BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

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

COMMENTS IN OPPOSITION AND REQUEST FOR MERGER CONDITIONS OF THE AGRICULTURAL RETAILERS ASSOCIATION

The Agricultural Retailers Association (ARA) respectfully submits these comments opposing the revised application of Union Pacific Corporation, Union Pacific Railroad Company, Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively, Applicants). If the Surface Transportation Board (Board) does not deny the proposed merger, ARA asks that any approval be subject to binding, enforceable conditions that protect competition, service, equipment availability, and accountability for agricultural shippers.

Member information is presented only in aggregate or non-identifying form. ARA does not identify individual members, facilities, routes, or commercial terms, and nothing in these comments should be read as the public position of any individual member company. For the same reason, ARA generally does not say whether a particular experience involved Union Pacific, Norfolk Southern, or both, unless that can be stated without identifying the member.

The Board should not treat the use of aggregated and non-identifying evidence as an indication that these concerns are isolated or entitled to less weight. Confidentiality is important to preserving agricultural retailers' ability to provide candid information about rates, service, equipment, and commercial relationships, particularly where a facility may depend on a single railroad for essential seasonal deliveries. Some members also have expressed concern that being publicly identified with criticism of a serving railroad could affect an important commercial relationship, particularly where the facility has few practical transportation alternatives.

ARA's confidentiality concerns also should be considered in light of the Board's recent examination of allegations and concerns involving potential or threatened retaliation in this proceeding. On November 4, 2026, the Board ordered Union Pacific to redesignate as public a video relevant to allegations of retaliation, ordered Union Pacific to produce documents and verified statements concerning potential or threatened retaliation, and invited stakeholders to provide the Board information regarding perceived, threatened, or actual retaliation. Referring to remarks by Union Pacific's chief executive at the March 2026 Southwest Association of Rail Shippers (SWARS) conference, the Board stated that it has "serious concerns about whether Vena's statement at SWARS—as reflected in the recording—may be influencing certain stakeholders' willingness to participate in this proceeding or share their own views without fear of commercial repercussions." The Board also stated that evidence of actual or threatened retaliation bears heavily on the future course of this proceeding and on how the Board will weigh the public interest in assessing the merits of the proposed merger. ARA does not ask the Board to draw any conclusion from that matter here. It does, however, reinforce why agricultural shippers should be able to provide candid information through their trade association without publicly identifying individual facilities, routes, rates, or commercial relationships. See *Union Pacific Corp.—Control—Norfolk S. Corp.*, Decision No. 45, Docket No. FD 36873 (STB served Nov. 4, 2026).

I. IDENTITY AND INTEREST OF ARA

ARA is a national trade association representing agricultural retailers and distributors that supply farmers with fertilizer, crop protection products, seed, equipment, and related services. Agricultural retailers depend on safe, reliable, and competitively priced freight transportation to move essential inputs into rural communities during narrow seasonal windows.

Rail service is particularly important for fertilizer and other bulk agricultural inputs. Many agricultural facilities are served by a single railroad and have no commercially practical

way to add a second carrier or shift to another mode. For those facilities, a major rail consolidation affects not just what they pay for transportation, but whether inputs arrive when and where farmers need them.

II. SUMMARY OF ARA'S POSITION

ARA opposes approval of the proposed merger on the present record. Combining two Class I railroads into a single transcontinental system poses serious risks for agricultural shippers, and a larger network is not, by itself, a public benefit. The question for agriculture is whether the proposed merger will enhance competition and deliver verifiable improvements in rates, service, routing flexibility, equipment availability, and accountability.

ARA members consistently report the same set of problems: rising transportation costs, less frequent switching, missed first- and last-mile service, longer equipment cycles, car bunching, too few cars during peak season, disputed accessorial charges, and weak escalation channels. For captive and near-captive facilities, market forces may provide little practical discipline because commercially usable transportation alternatives often do not exist.

