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STATE OF MONTANA

February 12, 2026

Acting Assistant Attorney General Omeed Assefi  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Acting Assistant Attorney General Assefi,

We write to express our strong concerns regarding the proposed merger between Union Pacific (UP) and Norfolk Southern (NS). The transaction would facilitate unprecedented consolidation in the freight-rail industry, inflate transportation costs, and erode service quality in a manner fundamentally at odds with an America-First economy. By entrenching a single rail behemoth across key east-west corridors, the deal would shackle domestic manufacturers, energy producers, and farmers with higher rates and fewer shipping options, thereby blunting their competitive edge against foreign rivals, squeezing household budgets, and weakening the supply chains that underpin our national security. Accordingly, we encourage the Department of Justice Antitrust Division (DOJ) to carefully scrutinize the merger, applying the existing law and merger guidelines to supplement the Surface Transportation Board's (STB) review of the transaction. Indeed, given the large volume and complexity of the information at hand, and the highly concentrated nature of the rail industry, DOJ deploying its economic resources and expertise in evaluating customer and employee impacts would provide valuable insight.

Our states host a wide variety of vital industries directly impacting the pocketbooks and monthly budgets of American families, such as chemical manufacturing, energy generation, and agriculture. A diverse range of rail-dependent customers in our states, including many members of the American Chemistry Council, the National Grain and Feed Association, and the National Industrial Transportation League, vocally oppose the merger, highlighting risks to America's economy.

Some of our teams have begun reviewing UP's and NS's Application for the transaction. While this review is ongoing, it appears that UP and NS have failed to adequately address the clear loss of horizontal competition between UP and NS resulting from the transaction. UP and NS's submissions advocating for the merger

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ignore DOJ's measures of concentration—such as combined HHIs over 1800 or combined shares over 30%—that would render the proposed merger presumptively illegal under the DOJ/FTC Merger Guidelines. Instead, UP and NS only identify areas where the merger results in a monopoly or duopoly. And there appear to be hundreds of thousands of carloads of freight traffic in these areas.

In addition to the reduction in head-to-head competition between UP and NS, we are concerned that post-transaction, the combined company may reduce or cease working with other railroads to offer shippers interline services. UP and NS claim their commitment to “open gateways” addresses this issue, but UP itself said in the CP-KCS merger proceeding that open gateway commitments do not work. UP stated in that proceeding just a few years ago that CP/KC's “promise to arbitrate gateway rates is illusory. Applicants want credit for promising to keep existing gateways open on ‘commercially reasonable’ terms without providing a concrete, enforceable commitment.” Union Pac. R.R. Co., Brief at 14, *Canadian Pac. Ry. Ltd. et al.—Control—Kan. City S. Ry.*, FD 36500 (S.T.B. Oct. 21, 2022). We request that DOJ consider the efficacy of UP's “open gateway” mechanism and provide the results of that analysis as part of the public STB process.

UP claims that the proposed transaction will cause it to increase its volume by 12 percent in three years. We are skeptical and ask that DOJ closely examine the basis for this claim. According to a September 23, 2024 *Railway Age* article, from 2014 to 2024, UP **decreased** its volume by 16 percent. It is difficult to imagine a company that has decreased rail service for a decade would reverse course as dramatically as forecast. Moreover, the largest forecasted area of growth—truck-to-rail conversions—has been touted in past mergers and not materialized. According to their STB filings, CP-KCS forecasted 64,018 annual conversions, and as of April 30, 2025, had achieved only 9,619 conversions annually. We ask DOJ to evaluate whether UP's claims may be similarly exaggerated.

We similarly ask DOJ to scrutinize UP's and NS's investment and efficiency claims. By law, the STB must evaluate this issue, *see* 49 C.F.R. § 1180.1(a), and may benefit from the Division's expertise in this area. For example, although UP and NS state that they expect to make \$1 billion in additional investments as a result of the deal, the Application does not discuss in meaningful detail UP and NS's pre-merger investment plans. And, apart from generically stating that contracting is not an adequate substitute, UP and NS also spend little time explaining what portion of their proposed efficiencies **could** be created through non-merger means, such as joint ventures or cooperation.

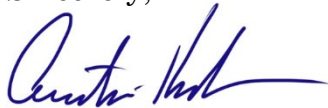
Finally, we request that the Division evaluate UP's proposed “concessions,” including its Committed Gateway Pricing (CGP) proposal. It appears to us that CGP does not even attempt to ameliorate the competitive harms from the proposed transaction and has **many** exclusions (including unit trains, intermodal, automotive, dimensional

loads, storage in transit, hazardous materials, empty railcars, gateways besides Chicago, St. Louis, Memphis, and New Orleans, and—perhaps most remarkably—shipments where the transaction reduces the number of competitive choices for the shipper). The STB may benefit from the Division analyzing the competitive impact—if any—of CGP. In addition, in its Application, UP reduced its concessions to shippers by \$750 million versus the estimates it provided to shareholders when it announced the transaction. We ask DOJ to explore the reason(s) for this anti-shipper decrease.

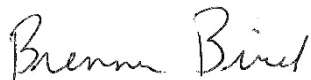
At bottom, we believe that this merger is unnecessary, and that railroads are not headed for extinction without it. American shippers currently have access to fair, competitive, and efficient rail and interline service. The transaction would undermine the President’s policies to unleash American industry, curb the need for government regulator intervention, and promote American employment and prosperity. With experience amassed over decades in assessing mergers and harm to competition, the DOJ should play a critical role in reviewing the proposed transaction. We cannot afford a merger that stalls America’s industrial momentum and respectfully ask the DOJ to utilize its unique expertise to scrutinize, and, if appropriate, oppose the deal.

Thank you for your attention to this important matter.

Sincerely,



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