unaffiliated carriers would leave partners with their own separate interests and shareholders. (Id. at 1-41.)

Applicants state that more than 2,000 shippers, smaller railroads, ports, public officials, labor unions, and other rail industry stakeholders have submitted statements supporting the UP/NS combination. (Id. at 1-66.) Volume 3 of the Revised Application contains these statements.

Public Harm and Voluntary Conditions. Applicants argue that the Transaction would not risk harm to the public interest. (Id. at 1-21.) They claim that the Transaction is an end-to-end merger joining "two complementary rail networks." (Id. at 1-50.) Applicants assert that UP and NS serve no more than four 3-to-2 shipper facilities and that they found no corridors where they were the only two rail options. (Id. at 1-51 to 1-52.) They add that there is "little potential" for horizontal effects in the few corridors where UP and NS were two of only three options and conclude that there are "no

meaningful geographic competition concerns." (Id. at 1-52.) They also claim that concerns about foreclosure or reductions in independent routings are "remote." (Id.)

Although they state five shippers would lose access to a second Class I carrier, Applicants commit to providing those entities with access to a Class I carrier other than UP/NS. (Id. at 51; id. at 1-395 to 1-397, V.S. Novak 22-24.) Applicants also make other commitments to reduce potential competitive harms, including that they would keep all existing gateways open for eligible traffic on commercially reasonable terms, and would provide gateway reporting analogous to that imposed as a condition on the transaction creating CPKC. (Id. at 1-52, 1-91); Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 81-82 (STB served Mar. 15, 2023). Additionally, Applicants state UP/NS would also preserve competitive options involving the use of build-outs or build-ins and would not create new regulatory bottlenecks that could limit customer access to rate relief through the Board. (Rev. Appl. 1-91.)

Enhanced Competition. Applicants argue that the Transaction would not have "an adverse effect on competition among rail carriers," but rather would "substantially enhance" competition with other rail carriers and trucks. (Rev. Appl. 1-53.) To address the Board's policy statement on enhanced competition in Major Merger Rules and 49 CFR 1180(1)(d), Applicants propose a framework called Committed Gateway Pricing (CGP). (Rev. Appl. 1-53.) According to Applicants, CGP would extend the benefits of the Transaction to certain customers who would otherwise not benefit from the new single-line service. (Id. at 1-377, V.S. Novak 4.) More specifically, eligible customers shipping to or from facilities served solely by BNSF or CSX Transportation, Inc. (CSXT), or facilities on a shortline interchanging traffic solely with BNSF or CSXT,

would have access to "rates that reflect the benefits of the UP/NS merger for traffic shipped through mid-continent gateways to or from facilities served solely by UP/NS or facilities on a shortline interchanging traffic solely with UP/NS." (Id.)

Applicants propose that CGP terminate at the end of the Board's oversight period. (Id. at 2-256, V.S. Israel 76.) However, they note that, if anticipated public benefits do not materialize in a timely manner, the Board could extend the period the CGP program is in place. (Id. at 1-92 to 1-93; id. at 1-392, V.S. Novak 19.)

Schedule for Consummation. Applicants state that they would consummate the Transaction as quickly as possible after the Board's final grant of approval. (Id. at 1-34.) They add that full integration of operations is expected to be completed within three years. (Id.) Applicants provide additional information regarding implementation in their Service Assurance Plan. (Id.)

Environmental Impacts. Applicants acknowledge that environmental review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4370m-11, is necessary in this proceeding. As discussed below, the increased traffic that would result from the Transaction would exceed the Board's thresholds for environmental review. Due to the potentially significant impact that the Transaction may have on the quality of the human environment in the affected area, the Board will prepare an Environmental Impact Statement (EIS). Applicants have also prepared a Safety Integration Plan (SIP), pursuant to the Board's regulations at 49 CFR part 1106 and FRA's regulations at 49 CFR part 244, which will be addressed during the EIS process. In the SIP, Applicants specify how they would ensure safe operations during the acquisition and implementation process. In addition, Applicants have prepared

information on what measures they plan to take to address potentially blocked crossings as a result of merger-related changes in operations or increases in rail traffic as required by 49 CFR 1180.8(a)(2).

Historic Impacts. As part of the review process, the Board must evaluate the potential impacts of the Transaction on historic properties in accordance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108; the Section 106 implementing regulations, 36 CFR part 800; and the Board's environmental regulations, 49 CFR part 1105. Applicants state that there are no plans to dispose of or alter properties that are 50 years old or older as part of the Transaction. (Rev. Appl. 1-72.) They also state that the Transaction does not require any construction that would require Board authorization under 49 U.S.C. 10901, nor are any abandonments anticipated because of the Transaction. (UP Resp. to OEA Info. Request No. 1, at 4, Dec. 18, 2025; Rev. Appl. 2-691, 2-1009 n.185.) However, Applicants propose to make certain capital improvements, including adding double track, extending sidings, upgrading an existing NS-UP connection, upgrading a bridge, and expanding yards and terminals along the combined network, which are subject to review under Section 106 of the NHPA. (Rev. Appl. 2-895 to 2-930.)

Labor Impacts. Applicants state that Omaha, Neb., where Union Pacific is headquartered, would serve as the headquarters for the combined company but that Atlanta, Ga., where Norfolk Southern is headquartered, would continue to serve as a regional operating center. (Id. at 1-64.) Applicants assert that employee reductions would involve management positions in general and administrative functions at NS's Atlanta headquarters, "driven by operational synergies and the elimination of overlapping

positions." (Id.) Applicants expect there would be movement of individuals from both companies amongst various positions to ensure optimal placement. (Id. at 1-528, V.S. Perkes 3.) They provide specific estimates concerning the effect on management employees at NS's current headquarters and offices, (Id. at 1-529, V.S. Perkes 4), as well as UP's headquarters and offices, (Id. at 1-532, V.S. Perkes 7). Applicants add, however, that "adjustments will occur gradually over three years, primarily through natural attrition and phased implementation, with critical roles preserved until integration is complete." (Id. at 1-533, V.S. Perkes 8.)

As to craft employees, Applicants expect efficiencies described in the Operating Plan will reduce the number of positions required to perform certain functions by 1,156 jobs by the end of Year 3. (Id. at 1-541, V.S. Parkerson 5.) However, Applicants commit to providing employment opportunities for all current craft employees and state that reductions will be realized through attrition or relocating employees to other employment opportunities.[10] (Id.) Despite these reductions, Applicants anticipate that growth resulting from the Transaction would ultimately add a net 1,229 craft jobs by the end of Year 3. (Id. at 1-541, V.S. Parkerson 5.)

[10] Applicants state that they "have not yet reached implementing agreements with unions representing UP and NS employees, but they have begun preliminary conversations with unions." (Rev. Appl. 1-65.) Indeed, UP states that it has entered into preliminary job-preservation agreements with the International Association of Sheet Metal, Air, Rail and Transportation Workers - Transportation Division; the National Conference of Firemen & Oilers; the Brotherhood of Railroad Carmen; the International Brotherhood of Boilermakers; the United Supervisors Council of America; and the American Train Dispatchers Association. (Id. at 1-14, 1-65; id. at 1-538, V.S. Parkerson 2.)

Furthermore, Applicants note that the Transaction would be subject to the employee conditions adopted in New York Dock—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979). (Rev. Appl. 1-64 to 1-65.) They state that they would also honor the obligations established in the "cramdown" agreements reached in 2000 and 2001 with certain labor organizations that represent certain classes of union-represented employees of UP and NS. (Id. at 1-65.)

Downstream Effects. Applicants argue that they "cannot predict" downstream merger proposals. (Id. at 1-95.) They note that the CEO of BNSF's owner, Berkshire Hathaway, has stated that the company "has been clear" it is not interested in acquiring another Class I carrier, but Applicants assert that even if BNSF were to seek to acquire CSXT and form another transcontinental railroad, that development would not diminish the public benefits of the Transaction. (Id.) Applicants add that similar end-to-end Class I mergers would "not result in any harm" if conditions like Applicants' gateway commitments are imposed on any such future transactions. (Id.)

Furthermore, Applicants do not believe that any of the conditions the Board might impose on the Transaction would need to be altered, or that any new conditions would need to be imposed on the Transaction, if the Board were to approve future rail mergers. (Id. at 1-96.) They add that a second transcontinental railroad would "be fully aligned with the public interest." (Id. at 1-97.)

Service Assurance Plan. As required by 49 CFR 1180.10, Applicants have included a Service Assurance Plan. (Id. at 1-103; id., Vol. 2 (Service Assurance Plan).) They assert that it describes the integration of operations post-consummation as well as how the benefits of the Transaction would be realized for the shipping public. (Id. at 1-

104.) They also claim it would ensure that service would not be undermined during the transition to one operator. (Id.)

Transnational and Other Information Requirements. Applicants state that UP operates almost exclusively in the United States, crossing the Canadian border only to facilitate interchange at Kingsport, B.C. (Id. at 1-105.) Similarly, NS also operates entirely in the United States except for trackage rights over approximately 1.9 miles of track between the U.S.-Canada border at Buffalo, N.Y., and CN's Fort Erie Yard in Fort Erie, Ont. (Id. at 1-106.) Although Applicants doubt operations over this segment would affect United States operations, they state that UP/NS would cooperate with relevant authorities in both countries, including the FRA, as necessary. (Id.) They add that neither UP nor NS are affected by any restrictions or preferences under the laws of Mexico or Canada that could affect their commercial decisions and that they also do not have any applicable ownership restrictions. (Id. at 1-107.)

REVISED APPLICATION AND RELATED APPLICATION ACCEPTED. As noted above, the Board permitted comments on whether the Revised Application contains the information required in 49 CFR part 1180, and a reply from Applicants. See Decision No. 17, FD 36873 et al., slip op. at 2.

The Board received comments from Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively, CN), BNSF, CPKC, CSXT, New Jersey Transit Corporation (NJ Transit), the New York Department of Transportation (NY DOT), the National Grain and Feed Association (NGFA), Houston Super Neighborhood 64 and 68, M4 Railcar Group, the NYC Department of Sanitation (DSNY), the Eastwood Civic Association, Atlantic Systems, Supply Chain Acumen LLC

(SCA), and a number of individuals, including Lindsay Williams, Ruth Tines, J. Vann Cunningham, and Colin Finney.[11] Applicants filed a reply on May 12, 2026.

Although the Revised Application does not contain the level of detail on certain issues that the Board would have preferred, particularly given the benefit of Board decisions and stakeholder comments after the original Application, the Board has determined that the Revised Application is complete, and the issues raised in the comments do not warrant rejecting the Revised Application. As discussed below, many of the issues pertain to the merits of the Revised Application and will be further developed in the supplement the Board will require prior to the submission of comments on the Revised Application or, as appropriate, at a later stage of the proceeding.[12] In addition, commenters raise concerns regarding missing or temporarily inaccessible items, such as a map or workpapers. The Board concludes that those deficiencies, while concerning in their frequency and magnitude, do not warrant rejection. Applicants are remedying those deficiencies, and the Board is requiring additional steps to improve the process for submitting, replacing, cataloguing, and validating workpapers. And, as discussed later in this decision, the Board will not deem that the Revised Application is incomplete based on assertions that Applicants have failed to comply with the information request in Decision No. 13.

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[11] The Board also received a number of late-filed comments, which will not be considered here.