Rates are a particular concern. Members report substantial multiyear rail-rate increases across multiple agricultural facilities in Union Pacific or Norfolk Southern service areas, or both. ARA presents this information only in aggregate because the underlying facility, route, volume, contract, and carrier-specific information is commercially sensitive and, for some members, disclosure could identify the shipper to its serving railroad. The reports are not limited to a single facility or an isolated annual adjustment. Those transportation-cost increases are ultimately reflected in the delivered cost of crop inputs to agricultural retailers and farmers.

Applicants bear the burden of demonstrating substantial and demonstrable public benefits that cannot otherwise be achieved. 49 C.F.R. § 1180.1(a), (c); *see Major Rail Consolidation Procedures*, EP 582 (Sub-No. 1) (STB served June 11, 2001). Benefits available through contracts, commercial arrangements, interchange agreements, or other less-consolidating

alternatives should not justify eliminating an independent Class I railroad. The Board should credit promised network efficiencies only when they are specific to the merger, measurable, transparent, and backed by enforceable remedies if performance falls short.

The Board's major-merger policy requires more than a showing that selected competitive harms might be mitigated. Because additional Class I consolidation is likely to create anticompetitive effects that are difficult to remedy directly or proportionately, an application should include provisions that enhance competition. 49 C.F.R. § 1180.1(c). For agricultural retailers, enhanced competition must mean a practical increase in rail-to-rail options or competitive discipline at the facilities and corridors that receive fertilizer and other bulk inputs. Truck diversion, expanded single-line reach, or a pricing program that merely preserves a limited preexisting option does not establish enhanced competition where a retailer still lacks commercially usable access to an independent rail carrier. Applicants should be required to show, for each affected facility and corridor, what new rail-to-rail options the transaction would create, what traffic could use them, and how the Board and affected shippers could verify that those options remain usable over time.

ARA also asks the Board to address the imbalance captive shippers face when negotiating with their railroad. If the transaction is approved, the Board should use its conditioning authority to give shippers a clearly defined and enforceable common carrier service obligation, informed by the service factors in the pending bipartisan Reliable Rail Service Act, so that a shipper has a real alternative when contract negotiations fail.

III. PUBLIC DATA CONFIRM THE IMPORTANCE OF FERTILIZER RAIL SERVICE

USDA's Fertilizer Transportation Dashboard provides independent public context for what ARA members report. Citing data from The Fertilizer Institute, USDA reports that approximately 63 percent of fertilizer moves by rail, compared with 17 percent by barge, 15 percent by truck, and 5 percent by pipeline. USDA also draws on the Board's public-use Carload

Waybill Sample and rail-service data to track fertilizer rail volumes, shipment characteristics, railcar ownership, and service conditions. See U.S. Department of Agriculture, Agricultural Marketing Service, Fertilizer Transportation Dashboard, Agricultural Transportation Open Data Platform, https://agtransport.usda.gov.

The dashboard shows that fertilizer carloads generally rise in early spring, peak around May, and climb again from late summer through fall. It also tracks fertilizer cars not moved for more than 48 hours, noting that elevated values suggest shippers may be experiencing service problems. Those are the periods, and the measures, the Board should focus on when evaluating agricultural service.[1]

Car ownership matters as well. In the most recent year shown on the dashboard, 88 percent of fertilizer carloads moved in privately owned cars, compared with 11 percent in railroad-owned cars and 1 percent in TTX-owned cars. When cycle times stretch out, it is largely shipper-supplied equipment that sits idle. ARA requests that any conditions governing service performance include transparent measures of loaded and empty car cycles and material delays.[2]

IV. AGRICULTURAL SERVICE RELIABILITY IS A CORE PUBLIC-INTEREST CONCERN

For agricultural retailers, reliable and consistent service days often matter more than line-haul speed. A retailer can plan around a known transit time. It cannot plan around a missed

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U.S. Department of Agriculture, Agricultural Marketing Service, Fertilizer Transportation Dashboard, Agricultural Transportation Open Data Platform, https://agtransport.usda.gov (presenting Surface Transportation Board rail-service data, including fertilizer cars not moved for more than 48 hours).

[2] *Id.* (presenting 2024 Surface Transportation Board public-use Carload Waybill Sample data showing fertilizer carload ownership of 88 percent privately owned, 11 percent railroad owned, and 1 percent TTX owned).

switch, an unpredictable service day, or a last-mile failure that leaves the facility without product in the middle of a planting or application window.

Members report that some facilities saw weekly service cut substantially during busy agricultural seasons, in some cases leaving very few service opportunities at the moment crop inputs were most needed. Peak season often calls for more service, not less, to keep product moving to farmers. Members also report missed first- and last-mile movements, longer loaded and empty car cycles, and delayed cars arriving in bunches that exceed unloading capacity. Each of these failures adds labor, inventory, demurrage, storage, claims-administration, and supplemental trucking costs.

ARA has assisted agricultural retail members in disputes involving proposed service reductions or material curtailments. Agricultural retail facilities perform an essential supply function for the farmers they serve. They are how fertilizer and other critical crop inputs reach farmers on time, and when a railroad reduces or curtails service to a facility, the farmers who depend on it experience the consequences.

In one matter, ARA assisted an agricultural retail member in a Class I railroad service dispute involving a facility that depended on timely rail deliveries of fertilizer. During a period of inadequate rail service, the member's fertilizer inventories fell to levels that jeopardized its ability to supply farmer customers when those products were needed. ARA sought assistance from the Board in resolving the dispute. To protect commercially sensitive information, ARA does not identify the member, facility, location, traffic volumes, or commercial terms.

That matter was not an isolated case. Agricultural retail runs on a tight calendar: retailers must have fertilizer and other crop inputs on hand when farmers need them, during planting and application windows that do not move. A shipment that arrives after the window closes is not the equivalent of one that arrived on time.

The same experience shows why annual traffic volume is a poor measure of how much rail service matters to an agricultural facility. A rural retailer may generate modest annual rail volume while performing an essential supply function during concentrated periods of agricultural demand. When a railroad reduces or ends service to that facility, the effects reach the farmers and rural communities that depend on it, not just the shipper.

ARA has raised car bunching and inconsistent service with the Board before. In 2019 comments in Docket No. EP 754, ARA described member experiences in which railcars were held and then delivered in concentrations that exceeded a facility's practical unloading capacity, and in which railroad operating practices contributed to placement delays while the retailer still faced demurrage exposure.[3]

Those comments also stressed the need for reliable, ratable car deliveries and accurate delivery information, so that facilities can coordinate product supply, unloading personnel, inspections, and facility operations. For agriculture, the issue is less about line-haul speed than about whether service arrives in a predictable pattern the facility can actually use.

Reduced switching frequency compounds these problems. Members describe loaded fertilizer cars reaching a nearby serving yard, missing the railroad's local service cutoff, and sitting there until the next service opportunity. During peak season, a short delay in reaching the yard can turn into a much longer delay in getting product to the retailer. Less frequent service also lengthens cycle times for privately supplied cars and raises the cost of that equipment.

Recent member experience shows these problems continuing, along with lengthy resolution of equipment and product claims and ongoing transportation-cost increases. For retailers working within narrow seasonal windows, the measures that matter are whether product

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[3]Comments of the Agricultural Retailers Association, Oversight Hearing on Demurrage & Accessorial Charges, Docket No. EP 754 (filed May 8, 2019) (discussing constructive placement, car bunching, demurrage exposure, and the need for reliable, ratable deliveries).

reaches the facility when needed, whether privately supplied equipment is returned to productive use promptly, and whether a meaningful remedy exists when railroad performance imposes added costs on the shipper.