[12] Although some commenters also raise concerns about potential environmental impacts, such issues will not be considered in this decision. Comments involving environmental issues should be submitted to the Board's Office of Environmental Analysis (OEA) and will be considered during the environmental review process.

A number of commenters challenge the market impact analyses from Dr. Elizabeth Bailey and Dr. Mark Israel as well as the rail-to-rail and truck-to-rail diversion study sponsored by David Hunt. These comments, however, implicate the merits of the analyses, not the completeness of the Revised Application. While commenters take issue with the quality, depth, and scope of the work, the Revised Application does include analysis of the market impact of the Transaction as required by the Board's regulations: Bailey provides what Applicants state are the actual market shares, and Hunt purports to provide the projected market shares. Both Bailey and Israel discuss the competitive impacts of the Transaction, including the potential impact of competitive enhancements offered by Applicants. Commenters' substantive concerns are properly addressed to the Transaction's merits. And although there remain issues with supporting workpapers, these issues can be corrected during the supplementation and abeyance period discussed below, and commenters would have the benefit of those corrections when commenting on the Revised Application's merits.[13]

Additionally, CN argues that the Revised Application is incomplete because Applicants have not identified all shippers that would suffer a loss of competition, primarily because Applicants treat access to another Class I carrier through a shortline railroad the same as having direct access. While the Board has questions about Applicants' analysis (as discussed below in the supplementation discussion), Applicants have provided sufficient information for completeness. Section 1180.7(b)(ii) gives

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[13] SCA asserts that Applicants do not include any sensitivity analysis on how the Transaction would affect the combined entity if the anticipated growth does not happen, but such a study is not explicitly required by the Board's part 1180 regulations. Applicants have also explained how the debt they would incur affects fixed charges, and the merits of their claims can be examined as part of the merits process.

Applicants leeway in defining the points used to assess competition loss, at least from a completeness perspective. Likewise, while BNSF questions the type of relief to be provided shippers who would lose access to another Class I carrier, that issue relates to the merits rather than completeness.

Other commenters question whether Applicants' CGP program would enhance competition, and some claim it would harm some shippers. As discussed below, the Board has questions regarding CGP that Applicants will be required to address in a supplement. But the Board concludes that Applicants have provided information sufficient to comply with 49 CFR 1180.6(b)(10) at the completeness stage. That regulation requires Applicants to propose measures to enhance competition, which Applicants have at least purportedly done here with their CGP program. Major Merger Rules provided applicants flexibility to craft a proposal and did not dictate a particular approach to enhanced competition proposals. See Major Merger Rules, 5 S.T.B. at 570. The questions raised here concerning the efficacy or impact of Applicants' proposal do not render the Revised Application incomplete.

Additionally, some commenters assert that Applicants have not provided a thorough analysis of the downstream effects of the Transaction. See 49 CFR 1180.6(b)(12). The Board finds that Applicants have done enough for completeness purposes to at least "initiate a commentary" about potential responsive merger applications, as the rule requires. Major Merger Rules, 5 S.T.B. at 582. As such, Applicants have complied with 49 CFR 1180.6(b)(12) from a completeness perspective, even though there may be criticisms regarding the robustness of the initial analysis.

NGFA claims that Applicants have not provided a sufficient plan in writing to address the steps they would take to ensure adequate service and have not provided service benchmarks below which concrete consequences would be triggered. The Board concludes that Applicants do provide benchmarks adequate for completeness, (see, e.g., Rev. Appl. 2-1092 n.234; id. at 2-1093 n.235), and while the steps to address shortcomings of projected benchmarks post-merger may be thin, they satisfy the requirements of the regulations for the purposes of completeness.[14] Further, while NGFA claims the Revised Application is incomplete based on Applicants' proposed arbitration program, an arbitration program is not explicitly required, and questions about its value are better addressed during the merits phase of the proceeding.

Some commenters argue that Applicants failed to submit related applications to control TRRA and TTX, claiming that Applicants' plans to divest control are too vague. As discussed below, although commenters raise valid questions regarding the merits of Applicants' TRRA and TTX proposals that warrant supplementation, the Board concludes that these issues do not render the Revised Application incomplete. Moreover, some commenters suggest that Applicants should have filed a control application for KCT, but the Board concludes that the lack of such an application does not render the Revised Application incomplete.

TRRA. TRRA is a Class III terminal and switching carrier that operates approximately 170 miles of rail line in and around St. Louis, Mo., including two bridges over the Mississippi River. Decision No. 9, FD 36873 et al., slip op. at 9. TRRA is

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[14] DSNY contends the Revised Application fails to provide the required discussion of the effect of the Transaction on the adequacy of municipal solid waste service, but there is no requirement that Applicants specifically discuss the issue.

owned 42.84% by UP and 14.29% by NS, with CSXT, BNSF, and CN (via Illinois Central Railroad Company) owning the rest. (Rev. Appl. 1-30, 1-77.)

As explained above, the Board rejected the previous Application as incomplete in part because Applicants should have filed a control application for TRRA as a "significant" transaction instead of a "minor" transaction. See Decision No. 9, FD 36873 et al., slip op. at 9-11. Rather than refile the TRRA application, Applicants have offered to condition consummation of the Transaction on divesting whatever ownership or governance interests are necessary so that the combined company will not control TRRA. (Rev. Appl. 1-30 to 1-31.)

BNSF and CSXT both argue that 49 CFR 1180.6(a)(7)(ii), which requires merger applicants 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," required Applicants to submit a copy of a proposed agreement to divest their interests in TRRA. (BNSF Comments 4, May 8, 2026; CSXT Comments 7, May 8, 2026.) The Board concludes that Applicants' failure to do this does not render the Revised Application incomplete. For purposes of completeness, the section 1180.6(a)(7) requirement does not include divestiture agreements that may ultimately be necessary but have not been negotiated.

As BNSF, CSXT, and CN point out, the Revised Application does not provide many details about the divestiture, including timing, price, and the impact on NS's outstanding liabilities to TRRA. (See, e.g., CN Comments 32-36, May 8, 2026; BNSF Comments 4, May 8, 2026; CSXT Comments 7, May 8, 2026.) CSXT also argues that Applicants' commitment to modify TRRA's board and governance documents to avoid control "may be illusory" because non-applicant owners of TRRA would have to agree,

and the Board cannot impose conditions on non-applicants as a condition of the Transaction. (CSXT Comments 7, May 8, 2026.) CN argues that shares of TRRA are expressly nontransferable (unless they are transferred back to TRRA), casting doubt on Applicants' ability to transfer the shares to other entities. (CN Comments 33-35, May 8, 2026.) Applicants respond that all of these concerns go to implementation, not completeness, and that they have committed to addressing them as a condition of consummation. (Applicants Reply 22, May 12, 2026.)

Although the Board agrees that the Revised Application leaves many questions about how the proposed divestiture can be accomplished, Applicants have provided sufficient information to satisfy completeness. The details of how their TRRA proposal would be accomplished can be addressed in the supplement being required by the Board and later in the proceeding.

TTX. TTX is a railcar pooling company that owns and manages fleets of railcars. (Rev. Appl. 1-87.) These include "a fleet of flatcars that are used in rail transportation of containers, truck trailers, automobiles, lumber, extra-dimensional loads, and other commodities," as well as "pools of boxcars and gondolas," pursuant to Board-approved pooling agreements. (Id. at 1-87 to 1-88.)[15] TTX owns over half of the well cars that are used for intermodal traffic. (BNSF Comments 5, May 8, 2026.) TTX is owned by seven

[15] See TTX Co.—Appl. for Approval of Pooling of Car Servs. with Respect to Flatcars, FD 27590 (Sub-No. 4), at 2 (STB served Oct. 1, 2014) (renewing approval of flatcar pool); Am. Rail Box Car Co. & Trailer Train Co.—Pooling, 347 I.C.C. 862 (1974) (approving boxcar pool); Railgon Co. & Trailer Train Co.—Pooling of Car Serv. Regarding Gondola Cars, FD 29121 (ICC served Mar. 17, 1980) (approving gondola pool).

railroads: UP (37.03%), NS (19.78%), CSXT, (19.78%), BNSF (17.4%), CN (3.2%), CPKC (2.2%), and Ferromex (0.6%). (Rev. Appl. 1-87.)

Although the combined shares of UP and NS in TTX exceed 50%, Applicants state that they are not required to file a control application for TTX because it is a noncarrier. (Id. at 1-89.) They also say that the TTX-pooling agreements, which are subject to Board approval, would prevent them from using a controlling interest in an anticompetitive way. (Id. at 1-88 to 1-89.) To avoid "distraction," however, they say that they will commit to divesting shares to reduce their combined ownership interest to no greater than 49% "at such time as they are able to do so on commercially reasonable terms." (Id. at 1-89.)

BNSF and CSXT argue, as they did with TRRA, that Applicants were required by 49 CFR 1180.6(a)(7)(ii) to file a copy of a proposed divestiture agreement for TTX. (BNSF Comments 5, May 8, 2026; CSXT Comments 7 n.2, May 8, 2026.) As explained above, section 1180.6(a)(7)(ii) does not require Applicants to file a divestiture agreement that has not yet been negotiated for their Revised Application to be complete. The Board will, however, require Applicants to provide more details about their intended divestiture, as discussed below.

BNSF also argues that the Revised Application is incomplete because it does not address "the competitive impacts of the transaction" with respect to TTX, such as Applicants' claim that "they will divert 1.58 million annual intermodal units to their combined railroad, a market segment where TTX owns over half of the underlying well cars." (BNSF Comments 5, May 8, 2026.) While the Board will scrutinize such

competitive impacts during its review of the Transaction, Applicants' presentation is sufficient to satisfy completeness.

KCT. KCT is a terminal railroad located in Kansas City, Mo., and Kansas City, Kan., that owns and dispatches approximately 95 miles of track. (Rev. Appl. 1-81.) It is owned by UP, BNSF, CPKC, and NS, all of whom can use KCT to interchange traffic with each other. (Id.) KCT also provides switching access to certain shippers. (Id.)

Some commenters suggest that Applicants' combined interest in KCT requires a control application. While the Board has questions regarding Applicants' proposal to retain a 50% interest in KCT, the Board is unpersuaded on this record that Applicants' combined 50% ownership of KCT would give them control post-merger within the meaning of 49 U.S.C. 10102(3) and the Board's current precedent, and therefore concludes that Applicants have satisfied completeness with regard to KCT.