Systemwide averages will not capture these failures. A network can meet its overall performance targets while a rural agricultural facility experiences repeated missed switches or erratic deliveries. Any approval should include facility- and corridor-level standards that measure the service agricultural customers actually receive.

V. PEAK-SEASON EQUIPMENT AND SERVICE CAPACITY MUST BE PROTECTED

Agricultural demand is seasonal and time-sensitive. Fertilizer delivered after the relevant planting or application period does not provide the same public benefit as fertilizer delivered when needed. Members report that railroad-supplied covered hopper capacity is not always sufficient during peak agricultural demand.

Equipment shortages and slow equipment cycles can force suppliers to reduce sales, carry additional inventory, or shift volume to higher-cost transportation where an alternative exists. Less frequent switching lengthens loaded and empty car cycles further, effectively shrinking the usable fleet when agriculture needs it most.

Members also report privately supplied railcars sidelined for extended periods after railroad-related incidents, followed by lengthy claims resolution. For shippers that furnish their own rail equipment, car-cycle performance and claims handling carry real operational and financial consequences.

Applicants should be required to submit, and adhere to, a merger operating plan that addresses agricultural peak seasons by corridor and commodity, with measurable equipment-availability and service commitments, public reporting, escalation procedures, and remedies for material failures.

VI. TRUCKING DOES NOT REPLACE THE REQUIRED ANALYSIS OF RAIL-TO-RAIL COMPETITION

Applicants may point to trucking or other modes as competitive alternatives to rail. But in a proceeding involving the merger or control of at least two Class I railroads, Congress directed the Board to consider "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. § 11324(b)(5). Truck availability does not answer that question.

The Board's Class I merger policy reflects the same focus. The policy seeks "balanced and sustainable competition in the railroad industry," requires the Board to ensure that any approved transaction "would promote a competitive, efficient, and reliable national rail system," and states that merger applications "should include provisions for enhanced competition." 49 C.F.R. § 1180.1(a)–(c).

For agricultural shippers, the question is whether facilities and corridors will keep meaningful competition among rail carriers, including competitive access, gateways, interchange opportunities, routing options, and commercially usable access to another railroad. That some freight could move by truck does not show that rail-to-rail competition will survive the transaction, particularly for bulk, long-distance, and seasonal agricultural movements.

The Board may consider intermodal competition, where relevant, as part of its broader review of the adequacy of transportation to the public under 49 U.S.C. § 11324(b)(1). That review does not displace the separate inquiry into competition among rail carriers required by § 11324(b)(5). ARA urges the Board to treat a claimed alternative, whether rail or another mode, as competitively meaningful only when it is operationally available and commercially usable for the affected agricultural facility.

VII. THE PROPOSED MERGER COULD INCREASE MARKET POWER OVER CAPTIVE AND NEAR-CAPTIVE SHIPPERS

Members report that many agricultural production sites, terminals, and customer markets are effectively served by one railroad, and some facilities have no realistic way to add another carrier or build a new connection. These shippers have little leverage over rates, service terms, switching frequency, accessorial charges, or the allocation of commercial risk.

Further consolidation could weaken East-West gateways, routing flexibility, interchange options, and shippers' ability to use one carrier to discipline another. It could also prompt additional Class I consolidation, further narrowing competitive options across the national rail network.

The Board should evaluate competitive effects at the facility, corridor, and commodity level. Connections should be treated as competitive only when they are operationally available, commercially usable, and capable of providing meaningful rate and service discipline.

VIII. RECIPROCAL SWITCHING MUST BE PRACTICAL, NOT MERELY THEORETICAL

Reciprocal switching can provide a remedy only where a facility can actually use it and the alternative carrier can offer viable service and commercial terms. A paper right that depends on unavailable infrastructure, impractical operating arrangements, or discretionary implementation will not protect agricultural shippers.

Any switching condition should identify eligible facilities and corridors, use objective service triggers, provide prompt access to an alternative carrier, prohibit retaliation or offsetting commercial penalties, and remain in effect for a period sufficient to protect shippers from merger-related harm. The Board should also retain authority to expand relief when experience shows that the initial remedy is inadequate.

IX. THE COMMON CARRIER OBLIGATION MUST GIVE SHIPPERS A REAL ALTERNATIVE IN CONTRACT NEGOTIATIONS

Much rail traffic moves under private contracts, and once signed, a rail transportation contract and the service provided under it are largely outside the Board's jurisdiction. 49 U.S.C. § 10709(c)(1). What gives a captive shipper any leverage in those negotiations is the alternative if talks break down: the railroad's common carrier obligation to provide transportation "on reasonable request," 49 U.S.C. § 11101(a), and its duty to provide its rates and other service terms on request, § 11101(b).

For a facility served by only one railroad, the common carrier obligation may be the shipper's only meaningful alternative if contract negotiations fail. Eliminating an independent Class I railroad could make that fallback even more important, particularly where the proposed merger removes or weakens an independent routing or commercial alternative.

The statute does not define the common carrier obligation in any detail. It requires service "on reasonable request" but sets out no criteria for deciding when service falls short, leaving shippers uncertain about what they can demand and how to enforce it. Senators Tammy Baldwin and Roger Marshall have proposed to close that gap in the Reliable Rail Service Act, which ARA has endorsed. The bill would require railroads to provide service in a manner that meets the shipper's need for timely, efficient, and reliable rail service and fulfills the shipper's reasonable service requirements. It would direct the Board to weigh specific factors in deciding whether a railroad has met that obligation, including reductions in service frequency and local service schedules; reductions in employees, crews, and equipment; whether service meets the shipper's local operational requirements; how the railroad handles equipment owned by others; and whether conditions the railroad imposes, including demurrage, are reasonably reciprocated.

The bill would also require expedited proceedings and require the Board to prescribe reasonable transit or cycle times or other service standards when a railroad fails to meet its obligation.[4]

ARA recognizes that the Reliable Rail Service Act is pending legislation and that this proceeding cannot amend the statute. The Board nevertheless has broad authority to condition approval of a major merger, 49 U.S.C. § 11324(c), and the Board has stated that, where both carriers are financially sound, it is prepared to use that authority as necessary "to preserve and/or enhance competition." 49 C.F.R. § 1180.1(c). The Board's merger policy also states that the Board "will look with disfavor on consolidations under which the controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand." *Id.* § 1180.1(a). The bill's service factors provide a useful framework for the merger-specific protections requested in Conditions 8 and 9.

Merger-related service protections also should not turn on whether an agricultural movement travels under a common carrier tariff, an exemption, or a contract under 49 U.S.C. § 10709. Agricultural retailers experience the same operational harm when fertilizer or other essential inputs arrive late, cars are bunched, or privately supplied equipment is delayed, regardless of the legal form governing the movement. Without disturbing negotiated contract terms, the Board should require the combined railroad's merger operating plan, service metrics, escalation procedures, and transaction-related remedies to address all traffic affected by network integration. Otherwise, a substantial share of agricultural traffic could be excluded from the very safeguards intended to prevent merger-related service deterioration.

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[4]Reliable Rail Service Act of 2025, S. 2104, 119th Cong. § 2 (as introduced June 18, 2025) (proposing amendments to 49 U.S.C. § 11101).

X. HAZARDOUS-MATERIAL INSURANCE AND RISK-TRANSFER TERMS REQUIRE OVERSIGHT

Agricultural retailers handle products subject to extensive safety and transportation requirements. Members report that railroad insurance, indemnification, liability, and handling requirements can determine whether certain regulated agricultural products move by rail at all. Requirements applied across an entire company, rather than to the relevant facility or movement, can make rail service commercially impractical.