Applicants' combined ownership of KCT will increase to 50% as a result of the Transaction, with BNSF and CPKC each holding 25%. (Rev. Appl. 1-81 to 1-82.) Applicants did not file a control application for KCT, explaining that they will not control KCT post-merger because their 50% share does not constitute a majority. Moreover, they say that several factors will ensure that their share will not constitute de facto control of KCT. First, the combined entity would have the right to appoint only half of KCT's directors. (Id. at 1-82.) Second, authority to manage the day-to-day operations of KCT rests in a General Manager who must be appointed by a majority of the board. (Id. at 1-82 to 1-83.) Third, Applicants note that this is not a situation where the other stockholdings are widely dispersed, since there are only two other owners with 25% each. (Id. at 1-82.) Fourth, they say that KCT's governing documents ensure that KCT cannot

act in a discriminatory manner. (Id. at 1-83 to 1-84.) Applicants argue that, under agency precedent, a shareholder's 50% share does not constitute control when the shareholder does not control the board of directors and when the entity's operating agreement ensures impartiality. (Id. at 1-84 (citing Burlington N., Inc.—Control & Merger, 366 I.C.C. 862, 865–66 (1983), aff'd sub nom. Bhd. of Ry. & Airline Clerks v. Burlington N., Inc., 722 F.2d 380 (8th Cir. 1989)).[16]

BNSF and CPKC argue that Applicants' combined 50% interest in KCT *could* constitute control, and they ask the Board to reject the Revised Application as incomplete if the Board concludes that Applicants would control KCT. (BNSF Comments 5, May 8, 2026; CPKC Comments 13-14, May 8, 2026.) CPKC argues that "ownership of 50% or less can entail control when there is not another equal 50% owner, and that the power to veto proposed initiatives of the other owners, which UP's 50% position would provide, constitutes 'negative' control even if it does not mean that the controlling entity can dictate every aspect of the organization's day-to-day operations." (CPKC Comments 13, May 8, 2026.) BNSF similarly argues that 50% ownership can give rise to control under some circumstances and that the combined UP/NS would have the power to block any proposal made by BNSF and CPKC that requires majority support. (BNSF Comments 5, May 8, 2026.)

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[16] Applicants cite other cases in support of their position that 50% ownership does not constitute control, at least absent indicia that are not present at this stage of the proceeding. (Rev. Appl. 1-85 to 1-86 & n.86 (citing, inter alia, CSX Corp.—Control—Conrail Inc., 3 S.T.B. 196, 349 (1998), aff'd sub nom. Erie-Niagara Rail Steering Comm. v. STB, 247 F.3d 437 (2d Cir. 2001); Burlington N.—Merger—Santa Fe Pac., 10 I.C.C.2d 661, 673 n.17 (1995), aff'd sub nom. W. Resources, Inc. v. STB, 109 F.3d 782 (D.C. Cir. 1997); and Borealis Infrastructure Trust Mgmt., Inc.—Acquis. Exemption—Detroit River Tunnel Co., FD 33984, slip op. at 5 (STB served Dec. 19, 2001)).)

It is not clear at this stage of the proceeding that Applicants would gain control over KCT under the Board's current precedent given the lack of a majority ownership stake, combined with the lack of a majority of the board of directors and provisions in KCT's governing documents requiring KCT's operation on a non-discriminatory basis.[17] Without making any determinations regarding the potential competitive effects associated with UP/NS's proposed 50% ownership of KCT, the Board concludes that Applicants have satisfied completeness with regard to KCT.[18] But the Board recognizes that Applicants' 50% ownership could give them the ability to veto proposals requiring a majority vote, and that effect of this veto power could be consequential. Thus, although Applicants will not be required to file a control application for KCT as a prerequisite for the completeness of the Revised Application, the Board will request more information

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[17] The cases cited by CPKC to support its claim that a 50% share equals control involved circumstances much different than those present here. See, e.g., Norfolk & W. Ry. & N.Y., Chi. & St. Louis R.R. Merger, 324 I.C.C. 1, 32 (1964) (holding that 30% stock ownership constituted control when the remaining stock ownership was widely dispersed, with the stock owner regularly constituting a majority of shares that actually voted at meetings for the election of directors); Transcon. Bus Sys., Inc. v. Greyhound Corp., 104 M.C.C. 524, 526 (1968) (finding that an option held by 45% owner to purchase remaining stock "could be used as one of several weapons held by Greyhound to keep [the other shareholders] in line"). And while the power to control may indeed not "depend on ownership of a majority of a carrier's stock," (CPKC Comments 13-14, May 8, 2026 (citing Greyhound Corp.—Control—Tex. N. M. & Okla. Coaches, Inc., 101 M.C.C. 655, 667 (1967))), that does not mean that 50% ownership or less in a cooperative venture necessarily creates control where the entity is otherwise structured to prevent that carrier's domination.

[18] The Board could in the future direct Applicants to file an application for control of KCT, or take other appropriate action, should evidence come to light during this proceeding that they would in fact obtain control of KCT post-merger. Regardless of the control issue, and as discussed below, the Board will direct Applicants to provide information regarding the potential competitive effects of any post-merger ability they may acquire to veto proposals requiring a majority vote of KCT's owners.

regarding Applicants' proposal regarding KCT, which could shed light on potential competitive effects and future influence regarding KCT decision-making.

In sum, the Board finds that Applicants have provided sufficient information to satisfy the completeness requirements for a "major" transaction application, and the completeness issues raised by commenters do not warrant rejecting the Revised Application. The Board is also accepting the related application concerning PPU.

ADDITIONAL MATERIAL AND ABEYANCE. Although Applicants have included sufficient information to satisfy the fairly narrow procedural question of completeness, there are several aspects of the Revised Application that are unclear or underdeveloped and require supplementation at this stage of the proceeding so that the Board may have the information necessary to thoroughly evaluate—and the public has an adequate opportunity to comment on—whether the Transaction is in the public interest. See 49 CFR 1180.1(a)-(c) (stating that the Board's evaluation is governed by the public interest criteria in 49 U.S.C. 11324, and that "the Board does not favor consolidations that reduce the transportation alternatives available to shippers unless there are substantial and demonstrable public benefits that cannot otherwise be achieved").[19] Major Merger Rules, 5 S.T.B. at 549.

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[19] (See also BNSF Comments 1-2, May 8, 2026 (arguing that Applicants fail to demonstrate that the proposed transaction is in the public interest, which shifts the burden to the Board and parties "to answer the tough questions" that Applicants have dodged); CPKC Comments 20, May 8, 2026 ("On many of the key public interest questions raised by the proposed transaction, Applicants have presented at best a barebones treatment . . . .").)

The Board is committed to conducting a thorough and fair review based on evidence and argument in this proceeding. Under the statute, parties offering views on the merits of a proposed merger, including by requesting conditions and proposing responsive applications, have a limited opportunity, early in a proceeding, to make their principal case to the Board. Based on the Board's initial assessment, the Board concludes that information in the Revised Application lacks clarity and detail and does not yet afford parties a meaningful opportunity to comment on the merits of the Transaction. And the Board's own review of the Transaction's consistency with the public interest, including its consideration of the contours of potential conditions, would suffer.

This Transaction is the first proposed merger evaluated under new rules forged following real-world consequences emanating from a 1990s wave of major mergers. Such consequences cannot be ignored, assumed away, or overlooked based on vague intentions or promises, particularly given the possible implications of subsequent mergers for the long-term future of the national rail network. Therefore, the current rules establish a "heavier burden" for applicants, with new provisions concerning competitive enhancement, benefit estimate integrity, service assurance, and downstream effects. See Major Merger Rules, 5 S.T.B. at 546 (explaining that, under the new rules, "applicants bear a heavier burden to show that a major rail combination is consistent with the public interest"). Indeed, in revising its major merger rules in 2001, the Board raised concerns about the prospect of further Class I railroad consolidation and explained that the new rules reflect a "more skeptical, 'show me' attitude toward claims of merger benefits and toward claims that no transitional service problems would occur." Id. at 549. The rules also strengthened consideration of a merger's impacts on communities, employees,

shortline railroads, ports, and others. In turning to the merits of the Transaction, the Board will not launch a procedural schedule that in effect places undue burden on the commenting parties to ascertain and evaluate important information about the Transaction and how it corresponds to the new framework.

Accordingly, given the questions raised by the Board's initial review of the Revised Application, the unprecedented scope of this Transaction, the possible consequences of this and any potential future major mergers for the nation's supply chains, the first-time application of these rules, and the benefits of additional information on this record, the Board will require Applicants to supplement their Revised Application with the information detailed below by July 27, 2026,[20] and will hold the proceedings in abeyance pending submission and Board review of the supplemental information. 49 U.S.C. 1321(b)(3); see Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 3 (STB served Mar. 16, 2022) (directing applicants to address an apparent inconsistency in data submissions and suspending the procedural schedule). The Board's assessment of the supplemental filing may include an evaluation as to whether Applicants have presented a prima facie case.[21] In a future decision, the Board will establish an appropriate procedural schedule for the remainder of the proceeding.

Abeyance of the proceedings does not affect discovery, including in proceedings before the ALJ. See Decision No. 17, FD 36873 et al. Continued discovery is essential to developing a record that allows for full consideration of this unprecedented proposed

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[20] The Board recognizes the detailed nature of the questions and would entertain a request for a 30-day extension.

[21] See 49 CFR 1180.4(c)(8); see also R.R. Consol. Procs. Expedited Processing, 363 I.C.C. 767, 769 (1980).

Transaction, and the Board is troubled by comments highlighting Applicants' purported unwillingness to engage in discovery. (See, e.g., BNSF Comments 8, May 8, 2026; CPKC Comments 19, May 8, 2026.) However, while disputes remain to be addressed by the ALJ, Applicants have expressed interest in entering discovery guidelines to "ensure that discovery proceeds smoothly and disputes are resolved efficiently," and the Board expects that Applicants and other parties will adhere to any discovery guidelines imposed and expeditiously respond to discovery requests. (Applicants Mot. to Enter Prop. Discovery Guidelines 1, May 4, 2026.)

Applicants will be required to provide supplemental information as discussed below. But the following supplemental information requirement is not intended to be an exhaustive list of potential questions or concerns the Board may have in assessing the Revised Application. Nor does the list below limit the subjects Applicants may address in their supplement. Given the scope of the Board's questions, it is important for Applicants to have the flexibility to improve or explain broad and interdependent aspects of the Revised Application. For example, if Applicants' supplement changes the Revised Application's calculation of public benefits or proposed conditions, Applicants should submit revised or updated portions of the Revised Application, including expert analysis, as appropriate.

Enhanced Competition. The Board's major merger rules reflect a policy shift that "places greater emphasis in the public interest assessment on enhancing competition while ensuring a stable and balanced rail transportation system." Major Merger Rules, 5 S.T.B. at 546. This is in part due to the Board's concern that "it is increasingly difficult to remedy certain competitive harms directly and proportionately" and that future major

mergers present an "increased likelihood of transitional service problems." Id. at 554; see id. at 550 (explaining 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"). Although the Board did not specify precise competitive enhancements that would tip the balance in future proceedings, it explained that applicants could focus "on enhancing intramodal (rail-to-rail) competition, for example, by the granting of trackage rights, the establishment of shared or joint access areas, the removal of 'paper' and 'steel' barriers, and other techniques that would enhance railroad-to-railroad competition." Id. at 554 (stating that provisions for competitive enhancement would be "given substantial weight" and "are likely to be extremely important to [the Board] in determining whether to approve a particular application"); see id. at 547 ("Ultimately, the quantity and quality of competitive enhancements that would be required would depend upon the circumstances of a particular case."). Thus, the Board's rules highlight the importance of competition-enhancing conditions. See 49 CFR 1180.1(a) (explaining that consolidations that reduce transportation alternatives available to shippers are not favored absent substantial and demonstrable public benefits, such as enhanced competition); see also id. at 1180.1(c)-(d), 1180.6(b)(10)-(11).