When rail becomes impractical, more volume moves by highway even where rail would otherwise be an efficient option. Higher insurance and risk-transfer requirements can also raise delivered input costs or limit product availability in some markets.

If the transaction is approved, the Board should prohibit the combined railroad from using merger-created or merger-enhanced market power to impose unreasonable insurance, companywide coverage, indemnification, liability, or hazardous-material handling terms that would make rail transportation commercially impractical. Disputes arising from merger-related changes in those requirements should be subject to expedited review and meaningful interim relief.

XI. APPLICANTS' CLAIMED BENEFITS DO NOT SATISFY THE REQUIRED STANDARD

Applicants contend that the transaction would provide faster and more reliable single-line service, reduce interchange handoffs, expand single-line market access, shift substantial traffic from truck to rail, generate shipper savings, and preserve or enhance competitive options. Those assertions do not resolve the questions that matter most to agricultural shippers: whether the claimed gains are merger-specific, whether they will reach captive and near-captive agricultural facilities, and whether they outweigh the loss of an independent Class I railroad and the resulting risks to rate and service discipline.

Single-line service is not itself a sufficient public benefit. Interline movements, coordinated schedules, commercial agreements, haulage, gateway arrangements, and other forms of railroad cooperation can provide through-service and expanded commercial opportunities without common ownership. Applicants themselves describe their expanded Committed Gateway Pricing program as "the functional equivalent of thousands of haulage agreements in a single enforceable commitment."[5] If a pricing commitment can deliver haulage-like access, that access can be provided without eliminating an independent Class I railroad. To the extent Applicants rely on benefits that can be achieved through contracts, haulage, interchange, or other less-consolidating alternatives, those benefits should receive little or no weight under the Board's Class I merger policy. See 49 C.F.R. § 1180.1(c).

Claims of faster transit and fewer interchange handoffs are not proof of reliable first- and last-mile service. As discussed above, missed switches, reduced service frequency, longer equipment cycles, and car bunching often determine whether agricultural inputs reach a facility within a narrow seasonal window. A faster line-haul movement does little good if local service remains unreliable.

Applicants' truck-diversion and shipper-savings claims likewise do not answer the statutory question whether the transaction would adversely affect competition among rail carriers. Greater competition with trucking cannot replace meaningful rail-to-rail competition for bulk agricultural movements or for facilities that lack a commercially practical modal alternative. Any projected systemwide savings should therefore be tested against facility- and corridor-specific effects on rates, service, gateways, interchange, and routing options.

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[5]Press Release, Union Pacific Corp. & Norfolk Southern Corp., Union Pacific and Norfolk Southern Affirm Strength of Merger Application and Offer Unprecedented New Customer Assurances (July 27, 2026) (describing the expanded Committed Gateway Pricing program).

Nor should proposed gateway, pricing, or temporary-access commitments be treated as equivalent to preserving an independent competitor. A remedy that depends on eligibility rules, implementation procedures, commercially usable connections, or post-merger enforcement may not provide the same day-to-day competitive discipline that exists when two independent railroads have incentives to compete for traffic. The Board should evaluate the practical usability, durability, and enforceability of each proposed protection for agricultural shippers.

Applicants' July 27, 2026 supplemental commitments do not change this analysis. Applicants state that they would preserve Class I rail options for 3-to-2 and 2-to-1 shippers where they can legally grant access to another railroad, provide temporary access to alternative rail service if service performance declines during merger integration, and offer a new rate-relief process if the merger's public benefits are not delivered in a timely manner. *See* Press Release, Union Pacific Corp. & Norfolk Southern Corp., *Union Pacific and Norfolk Southern Affirm Strength of Merger Application and Offer Unprecedented New Customer Assurances* (July 27, 2026); Applicants' Supplemental Response, Docket No. FD 36873 (filed July 27, 2026). Those commitments do little for a facility that is served by only one railroad today. Preserving existing access does not create a new rail-to-rail option, and many agricultural retail facilities have no second carrier to preserve. A service remedy that is limited to the integration period, and that becomes available only after performance has declined, may not deliver relief in time for a retailer facing missed switches or delayed cars during a planting or application window. The Board's rules already require major-merger applicants to propose contingency plans that include alternative rail service if merger implementation creates service problems, 49 C.F.R. § 1180.1(h)(6), and require applicants to propose measures the Board might take if anticipated public benefits fail to materialize in a timely manner, *id.* § 1180.1(c)(1). The Board should therefore examine the eligibility rules, performance triggers, duration, implementation

procedures, and practical availability of each commitment and determine whether it would actually protect captive and near-captive agricultural facilities when relief is needed.

Finally, projections of new traffic, operating efficiencies, projected equipment and infrastructure capacity, or broader market access should not be credited merely because they are quantified. Applicants should demonstrate that the assumptions are realistic for agricultural corridors, that promised benefits cannot otherwise be achieved, and that enforceable remedies will protect shippers if projected service, savings, or competitive outcomes do not materialize.

XII. CONDITIONS REQUESTED BY ARA

ARA strongly opposes the proposed merger and respectfully requests that the Board deny the revised application. Eliminating an independent Class I railroad and the resulting loss of competitive discipline cannot be fully remedied through behavioral conditions, contractual protections, monitoring, or arbitration. The conditions below are therefore offered only in the alternative to reduce harms caused or intensified by the transaction, including the loss of an independent carrier, increased market power, weakened routing and gateway options, and merger-integration risk. Nothing in these recommendations should be read to mean that ARA believes the conditions would adequately replace competition from an independent railroad or otherwise satisfy Applicants' burden under 49 U.S.C. § 11324 and 49 C.F.R. § 1180.1. If the Board does not deny the revised application, ARA requests that any approval include, at a minimum, the following conditions:

1. Agricultural service commitments. Establish enforceable standards for switching frequency, first- and last-mile service, loaded and empty car cycles, car delivery consistency, and peak-season performance, supported by prompt escalation procedures and meaningful remedies for material failures.

2. Equipment capacity. Require a corridor- and commodity-specific operating plan demonstrating adequate railroad-supplied equipment for agricultural peak seasons, with measurable availability and equipment-cycle obligations.

3. Competitive access. Preserve gateways, interchange, routing options, and existing competitive access. Require facility- and corridor-specific analysis of competition among rail carriers under 49 U.S.C. § 11324(b)(5), without treating truck availability as a replacement for that inquiry. Treat reciprocal switching as a remedy only when it is operationally available and commercially usable, with objective eligibility standards, prompt implementation, and protection against retaliation or offsetting charges. Where the combined railroad's single-line route would compete with an interline route that includes a former Union Pacific or Norfolk Southern segment, require the combined railroad, at the shipper's request, to provide a confidential Rule 11 rate for its segment under an objective, transparent, and nondiscriminatory methodology. The methodology should prevent segment pricing, rate divisions, or operating practices from rendering the interline route commercially unusable and should be subject to expedited Board review. An open gateway is not meaningful if the alternative route cannot provide commercially viable rate and service discipline.

4. Transparency and verification. Require baseline measurements, public agricultural service metrics, periodic compliance reports, and corridor- and commodity-specific proof of claimed savings, service improvements, truck diversion, and market access without disclosing shipper-confidential information.

5. Accountability and continuing oversight. Establish deadlines and remedies for unresolved rate requests, disputed demurrage and detention, missed switches, service interruptions, claims, and noncompliance. Preserve shipper complaint rights, authorize expedited dispute resolution, and retain jurisdiction to strengthen conditions if initial remedies prove inadequate.