Several commenters argue that the Revised Application provides only a superficial or highly limited discussion of enhanced competition. Many question whether CGP—the sole competitive-enhancing condition proposed in the Revised Application—will provide much, if any, competitive enhancements given its many exclusions and limitations. (See CN Comments 26, May 8, 2026; BNSF Comments 7, May 8, 2026;

CSXT Comments 10-12, May 8, 2026; NGFA Comments 2-5, May 8, 2026; Cunningham Comments 10, May 6, 2026.) As commenters note, Applicants describe CGP as applying only to manifest carload shipments between UP/NS sole-served facilities (and facilities on shortlines interchanging solely with UP/NS) and BNSF or CSXT sole-served facilities (and facilities on shortlines interchanging solely with BNSF or CSXT) that are interchanged in Chicago, St. Louis, Memphis, or New Orleans. CGP does not apply to intermodal or unit train shipments, shipments of finished vehicles, shipments to and from storage-in-transit facilities or facilities owned by rail carriers or their affiliates, or certain specialized shipment types that present heightened operational capacity and risk concerns. (Rev. Appl. 1-384 to 1-385, V.S. Novak 11-12.) Further, CGP would extend only through the oversight period absent a Board extension. (Id. at 1-92.)

CN argues that "CGP cannot be what the Board intended under the new rules when it adopted the requirement that applicants propose competitive enhancements," as it applies to less than 1% of rail traffic and may harm shippers regardless of their eligibility for CGP. (CN Comments 25-26, May 8, 2026 (citing Rev. Appl. 2-256 to 2-257, V.S. Israel 76-77 (discussing the potential incentive for UP/NS "to compete less aggressively and transact at rates higher than would otherwise occur absent the gateway rate mechanism")).) Similarly, BNSF argues that CGP does not remedy vertical foreclosure or enhance competition, as it applies "to a small subset of traffic and is shot through with caveats and limitations." (BNSF Comments 7 n.5, May 8, 2026 (arguing that CGP "covers less than 1% of traffic, is limited to four gateways, and excludes intermodal, autos, unit trains, TIH/PIH, dimensional shippers, and Canadian carriers").) CSXT argues that CGP excludes shippers with direct rail-to-rail competition and thus does not

enhance such competition. (CSXT Comments 10-11, May 8, 2026.) Commenters also raise concerns about the proposed limited duration of CGP, (see BNSF Comments 7 n.5, May 8, 2026; Cunningham Comments 10, May 6, 2026), and whether there would be any benefit to extending CGP's duration if anticipated public benefits fail to materialize, (see CSXT Comments 12, May 8, 2026).

While the major merger rules repeatedly emphasize competitive enhancements as important to the Board's public interest calculus, the sole competitive enhancement Applicants propose—CGP—appears to exclude a significant amount of traffic hauled or proposed to be hauled by Applicants, terminates with the conclusion of the Board's oversight period, and may harm some shippers by incentivizing UP/NS to compete less aggressively for some traffic. (See Rev. Appl. 2-256 to 2-257, V.S. Israel 76-77.) At this stage in the proceeding, the Board will not engage in any weighing of CGP against other effects of the Transaction. However, Applicants' policy choices underlying CGP and Applicants' own claims as to its effects raise substantial questions that must be addressed early in this proceeding. Further information from Applicants will facilitate meaningful public comment and the Board's review of CGP's effects, including as relevant for considering any conditions pertaining to the program or other potential competitive enhancements.

Specifically, the Board directs Applicants to:

- [EC-1] For each proposed CGP exclusion or limitation,[22] (a) applying Israel's model, quantify the degree to which inclusion in CGP would

[22] For purposes of this directive, Applicants' analysis shall include, but is not limited to, the following proposed exclusions or limitations: unit trains, TIH/PIH,

generate consumer surplus for the excluded group; (b) explain the rationale for excluding or limiting that group from CGP eligibility; and (c) where the exclusion or limitation is for operational reasons, estimate the costs of any operational modification required to make the excluded group CGP-eligible. While some traffic may fall in multiple excluded groups, Applicants shall address and compare the potential public benefits and costs of making each individual excluded group CGP-eligible, rather than address all groups in aggregate.

- [EC-2] For the proposed time limitation of CGP, (a) address the extent to which any harms of the Transaction, which CGP may be intended to offset, are permanent; (b) applying Israel's model, explain the selection of CGP's termination date on public interest grounds, factoring in any potential consumer surplus from extending the program; and (c) address whether the proposed time limitation of CGP reduces the net benefits of the Transaction as compared to a longer duration or permanent condition.
- [EC-3] For the set of carloads identified as eligible for CGP but not identified as potentially benefitting from CGP, (see Rev. Appl. 2-261, V.S. Israel 81, Fig. 14), quantify any potential harm[23] and discuss whether and how the design of CGP maximizes net benefits for CGP-eligible traffic.

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intermodal, automotive, interchange points outside of the four covered gateways, connecting carriers other than BNSF and CSXT, and shippers with direct rail-to-rail competition. Each exclusion or limitation shall be considered an excluded group and addressed individually (e.g., unit trains shall be addressed individually).

[23] Applicants shall present the quantification of any harms in the same format as the quantification of projected benefits. (See Rev. Appl. 2-261, V.S. Israel 81, Fig. 14.)

- [EC-4] Discuss the extent to which Applicants propose any specific measures (e.g., specific service benchmarks with clear timeframes) against which CGP service performance will be measured relative to comparable single-line traffic moving in UP/NS service, and detail any specific enforcement mechanisms to ensure non-discriminatory handling of traffic moving under CGP. (See Rev. Appl. 1-390, V.S. Novak 17.)
- [EC-5] For sole-served shippers served by either UP or NS on a single-line basis,[24] (a) quantify, by commodity group and Business Economic Area, the amount of traffic that is potentially disciplined by geographic competition; and (b) explain the extent to which any proposed conditions (e.g., CGP, gateway protections, access remedies) provide a meaningful offset for any loss in any geographic competitive constraint for this traffic. [EC-6] Discuss the extent to which CGP would enable shippers to have competitive choice to help reduce or avoid use of the merged carrier during service disruptions, should transitional service problems occur.

Access: 2-to-1 and 3-to-2 Shippers. Protection against a reduction in the number of railroads serving a shipper facility is not new. Indeed, the Board's major merger rules state that the Board "consistently impose[s] conditions to preserve two-railroad service" and will impose remedies to preserve competition on a case-by-case basis where a shipper's rail access is reduced from three carriers to two. Major Merger Rules, 5 S.T.B. at 548-49 & n.10. In comments on the new rules, UP itself endorsed a case-by-case

[24] For purposes of this directive, Applicants shall include shippers served by a Class II or Class III carrier interchanging solely with UP or NS.

analysis for 3-to-2 situations and argued that the Board should examine each situation on its facts, and, if the evidence demonstrates that a competing railroad would be ineffective in constraining the merged carrier, introduce a third competitor. Id. at 691. Recent Board precedent (in a minor transaction) addresses the competitive impact of a proposed transaction on 3-to-2 shipper facilities. See Canadian Nat'l Ry.—Control—Iowa N. Ry., FD 36744 et al., slip op. at 7-11 (STB served Jan. 14, 2025) ("There can still be a significant lessening of competition even where the merging parties are not the only, or even the two largest, competitors in the market."). The major merger rules call for applicants to list 2-to-1 and 3-to-2 shippers. See 49 CFR 1180.7(b)(2).

While Applicants' treatment of 2-to-1 and 3-to-2 shipper facilities does not fail the minimum informational requirements for completeness,[25] the Board's review of the merits of Applicants' proposed access remedies would benefit from additional information, and such information would also aid in enabling meaningful public comment from affected parties. Indeed, the Board's experience in imposing and enforcing past major merger conditions protecting against a reduction in serving railroads

[25] Applicants detail the steps they took to develop their list of 2-to-1 and 3-to-2 shipper facilities but acknowledge that their original method fell short of identifying all of the necessary facilities. (Rev. Appl. 1-394 to 1-397, V.S. Novak 21-24.) Applicants acknowledge that there may be further facilities they have yet to identify. (Id. at 1-397, V.S. Novak 24.)

indicates the benefits of ascertaining and evaluating the specifics of potential remedies early in the merger review process.[26]

As such, the Board directs Applicants to:

- [A-1] List each 2-to-1 and 3-to-2 shipper facility—including each shipper facility that would face a 2-to-1 or 3-to-2 reduction in direct access to Class I carriers[27]—and, for each facility listed, address how pre-merger competition among carriers will be maintained.
- [A-2] For each 3-to-2 shipper facility, explain why the Board should not remedy a reduction in carriers serving the facility. For each facility for which Applicants maintain no condition should be imposed, detail how any alternative competitive constraint would fully protect against competitive harm from a loss of a competitive intramodal option.
- [A-3] For each 2-to-1 and 3-to-2 shipper facility, provide any contracts or agreements, and any supporting details relevant to the Board's examination of the arrangement, pertaining to access or competition protection, and—if no contract or agreement has been entered into—describe Applicants' most recent proposal to provide access or

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[26] See BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry., FD 32760 (Sub-No. 46), slip op. at 9 (STB served July 5, 2016) (analyzing requested terminal trackage rights using a public interest standard to determine if they were necessary to effectuate the merger conditions imposed decades earlier).

[27] For purposes of Applicants' responses to A-1, A-2, and A-3, direct access to a Class I carrier does not include access via a Class II or III carrier that connects to a Class I carrier.

competition protection to such facility and the status of any negotiations on such proposal.

- [A-4] Confirm that Applicants do not intend to take any action to reduce or eliminate the access of any Class II carrier, Class III carrier, or a port to a Class I carrier following the Transaction, including, for example, through changes involving interchange commitments, lease arrangements, routing, or service.

Public Benefits: Diversion Analysis. Applicants' public-interest analysis relies principally on the proposed diversion of approximately 2.1 million truckloads of traffic from long-haul trucking to rail, which Applicants' expert estimates will save customers approximately $3.5 billion annually and result in cascading benefits to multiple stakeholders. (Rev. Appl. 1-14.) One of the goals of the Board's Major Merger Rules was to align an application's projections for the benefits of a merger with the realized transaction and to provide means to alleviate any inconsistencies. See 49 CFR 1180.1(c)(1) ("To ensure that applicants have no incentive to exaggerate the projected benefits to the public, the Board expects applicants to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner."); Major Merger Rules, 5 S.T.B. at 579-581. The Board requires additional information to evaluate, and for the public to have a meaningful opportunity to comment on, Applicants' projected diversions and the accompanying asserted public benefits.

Specifically, the Board requires Applicants to:

- [PB-1] Confirm whether Applicants' diversion analyses and public benefit summaries reflect Applicants' assumption that no competitive response,

by any market participant, in any form, will occur during the first three years after consummation. If Applicants' analyses and summaries incorporate a competitive response, detail how that response was incorporated into the model and affects the diversion and benefit estimates.

- [PB-2] Taking into account analyses reflected in the documents produced in response to Decision No. 13, identify and describe the most likely competitive responses from any mode of transportation to the proposed Transaction and how each of those responses would impact Applicants' ability to attract new traffic. For each competitive response identified, Applicants shall (a) provide a quantitative estimate or, if a quantitative estimate is not feasible, a detailed qualitative assessment of the potential reduction in projected diversions[28]; (b) provide the resulting impact on Applicants' projected net revenues and annual public benefits; and (c) discuss the impact on Applicants' earnings available for fixed charges. See 49 CFR 1180.6(a)(2)(ii) & (iii).
- [PB-3] Provide any document generated by or for UP or NS since July 30, 2024, that contains diversion projections under competitive response scenarios that are materially lower than Hunt's estimates and, if any such projections exist, explain any material differences.

[28] For purposes of PB-2, Applicants' analysis shall include, at a minimum, carload and intermodal on an individual basis, and rail-to-rail and truck-to-rail on an individual basis.

- [PB-4] Confirm whether Applicants' diversion analysis and public benefit summaries reflect any impact from CGP.
- [PB-5] Given that Applicants state that they do not currently have sufficient capacity to support the projected traffic growth, (see Rev. Appl. 1-59), (a) explain how Applicants will achieve the projected benefits of the Transaction within the first three years after consummation considering the time needed for Applicants and shippers, as applicable, to construct the infrastructure (e.g., new sidings, siding extensions, new mainline track, yard expansions, shipper facility investments) and deploy operational assets (e.g., containers, cars, and chassis) needed to generate and handle projected traffic growth; and (b) provide a quantitative estimate or, if a quantitative estimate is not feasible, a detailed qualitative assessment as to the extent to which Applicants' projected benefits are dependent on shipper investment.
- [PB-6] Beyond the conversion of routes to single-line service, elaborate on the extent to which other changes to business or commercial strategies or practices (including with respect to pricing) are planned or modeled to achieve the projected traffic diversions. Applicants shall specify (a) the extent to which rate adjustments (outside of the CGP) are planned to achieve projected diversions and (b) the extent to which Applicants' modeled revenue projections reflect any reduction in revenue per carload (or other pricing adjustment) for any shipper or group of shippers (outside of CGP).

- [PB-7] Provide a discussion of (a) any proposed oversight framework for both diversions and the related public benefits projected by Applicants and (b) if the anticipated public benefits fail to materialize in a timely manner after consummation,[29] any proposed measures that could be enacted swiftly[30] and any proposed measures that could be available for shippers that are excluded from CGP (as referenced in EC-1 above). For each CGP-excluded group, identify any mechanism that would provide relief or generate other benefits should Applicants' projected benefits fail to materialize.
- [PB-8] Given the significant length-of-haul opportunities identified in Hunt's truck-to-rail diversion analysis that go beyond the watershed area,[31] (a) elaborate on what efforts have been made in the area of joint-line agreements between UP and NS regarding these opportunities from

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[29] The Board notes that there is history of prior major mergers that have fallen short of truck-to-rail conversion projections on past applicants' timelines. For example, in the most recent Class I merger, Canadian Pacific—Kansas City Southern, the applicants forecasted converting 64,000 trucks per year from highway to rail. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 21 (STB served Mar. 15, 2023). Three years after consummation, that goal has not yet been realized. See CPKC's Jan. 2026 Traffic Diversion Submission 6, Canadian Pac. Ry.—Control—Kan. City S. (Gen. Oversight), FD 36500 (Sub-No. 6) (filed Jan. 15, 2026). Applicants here project substantially more diversions—2.1 million truck-to-rail conversions. (See Rev. Appl. 1-14.)

[30] The Board notes that an extension of the CGP could be years after the timeline on which Applicants project benefits would materialize. (See Rev. Appl. 1-92 to 1-93 (discussing the possibility of the Board extending CGP "if the other anticipated public benefits of the merger fail to materialize in a timely manner").)

[31] In Hunt's truck-to-rail diversion analysis, the data shows that *average* length-of-haul is 2,070 door-to-door miles for the 1.203 million annual trucks to be converted to intermodal rail. (Rev. Appl. 2-450, V.S. Hunt 63.) Nearly 80% of the truck-to-rail diversions are 1,500 miles and longer. (Rev. Appl. 2-451, V.S. Hunt 64.)

January 1, 2023, to present and (b) specify the reasons the traffic did not convert to rail without a merger.

Service Assurance Plan. The Board's major merger rules envision proactive steps to address service issues surrounding the implementation of a merger. See 49 CFR 1180.1(h)(1) ("The quality of service is of vital importance. Accordingly, applicants must . . . [identify] the precise steps they would take to ensure adequate service and to provide for improved service . . . [A]pplicants will be required to provide service benchmarks, describe the extent to which they have entered into any arrangements with shippers and shipper groups to compensate for service failures, and establish contingency plans that would be available to mitigate any unanticipated service disruption."). In Major Merger Rules, the Board "strongly encouraged applicants to make a commitment in the application to submit to arbitration all claims of merger-related service failures," and the Board provided an example of an arbitration process with specific standards for a service failure and a system for compensating shippers harmed by failures such that disputes could be "readily handled" by an arbitration should an affected shipper elect to use arbitration. Major Merger Rules, 5 S.T.B. at 580.

The Revised Application proposes an arbitration system for service failures. Specifically, Applicants propose to provide arbitration, on complaint by a shipper, when Applicants fail "to provide reasonable service due to merger implementation problems during the statute of limitations period." (Rev. Appl. 2-1141 (Service Assurance Plan).) Applicants propose to require a customer to demonstrate "substantial deterioration in service." (Id.) Under the proposal, Applicants would "have the right to cure the alleged failure to provide reasonable service" within a 30-day period, and the proposed

arbitration process would terminate three years after the effective date of the Board's approval of the Transaction. (Id. at 2-1141, 43 (Service Assurance Plan).) While Applicants provide the information required for the purposes of completeness, additional information is needed to assess the usefulness of the proposed arbitration process and allow parties to understand rights and remedies associated with the proposal. (NGFA Comments 5, May 8, 2026 ("Applicants must submit a precise, detailed Service Assurance Plan that provides the Board and industry stakeholders in advance with a written plan to which the Applicants can be held to account when any post-merger service disruptions occur.").)

Accordingly, the Board directs Applicants to:

- [SA-1] Elaborate on the terms "substantial deterioration in service," "reasonable service," and "cure," and explain any criteria (e.g., specific measurable benchmarks and clear timeframes) that would be used when evaluating those terms in the context of individual shipper claims.
- [SA-2] Explain the compensation available to shippers under the proposed arbitration system, including how Applicants envision the compensation will be calculated and what forms it might take (e.g., direct payment, rate reductions). (Rev. Appl. 2-1142 (Service Assurance Plan).)
- [SA-3] Explain any remedies available for traffic Applicants have designated as ineligible for the proposed arbitration system, including

exempt commodities and traffic moving under contract, and describe the process for shippers of such traffic to obtain such remedies.

Issues Involving Gateways and Car Supply (TRRA, KCT, and TTX). Absent conditions, the Transaction, if approved, would result in the combined UP/NS holding 50% or more of the ownership interests in various entities, including terminal railroads at important gateways (TRRA in St. Louis and KCT in Kansas City) and the rail car-pooling company, TTX. As discussed above, though the Transaction would lead to Applicants' majority ownership of TRRA and 50% ownership of KCT, Applicants assert that they will divest sufficient interests in TRRA rather than acquiring control, and that their combined 50% ownership interest in KCT would not constitute control. Applicants would also gain majority control of TTX and, as with TRRA, propose to divest their interests below 50%. Thus, through various mechanisms, the Revised Application states that Applicants will not control these three entities, with differing commitments as to certainty of divestiture, resulting ownership, and timelines for TRRA and TTX.

Even if Board authority for control of these entities is not required at this time based on the current record, Applicants' substantial ownership interests in these entities may have competitive impacts that the Board may consider in determining whether the Transaction is consistent with the public interest. See 49 CFR 1180.1(c); see also TTX Co.—Appl. for Approval of Pooling of Car Serv. with Respect to Flatcars, FD 27590 (Sub-No. 4) (STB served Oct. 1, 2014) (approving TTX's flatcar pooling authority for 15 years). The Board's rules contemplate conditions that would enhance competition in ways that strengthen and sustain the rail network as a whole, including portions of the network operated by Class II and Class III carriers, 49 CFR 1180.1(d), and require

evaluation of impacts on network links, including Class II and III carriers, 49 CFR 1180.7(b).

In Decision No. 9, the Board determined that Applicants' acquiring control of TRRA would be a "significant" transaction because, on the record presented, the Board could not find that any anticompetitive effects of the transaction (which, as the Board held, were possible) would clearly be outweighed by the anticipated public benefits. Decision No. 9, slip op. at 10-11. In addition to concerns about TRRA, commenters have raised potential public interest concerns related to KCT (see, e.g., CPKC Comments 13-14, May 8, 2026) and TTX (see, e.g., BNSF Comments 5-6, May 8, 2026.) The Board requires additional information regarding Applicants' planned disposition of their interests in TRRA and TTX and retention of their 50% interest in KCT at the outset of the proceeding to facilitate the Board's assessment of, and public comments on, the public interest implications.

Specifically, the Board directs Applicants:

- For TRRA:
    - [TRRA-1] Explain Applicants' proposal for receiving Board review and confirmation that any divestiture has been sufficient to avoid legal control requiring Board authority, such that any express condition requiring divestiture before consummation has been satisfied.
    - [TRRA-2] Provide additional details regarding TRRA-related corporate documents that may affect the implementation of Applicants' proposal to divest shares and Board seats sufficient to

avoid majority control by Applicants. For each such document, explain what changes would be required, and whether in Applicants' view such changes must be pursued under state law or whether preemption under 49 U.S.C. 11321(a) may apply.

- [TRRA-3] Given Applicants' proposed operational changes at the St. Louis Gateway, which include re-routing traffic that historically has been interchanged with TRRA (see, e.g., Rev. Appl. 2-874 (Service Assurance Plan)), provide additional details regarding Applicants' plans and incentives to invest in, and assume the liabilities of, TRRA.

- For KCT:
  - [KCT-1] Identify any decision-making mechanism, including in KCT's governance documents, that would resolve any deadlock on KCT decisions, including investment decisions.[32]
  - [KCT-2] Given Applicants' proposed operational changes at the Kansas City Gateway, which include adjusting current interchanges with KCT (see, e.g., Rev. Appl. 2-874 to 2-875 (Service Assurance Plan)), provide additional details regarding Applicants' plans and incentives to invest in, and assume the liabilities of, KCT.

[32] The Board notes that Applicants propose to keep a 50% ownership interest in KCT and, therefore, apparently, the power to veto proposals from KCT's other owners, and have not committed to divesting ownership below 50%.

- [KCT-3] Should the Board identify competitive impacts resulting from Applicants' 50% ownership interest in KCT that must be remedied by divestiture, provide any additional details regarding KCT-related corporate documents that may impact the implementation of any divestiture of shares and board seats.

- For TTX:
  - [TTX-1] Confirm whether Applicants would consummate the Transaction without first divesting from TTX. If so, provide additional details regarding Applicants' commitment to divest "at such time as they are able to do so on commercially reasonable terms." (Id. at 1-89.) This response shall discuss Applicants' proposal for how the Board can evaluate, and confirm, whether TTX's divestment commitment has been satisfied, including what standards would govern the Board's adjudication of a claim that Applicants failed to divest after receiving a "commercially reasonable" offer[33] and whether any deadlines or specific timing constraints apply to Applicants' commitment that they will divest "at such time as they are able."
  - [TTX-2] Provide additional details regarding TTX-related corporate documents that may impact the implementation of

[33] Although the Board does not expect Applicants to predict the specific terms of any offer, Applicants shall address the definition of "commercially reasonable" as necessary for the Board to consider the enforceable parameters of their proposed condition.

Applicants' proposal to divest shares and Board seats sufficient to avoid majority control by Applicants. For each such document, explain what changes would be required, and whether in Applicants' view such changes must be pursued under state law or whether preemption under 49 U.S.C. 11321(a) may apply.

- [TTX-3] Explain the potential impacts on competition of (a) Applicants' control interests if divestiture is not consummated and (b) Applicant's proposed 49% control of TTX, if implemented.

Market Share Projections. Under 49 CFR 1180.7(b), Applicants are required to submit "full system" impact analyses that include any operations in Mexico and Canada. For major mergers, these analyses must meet certain "minimum requirements" to ensure that such applicants "supply the types of information we have found most helpful in assessing harm to competition or to essential services . . . ." Major Merger Rules, 5 S.T.B. at 599. Among other things, the analyses must "demonstrate the impacts of the transaction—both adverse and beneficial—on competition within regions of the United States and this nation as a whole . . . ." 49 CFR 1180.7(b). They must account for "inter- and intramodal competition, product competition, and geographic competition." Id. They "should reflect the consolidated company's marketing plan." Id. at 1180.7(a). They "must" provide actual and projected market shares of (i) originated and terminated traffic by railroad for each major point on the combined system and (ii) revenues and traffic volumes for major interregional or corridor flows by major commodity group. Id. at 1180.7(b)(2)-(3). And "[f]or each major commodity group, an analysis of traffic flows indicating patterns of geographic competition or product competition across different

railroad systems, showing actual and projected revenues and traffic volumes." Id. at 1180.7(b)(4). These detailed market-share projections are required because "[a]ny railroad combination," including an end-to-end combination, "entails a risk that the merged carrier would acquire and exploit increased market power." Id. at 1180.1(c)(2)(i). In Decision No. 9, the Board concluded that the Application was incomplete because the full-system impact analyses did not contain Applicants' "projected market shares" as required by 49 CFR 1180.7(b), including the failure to account for merger-related traffic growth, diversions, or future changes to market conditions. In the Revised Application, Applicants assert that they have addressed the Board's prior basis for rejection by deriving post-merger market share projections that incorporate traffic that Applicants anticipate attracting from trucks and other railroads. (Rev. Appl. 1-16.)

The Board requires additional information to evaluate Applicants' projected market shares, and such information will also benefit the public's opportunity for comment. Specifically, the Board directs Applicants to:

- [MS-1] For each route on which Applicants' combined market share will increase if the Transaction is approved, elaborate on the potential impact on competing or alternative routes, including whether those competing or alternative routes' viability may be jeopardized due to insufficient post-Transaction traffic, (see, e.g., NS_STB_00001186; NS_STB_00001321).
- [MS-2] Because the diversion analysis does not account for industry changes since 2023 from transactions involving CP-KCS, CSXT-Pan Am, and CN-Iowa Northern, (Rev. Appl. 2-457, V.S. Hunt 70), discuss the

impact of these transactions on Applicants' ability to achieve the truck-to-rail and rail-to-rail diversions modeled by Hunt's diversion and projected market share analysis.[34]

Downstream Merger Impacts. As addressed above, the Board received comments arguing that Applicants did not thoroughly address potential downstream merger applications. See 49 CFR 1180.6(b)(12). BNSF argues that Applicants "dismiss[] the analysis as impossible" in the Revised Application, but that documents produced pursuant to Decision No. 13 "tell quite a different story." (BNSF Comments 6, May 8, 2026.) BNSF states that the lack of candor concerning Applicants' "'end game' assessments" deprives the Board of "even the most basic tools to wrestle with those industry-shaping issues." (Id. at 6-7.) Similarly, CN argues that Applicants do not provide a commentary on potential downstream mergers even though Applicants clearly considered such impacts. (CN Comments 23-24, May 8, 2026.)

While the Board's rules do not require specific benefit calculations based on the potential for possible downstream merger responses, the Board can fully analyze the effects of major mergers on the current landscape only if Applicants provide "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 parties then express their concerns on a full record. Major Merger Rules, 5 S.T.B. at 582. Accordingly, to further this critical

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[34] See, e.g., the Falcon Premium intermodal service offered by UP, CN, and Grupo México, and the intermodal service provided by BNSF, Grupo México, and J.B. Hunt.

discussion, Applicants should provide further discussion about the potential for downstream merger applications, including further consolidation of the Class I railroads, including the Canadian carriers.

Specifically, the Board directs that:

- [DS-1] Because Applicants have taken the position that any additional Class I mergers would not likely result in harm if they are "essentially end-to-end," (Rev. Appl. 1-95), Applicants shall specifically discuss whether any subsequent mergers—involving BNSF, CSXT, CN, or CPKC—would be "end-to-end," and if not, provide their view on how to deal with potential problems resulting from further consolidation.
- [DS-2] Elaborate on the extent to which subsequent major mergers involving BNSF, CSXT, CN, or CPKC could cumulatively reduce geographic competition and impact market power, and discuss any implications for the Board's use of its conditioning authority in this proceeding.
- [DS-3] For each condition proposed in the Revised Application (including but not limited to CGP, open gateway commitments, access protections, and divestiture commitments), identify whether the condition would be rendered less effective by a subsequent major merger involving BNSF, CSXT, CN, or CPKC.

Passenger Rail. There appears to be one passenger rail route for which the Revised Application does not include a 49 CFR 1180.8(b)(2) passenger rail impact analysis. According to FRA's Intercity Passenger Rail Service Quality and Performance

Reports, UP has hosted the Amtrak Heartland Flyer's northbound trains for 60 minutes each train run from October to December since at least 2021. See Federal Railroad Administration, FY26 Q1 Host Runtime Metric, https://railroads.dot.gov/elibrary/fy26-q1-host-runtime-metric.

Further, NJ Transit and NY DOT claim the Revised Application does not include several passenger rail services where NS has trackage rights on the lines used by those passenger services. (NJ Transit Comments 1-2, May 8, 2026; NY DOT Comments 2-7, May 7, 2026.) In reply, Applicants argue that the Board's regulations only require an impact analysis for passenger services that are operated "over the lines of applicant carriers," which does not include lines where an applicant carrier only has operating rights. (Applicants Reply 37-38, May 12, 2026 (citing 49 CFR 1180.8(b)(2), 1180.3(b)).) Moreover, Applicants state that most of the services raised by NJ Transit will not be affected because there is no projected increase in trains due to the Transaction. (Id. at 39.) This includes the Pascack Valley Line, Bergen Line, Main Line, Montclair-Boonton Line, Morristown Line, Gladstone Branch, and Raritan Valley Line. (Id.) Likewise, Applicants state that the "Southern Route" and the "Port Jervis line," both raised in NY DOT's comments, will not be affected because no additional trains are projected on those lines as a result of the Transaction. (Id. at 36, 41.)

Additionally, Applicants assert that the UP and NS lines used to host passenger services have sufficient capacity to support the projected freight increase while maintaining the current passenger service levels. (Rev. Appl. 2-757 to 2-763 (Ex. 13, Operating Plan).) But the only information provided to support that assertion is a worksheet showing the maximum daily capacity of rail line segments. (See, e.g., id. at 2-

757 n.100 (Ex. 13, Operating Plan).) The maximum daily train capacity does not explain how passenger trains will actually be affected. Passenger trains have specific schedules and are likely to travel at greater speeds than freight traffic. Applicants' Road Volume Capacity Summary worksheet does not illustrate how passenger and freight traffic will interact.

Thus, the Board directs Applicants to:

- [PR-1] Provide a passenger impact analysis for the Heartland Flyer service or explain why such an analysis is not needed.
- [PR-2] Because Conrail's Lehigh Line, over which NS has trackage rights, is projected to have a significant increase in train traffic, provide a passenger rail impact analysis for the Lehigh Line as Applicants prepared for NS- and UP-owned lines that carry passenger routes.
- [PR-3] Address, in the passenger impact analysis and SAP, how the UP and NS lines used to host passenger services have sufficient capacity to support projected freight increases while maintaining current passenger service levels. Supplemental information could include, for example, a dispatching plan for handling post-merger traffic increases, train modeling evidence showing passenger rail impacts (or the lack thereof), and an analysis of the anticipated freight traffic schedules and how they impact the existing passenger services.

Workpaper Issues. On May 14, 2026, BNSF filed a letter expressing concern with the quality and sufficiency of the workpaper submissions by Applicants. BNSF notes instances of outdated scripts and missing workpapers. BNSF argues that

Applicants should have provided complete workpapers with the Revised Application and that their failure to do so compromises the integrity of the Board's proceedings. BNSF asks that the Board require Applicants to certify compliance with Decision Nos. 3, 8, and 9. On May 15, 2026, CPKC filed a letter joining in BNSF's concerns and arguing that Applicants had still yet to provide a complete and usable set of workpapers.

Applicants filed a response to CPKC and BNSF on May 15, 2026, stating that they believe all legitimate issues that have been identified have been resolved. Applicants commit to continue responding promptly to any additional issues raised by other parties. Subsequently, CPKC filed an additional letter on May 19, 2026, asserting that it has discovered further deficiencies in Applicants' workpapers and arguing that the time it takes for other parties to process and begin analysis of the Revised Application anew is untenable.

The Board appreciates the complexity and magnitude of the workpaper production in this proceeding, but the manner in which Applicants have managed the workpaper submission process has raised legitimate concerns that parties and the Board may not have a reliable and static set of workpapers to use in assessing and responding to the Revised Application. Therefore, with the upcoming submission of supplemental information, Applicants will be required to submit a new, complete set of workpapers and certify compliance with the requirements of Decision Nos. 3, 8, and 9, and the further guidance below. Continued significant issues regarding the workpaper submission process could delay the proceeding to the extent they impede the ability to respond to or analyze the Revised Application and supplement.

With the supplement and going forward, Applicants' workpaper submissions must follow the guidance in Decision Nos. 3, 8, and 9, as amended to comply with the below. To improve the process of submitting, replacing, cataloguing, and validating workpapers, Applicants will be required to:

1. Provide a single, comprehensive index containing all document names. Where the principal index "FD 36873 Workpaper Index.xlsx" today contains an entry referencing a secondary index, in the form "see separate index titled '[Expert VS] Workpaper Index,'" replace this entry with the list of that expert's workpapers and their confidentiality designations. There are currently five sub-indices referenced by the principal index. Bring all of the content in the sub-indices into the principal index.
2. After "FD 36873 Workpaper Index.xlsx" has been augmented with all information formerly contained in sub-indices, populate three additional columns with the following information:
    a. A column titled, "Upstream References." If a workpaper contains formulas that reference one or more upstream workpapers, list all such workpapers in this column. If a workpaper does not contain formulas referencing other documents, leave its entry blank.
    b. A column titled, "Downstream Feeds." If a workpaper contains cells that are referenced by one or more downstream workpapers, list all such workpapers in this column. If a workpaper is not referenced by formulas in any other workpaper, leave its entry blank.

c. A column titled, "Exhibits and Entries." List all exhibits, graphs, tables, and numeric figures in the Revised Application text that are drawn from this workpaper, using as specific a reference as possible, (e.g. to the volume, page, and figure or table). If a workpaper does not directly feed content in the Revised Application, leave this column blank.

If a change to a workpaper results in a change to the content of the Revised Application (a chart, figure, or citation), Applicants must file an errata to the Revised Application reflecting that change.

COMPLETENESS OF APPLICANTS' DOCUMENT PRODUCTION IN RESPONSE TO DECISION NO. 13. As noted above, on March 18, 2026, the Board directed Applicants to submit additional information deemed necessary to facilitate the Board's review of a revised application. Decision No. 13, FD 36873 et al., slip op. at 5-7. Specifically, the Board required Applicants to submit documents of the kind ordinarily requested by the Federal Trade Commission and the Department of Justice in merger cases subject to review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), 15 U.S.C. 18a. The submission was to be made in advance of the anticipated April 30 filing date of the Revised Application. Decision No. 13, FD 36873 et al., slip op. at 7.

Applicants submitted their responses to Decision No. 13, including the production of documents, on April 7, 2026. (See Norfolk S. Letter 1-2, Apr. 7, 2026; Union Pac. Letter, Apr. 7, 2026.)

On April 27, 2026, BNSF filed a motion to enforce Decision No. 13, arguing that the universe of submitted documents was too small to plausibly represent a complete

response to the Board's order. CPKC filed a reply in support of BNSF's motion on April 28, 2026, and Applicants replied on May 8, 2026.

In comments on the completeness of the Revised Application, CPKC and CSX assert that the Revised Application is incomplete on the ground that Applicants have allegedly failed to comply with Decision No. 13, as set forth in BNSF's motion to enforce. (CPKC Comments 14-15, May 8, 2026; CSX Comments 8-9, May 8, 2026.)

For present purposes, the sufficiency of Applicants' production in response to Decision No. 13 does not bear on the completeness of the Revised Application. In Decision No. 13 the Board exercised its general authority to request information *supplemental* to a refiled application. Decision No. 13, FD 36873 et al, slip op. at 5 (citing 49 U.S.C. 1321(b)(3)). It did not indicate that the Board intended to make compliance with Decision No. 13 part and parcel of a revised application itself (although the Board would have had authority to do so had it chosen that path, see 49 CFR 1180.4(c)(2)(v)). The Board will rule on BNSF's motion to enforce Decision No. 13 at a later date.

EX PARTE COMMUNICATIONS. On August 29, 2025, Applicants filed a motion to permit stakeholder communications in accordance with 49 U.S.C. 11324(f).[35] In it, Applicants ask the Board to waive in this proceeding the prohibition on ex parte communications for railroad merger proceedings established in Petition of Fieldston Co. to Establish Procedures Regarding Ex Parte Communications in Railroad Merger Proceedings (Fieldston), 1 S.T.B. 1083 (1996). Applicants argue that Fieldston relied on

[35] Section 11324(f) permits, but does not require, ex parte communications in consolidation, merger, or acquisition of control proceedings involving at least one Class I rail carrier, subject to certain requirements.

justifications that "are no longer valid," and that allowing parties to the proceeding to participate in ex parte communications would facilitate the Board's decision-making. (Applicants Mot. 2-5, Aug. 29, 2025.)

Applicants state that, in Fieldston, the Board expressed concerns about reducing oral communications to writing and reflecting such communications in the public record. (Id. at 3-4.) According to Applicants, those concerns were remedied by the Board's more recent rules allowing ex parte communications in informal rulemaking proceedings, which require participating stakeholders to submit a memorandum that, among other things, "summarizes the data and arguments presented during the ex parte communication." 49 CFR 1102.2(g)(4). Under those rules, the Board reviews the memorandum to ensure it is "sufficiently detailed," and then places it in the public docket. Id. According to Applicants, such procedures safeguard fairness and transparency and should be employed in this proceeding. (Applicants Mot. 4, Aug. 29, 2025.) Applicants also argue that ex parte communications could further the Board's ability to issue an efficient and timely decision, contrary to the Board's finding in Fieldston that ex parte communications would impede efficiency. (Id. at 3, 5-6.) Additionally, Applicants argue that the Board in Fieldston provided no support for finding that judicial review of a railroad merger decision would be complicated if the Board exercised its discretion to permit ex parte communications. (Id. at 4.)

The other Class I railroads each replied to Applicants' motion. BNSF and CN support Applicants' motion. BNSF argues that ex parte communications would "increase[e] the flow of information and technical expertise between the Board and its stakeholders," facilitating "decision-making that is grounded in the complex operational

and market realities of the rail industry." (BNSF Reply 3, Sept. 22, 2025.) Similarly, CN argues that ex parte communications in this proceeding would enhance efficiency and "contribute to more timely and informed decision-making." (CN Reply 2, Sept. 17, 2025.) CSXT replies that it does not oppose ex parte communications in this proceeding, subject to safeguards ensuring that they are helpful, efficient, and fair. (CSXT Reply 2-8, Sept. 22, 2025.)

CPKC opposes Applicants' motion, arguing that the principles underlying Fieldston remain valid and that Applicants underestimate "practical, due process, and fairness concerns" associated with permitting ex parte communications in this proceeding. (CPKC Reply 2, 5, Sept. 19, 2025.) CPKC also argues that rail merger proceedings are distinguishable from informal rulemaking proceedings, in which the Board generally permits ex parte communications. CPKC reasons that, in rail merger proceedings, the Board acts as a decision maker rather than a policymaker. (Id. at 7.) CPKC also argues that merger proceedings are subject to statutory deadlines that do not apply to informal rulemaking proceedings. (Id.) Should the Board decide to permit ex parte communications in this proceeding, CPKC argues that the Board should impose certain safeguards. (Id. at 8-11.)

The Board will deny Applicants' motion to waive the ex parte communication prohibitions in Fieldston at this time.[36] Ex parte communications provide an opportunity for freer discussions between parties and the Board, potentially aiding in the Board's

[36] Because Applicants' motion will be denied, the Board need not address arguments, raised in replies to Applicants' Fieldston motion and comments on the Board's proposed procedural schedule, on how and when to permit ex parte communications.

understanding of key issues and its decision making. However, given the high level of interest in this proceeding, a broad Fieldston waiver at this juncture could complicate and delay any future record building process. Under Applicants' proposal, entertaining ex parte communications would also require additional filings—namely, summaries of each ex parte communication and potentially numerous responses to each summary—adding to what will likely be a large and complex record and requiring Board members and staff to expend resources on additional review. (Applicants Mot. 3, 5, Aug. 29, 2025); see 49 CFR 1102.2(g)(4)(ii); see also Fieldston, 1 S.T.B. at 1084 (discussing practical bases for deciding not to entertain ex parte communications); Pet. for Rulemaking—Amends. to Reguls. Governing Ex Parte Commc'ns, EP 782, slip op. at 5-6 (STB served Apr. 14, 2026).

Additionally, the concerns expressed in Fieldston about transparency and fairness in merger proceedings were not necessarily "remedied" by the Board's rules imposing safeguards on ex parte communications in informal rulemaking proceedings. (Applicants Mot. 3, 5, Aug. 29, 2025.) When the Board amended its rules to allow ex parte communications in informal rulemakings, it specifically declined to determine whether ex parte communications should be permitted in major rail merger proceedings. See Ex Parte Commc'ns in Informal Rulemaking Procs., EP 739, slip op. at 8 n.13 (STB served Feb. 28, 2018). In Fieldston, the agency recognized that potential trade-offs in allowing ex parte communication are heightened in the merger context. Fieldston, 1 S.T.B. at 1085.

However, as the record develops, if the Board identifies specific issues for which ex parte communications would have particular value, the Board will again evaluate

whether the benefits of such communications outweigh the burden of additional filings and any other effects. In that event, the Board will issue a decision inviting such communications and providing for any necessary safeguards, including subject matter or procedural limitations.

ENVIRONMENTAL MATTERS. NEPA requires that the Board examine the potential environmental impacts of Board actions that fall within the statutory definition of "major federal action." See 42 U.S.C. 4336e(10); 49 CFR 1105.5.[37] Under NEPA and the Board's environmental regulations, actions subject to NEPA are separated into three classes that prescribe the level of environmental review required. See 42 U.S.C. 4336(b); 49 CFR 1105.6. The Board must prepare an EIS for proposed actions that have a reasonably foreseeable significant effect on the quality of the human environment. See 42 U.S.C. 4336(b)(1). The Board must prepare a more limited Environmental Assessment (EA) with respect to proposed actions that do not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the Board determines that the proposed action is categorically excluded from the requirement to prepare an EA or EIS. See 42 U.S.C. 4336(b)(2). As pertinent here, a merger transaction normally requires the preparation of an EA or EIS where the thresholds listed in the Board's regulations would be exceeded. See 49 CFR 1105.6(b)(4), 1105.7(e)(5).

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[37] The Board's current regulation references the definition of "major Federal action" contained in the Council on Environmental Quality's (CEQ's) former NEPA implementing regulations at 40 CFR parts 1500-1508. As explained below, CEQ has recently rescinded these regulations. 91 Fed. Reg. 618 (Jan. 1, 2026). Therefore, the operative definition is the statutory definition at 42 U.S.C. 4336e(10).

The thresholds for assessing environmental impacts from increased rail traffic on rail lines in railroad merger proceedings are an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains per day. 49 CFR 1105.7(e)(5)(i)(A). Rail lines located in areas classified as being in "nonattainment" under the Clean Air Act (42 U.S.C. 7401-7671q) are also assessed if they would experience an increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains per day. 49 CFR 1105.7(e)(5)(ii)(A).

Additionally, the thresholds for assessing environmental impacts from increased activity at rail facilities, including rail yards and intermodal facilities, are an increase in rail yard activity of at least 100% (measured by carload activity) or an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment. 49 CFR 1105.7(e)(5)(i)(B), (C). For rail facilities in nonattainment areas, the thresholds are an increase in rail yard activity of at least 20% (measured by carload activity) or an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment. 49 CFR 1105.7(e)(5)(ii)(B), (C).

Based on the information provided by Applicants to date, OEA has identified rail lines, rail yards, and intermodal facilities that would experience increases in rail traffic and activity that would exceed the analysis thresholds as a result of the Transaction.[38]

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[38] The Board will not conduct an environmental review of the control application in Docket No. FD 36873 (Sub-No. 1). That transaction is categorically excluded under 49 CFR 1105.6(c)(1) because there will be no significant changes in operations as a result of the acquisition. (See Rev. Appl. 2-1162.)

The NEPA Process. Based on information provided by Applicants and in consultation with OEA, the Board has determined that the preparation of an EIS is appropriate in this proceeding.[39] Under NEPA, an agency must prepare an EIS for actions that would have a "reasonably foreseeable significant effect on the quality of the human environment." 42 U.S.C. 4336(b)(1). An EIS is usually not required in merger cases; a more limited EA generally is sufficient because there are not usually significant environmental impacts from the change in owners and operators of existing lines. 49 CFR 1105.6(b)(4). In this case, however, an EIS is warranted in light of the potential for significant impacts of the Transaction on numerous communities across the United States that would likely result from increased activity levels on rail line segments and at rail facilities. (See UP Resp. to OEA Info. Request No. 1, Master Segment Table, Dec. 18, 2025; UP Resp. to OEA Info. Request No. 3, Master Data Tables, Apr. 30, 2026.)

Consistent with recent Board precedent, the Board will follow the EIS process described below in this proceeding.[40] This process is based on recent changes regarding the interpretation and application of NEPA. NEPA's statutory and regulatory framework has changed significantly since the Board last revised its environmental regulations in 1991. In 2023, Congress amended NEPA to clarify and streamline the environmental review process. Pub. L. No. 118-5, 321. Among other things, the revised statute

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[39] Along with the procedural schedule, the environmental review will also be held in abeyance pending Board review of the required supplementation discussed above.

[40] See Nev. Gold Rail LLC—Constr. Exemption—in Eureka & Landers Cntys., Nev., FD 36889, slip op. at 2-5 (STB served May 22, 2026).

addresses the requirements for providing notice of the intent to prepare an EIS and for soliciting comments. See 42 U.S.C. 4336a(c).

In 2025, CEQ published an Interim Final Rule, effective April 11, 2025, rescinding "all iterations" of its NEPA implementing regulations. 90 Fed. Reg. 10,610 (Feb. 25, 2025).[41] The rescinded regulations included procedures for scoping, preparing, and seeking comment on an EIS. See 40 CFR 1501.9 and part 1502 (2020). Following the rescission, CEQ published NEPA implementation guidance envisioning a streamlined EIS process, focused on the statutory requirements.[42] CEQ's actions were directed by Executive Order 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025), which also directed that revisions to individual agencies' NEPA implementing regulations must be consistent with NEPA as amended.

Moreover, in Seven County Infrastructure Coalition v. Eagle County Colorado (Seven County)—a case upholding a Board EIS—the Supreme Court called for adherence to the "statutory text" and "common sense" in NEPA reviews. Seven Cnty., 605 U.S. 168, 184 (2025). The Court stated that "NEPA is a purely procedural statute that, as relevant here, simply requires an agency to prepare an EIS—in essence, a report." Id. at 173; see also id. at 183 (indicating that the NEPA process should be seen as a "modest procedural requirement").

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[41] CEQ adopted the Interim Final Rule as Final on January 8, 2026. 91 Fed. Reg. 618.

[42] Memorandum for Heads of Departments and Agencies: Implementation of the National Environmental Policy Act (Sept. 29, 2025) (CEQ Guidance), available at https://ceq.doe.gov/guidance/guidance.html (last visited Apr. 23, 2026).

In light of these changes to NEPA's legal framework and to promote a more efficient process,[43] the Board finds it is appropriate to waive certain requirements contained in 49 CFR 1105.10(a)(2)-(4) in this proceeding.[44] These waivers are consistent with the Board's recent proposed changes to its environmental regulations. Permitting Reform—Env't Rev. Process (Permitting Reform), EP 779 (STB served Mar. 25, 2026). The Board will also increase public engagement early in the environmental review process—with numerous public meetings and opportunities for public comment.

The EIS process will include robust public involvement and will ensure that the Board considers the potential environmental effects of the Transaction as required under NEPA. OEA will send out thousands of letters requesting preliminary comments on the Transaction from appropriate federal, state, Tribal, and local agencies. A project webpage has also been made available to the public and will be updated throughout the EIS process.[45] OEA will publish a Notice of Intent to Prepare an EIS (NOI) containing detailed information about the planned scope of analysis for the EIS including, among other things, the purpose and need for the Transaction; a summary of expected effects; a

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[43] As CEQ has noted, "NEPA implementation reform now has been called for, authorized, and directed by all three branches of government at the highest possible level: Congress, the President, and the Supreme Court." CEQ Guidance 6.

[44] The Board may waive its regulations and has done so on its own motion in various contexts and proceedings. See, e.g., Expanding Access to Rate Relief, EP 665 (Sub-No. 2), slip op. at 1-2 (STB served Mar. 28, 2018) (waiving the prohibition on ex parte communications based on regulatory revisions adopted by the Board during the pendency of the proceeding); Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La., FD 36447, slip op. at 5 & n.15 (STB served Dec. 11, 2020) (waiving timeframe for posting notice of feeder line application acceptance); Rio Grande Pac.—Continuance in Control—Colo., Midland & Pac. Ry., FD 37470 (STB served Jan. 29, 2021) (waiving regulatory deadline for Board decision on motion for access).

[45] https://www.stb.gov/upns-eis-fd36873.

summary of anticipated reviews, consultations, permits and authorizations; and a description of the public scoping process. See Permitting Reform, EP 779, slip op. at 36 (proposed 49 CFR 1105.9(f)(1)).

The NOI in this proceeding will be more fulsome than under the Board's prior EIS process and will serve as an opportunity for interested members of the public to provide substantive comments earlier in the environmental review process. The NOI will also include a request for public comment on potential effects and on relevant information, studies, or analyses with respect to the Transaction. Id. at 36-37 (proposed 49 CFR 1105.9(f)(2)).

Following the NOI and scoping process, OEA will prepare and publish an EIS that will analyze in detail the potential environmental impacts of the Transaction, respond to public comments on the NOI, and, if appropriate, make recommendations for environmental mitigation. In making its final decision in this proceeding, the Board will consider the entire record, including the record on the transportation merits, the NOI, the EIS, and all public and agency comments received. The Board will decide whether the Transaction should be authorized, and if so, what conditions, including environmental mitigation conditions, to impose.

OEA will provide ample opportunities for timely public participation in this proceeding, including at least 12 in-person public meetings.[46] Public participation is an integral part of the Board's EIS process, and meetings, including several virtual meetings, will be planned as appropriate to facilitate public involvement in areas of the country that

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[46] During the EIS process for the last major merger, OEA held four in-person public meetings. Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 152 (STB served Mar. 15, 2023).

may be impacted.[47] To appropriately consider the Transaction's potential environmental effects and to provide meaningful opportunities for public participation early in the process, the Board will modify its procedures in two ways.

First, the Board is modifying the process set forth at 49 CFR 1105.10(a)(2) for publishing an NOI to prepare an EIS. Specifically, OEA will address any comments on the NOI in the EIS itself, rather than publishing a "Final Scope of Study" following publication of the NOI and request for comments. The Board's NOI process in this proceeding will present more detailed information to the public at the NOI stage than under the Board's previous process. The two-step NOI process, as reflected in section 1105.10(a)(2), is not required under NEPA's current framework. Section 107(c) of NEPA, added as part of the 2023 amendments, provides that EIS NOIs must "include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action." 42 U.S.C. 4336a(c). The statute does not mandate a further scoping process, nor envision publication of a "Final Scope of Study" or similar document following the NOI comment period and before publishing the EIS. See id. The modified NOI process that the Board will use in this proceeding is consistent with CEQ's current guidance. See CEQ Guidance, App. 1.

[47] For example, the Board intends to hold at least one such meeting in Houston, Tex., in light of the city's interest in the Transaction as reflected in its comments on the completeness of the Revised Application discussed above. Additional details, such as the timing and specific locations for in-person public meetings, will be outlined in the NOI.

Second, the Board will waive the requirements for a Draft EIS and public comment period on the Draft EIS as reflected in 49 CFR 1105.10(a)(3) and (4).[48] The historical requirement that agencies publish a Draft EIS for public comment before issuing a Final EIS stemmed not from NEPA itself, but from CEQ's now-rescinded NEPA implementing regulations. See 40 CFR 1502.9 (2020). The 2023 NEPA amendments, in laying out the requirements for an EIS, do not require publication of a Draft EIS. See 42 U.S.C. 4336, 4336a; CEQ Guidance, App. 1. In this proceeding, applying the Board's Draft EIS provisions is therefore unnecessary, and the Board will still be able to ensure adequate and meaningful public participation, as discussed above.[49]

Historic Review. In accordance with Section 106 of the NHPA, the Board is required to determine the effects of its licensing actions on cultural resources. The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or

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[48] The Board's regulations also allow for waiver of certain Draft EIS requirements. See 49 CFR 1105.10(c) (allowing for waiver of 49 CFR 1105.10(a)(4) in individual proceedings). The waiver provisions are not intended to "waive" the Board's responsibilities under any environmental laws, but rather to "enable tailoring the environmental analysis to the specific circumstances at hand, and to give [the Board] flexibility in applying [its] own internal procedures." Implementation of Envt'l L., 7 I.C.C. 2d 807, 815 (1991).

[49] When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry[.]" Seven Cnty., 605 U.S. at 183. Here, the Board has determined that its assessment of the environmental effects of the Transaction will be better informed through a broad public inquiry at the scoping stage rather than a formal comment period on a complete Draft EIS.

older.[50] 49 CFR 1105.8(b)(1). Applicants do not propose to construct any new rail lines subject to Board licensing or to abandon any rail lines as part of the Transaction. (UP Resp. to OEA Info. Request No. 1, at 4, Dec. 18, 2025; Rev. Appl. 2-691, 2-1009 n.185.) Applicants also have no plans to dispose of or alter properties that are 50 or more years old, (Rev. Appl. 1-72), and any future line abandonment or construction activities by Applicants would be subject to the Board's jurisdiction. However, Applicants intend to make certain capital improvements as part of the Transaction, including adding double track, extending sidings, upgrading an existing NS-UP connection, upgrading a bridge, and expanding yards and terminals along the combined network. (Rev. Appl. 2-895 to 2-930.) Consistent with past practice in merger cases, OEA will therefore conduct any necessary Section 106 review on the capital improvement projects that Applicants would undertake as part of the Transaction during the EIS process because those projects are the only components of the Transaction that could have the potential to affect cultural resources.

Safety Integration Plan. Applicants state that a SIP is being separately submitted to the Board and FRA to address the safe integration of their rail lines, equipment, personnel, and operating practices. (Rev. Appl. 1-100.) A SIP is a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the

[50] Though the Board has proposed revisions to its environmental regulations, it is not proposing to modify its current regulation regarding the historic review and reporting process. Proposed 49 CFR 1105.14 retains all the language that is in current 49 CFR 1105.8. See Permitting Reform, EP 779, slip op. at 16 n.26.

event the Board approves the Transaction. 49 CFR 1106.2; see also 49 CFR 244.9. Applicants submitted the proposed SIP, prepared in consultation with FRA, to OEA and to FRA consistent with 49 CFR 1106.4(a) and 1180.8(a)(1). The proposed SIP will be made available for public review and comment during the EIS process. If the Board authorizes the Transaction and adopts the SIP, the Board requires compliance with the SIP as a condition to its authorization. 49 CFR 1106.4(b)(4).

Blocked Crossings Plan. Applicants state that they will submit information regarding measures that Applicants plan to take to address potentially blocked crossings as a result of merger-related changes in operations or increases in rail traffic as part of the environmental review process. (Rev. Appl. 1-101.) Applicants submitted their blocked crossings plan to OEA, consistent with 49 CFR 1180.8(a)(2), and OEA will consider it when preparing the EIS in this proceeding.[51]

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's website at www.stb.gov.

ACCESS TO FILINGS. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Revised Application and other filings in this proceeding will be furnished to interested persons

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[51] Applicants' blocked crossings plan is available on the Board's website under "Environmental Comments," (environmental comment EI-34241).

upon request and will also be available on the Board's website at www.stb.gov. In addition, the Revised Application may be obtained from Messrs. Rosenthal and Atkins at the addresses indicated above.

It is ordered:

1. The Revised Application in Docket No. FD 36873 and the related application filed in the embraced docket, Docket No. FD 36873 (Sub-No. 1), are accepted for consideration.

2. The proceedings, including the environmental review of the Transaction, are held in abeyance pending further Board order.

3. Applicants are directed to provide the supplemental information discussed above by July 27, 2026.

4. Applicants' August 29, 2025 motion to permit ex parte stakeholder communications is denied.

5. The Board waives the requirements in 49 CFR 1105.10(a)(2)-(4) for publication of a Final Scope of Study and a Draft EIS.

6. This decision will be published in the Federal Register.

7. This decision is effective on May 28, 2026.

Decided: May 26, 2026.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2026-10751 Filed: 5/28/2026 8:45 am; Publication Date: 5/29/2026]