6. Reciprocal accountability. To address costs created or intensified by merger integration and the combined railroad's increased market power, require reciprocal accountability when railroad-caused service failures impose costs on agricultural shippers. Agricultural shippers remain subject to demurrage, detention, and accessorial charges, while comparable remedies often are unavailable when missed switches, car bunching, equipment problems, slow claims processing, or other railroad-caused delays prevent a shipper from efficiently receiving or releasing equipment. Where shippers face financial consequences for equipment detention, the combined railroad should face reasonably comparable consequences when its performance causes the delay, subject to appropriate exceptions for matters outside its reasonable control.

7. Rural and hazardous-material protections. Prevent merger-related service reductions, facility rationalization, or operating changes that would strand agricultural communities or materially reduce service to facilities handling fertilizer and other regulated agricultural products. Prohibit the combined railroad from using merger-created or merger-enhanced market power to impose unreasonable insurance, companywide coverage, indemnification, liability, or hazardous-material handling terms that would make rail transportation commercially impractical. Provide expedited review and interim relief where such terms threaten the timely movement of essential agricultural inputs.

8. Defined merger-related service obligation. As a merger-specific protection against service degradation caused or intensified by the transaction, require the combined railroad, during the Board's oversight period, to provide affected shippers timely, efficient, and reliable service on reasonable request. In evaluating compliance with this condition, the Board should use objective factors informed by the pending Reliable Rail Service Act, including service frequency and local service schedules, staffing and crew availability, equipment availability, the shipper's local operating requirements and prior service experience, the handling of shipper-owned equipment, and whether railroad-imposed conditions such as demurrage are reasonably reciprocated. These

factors would define compliance with a merger condition imposed under existing authority; they would not enact or amend the pending legislation or alter the generally applicable scope of 49 U.S.C. § 11101. Complaints alleging a violation should be handled on an expedited basis. When a violation is found, the Board should enforce the condition through appropriate facility- or corridor-specific relief, including measurable transit, cycle-time, switching, or delivery standards when needed to cure merger-related service harm.

9. Parity in contract negotiations. For movements affected by the proposed merger and contract renewals occurring during the Board's oversight period, require the combined railroad, on request, to promptly provide common carrier rates and service terms under 49 U.S.C. § 11101(b), together with committed transit or cycle times and other measurable service standards. Prohibit the combined railroad from conditioning a contract or renewal on a shipper's agreement to forgo Board complaints, reciprocal switching, or participation in Board proceedings, and prohibit retaliation through service, car supply, or pricing against shippers that exercise those rights. Require the combined railroad to honor existing contracts through their stated terms and preserve shippers' ability to contract for one segment of a movement and pursue rate relief on the remainder, as 49 C.F.R. § 1180.1(c)(2)(i) contemplates. The Board's November 4, 2026 decision inviting stakeholders to report perceived, threatened, or actual retaliation in this proceeding underscores the need for these protections.

10. Voluntary model agricultural rail transportation contract and contractual arbitration. As a merger-specific condition under 49 U.S.C. § 11324(c), require the combined railroad, within 180 days after any approval and following consultation with agricultural shippers and shipper organizations, to develop and offer a voluntary Model Agricultural Rail Transportation Contract (Model Contract) and implementing arbitration rules. The combined railroad should submit the proposed form and rules to the Board for review after notice and an opportunity for public comment. The Board should determine whether the proposal satisfies the merger

condition and should retain jurisdiction during the merger oversight period to enforce the condition and require modifications necessary to address merger-related harms. Nothing in this condition should be construed to authorize the Board to prescribe rates or regulate the substantive terms of individual contracts governed by 49 U.S.C. § 10709. The combined railroad should report annually during the oversight period, in aggregated and non-identifying form, on the number of agricultural shippers offered and electing the Model Contract and on arbitration filings, disposition times, and outcomes.

The Model Contract should be available, at the shipper's election, for new contracts and renewals involving agricultural traffic affected by merger implementation. It should establish minimum reciprocal protections addressing measurable service commitments, equipment and car-cycle performance, notice and contract modifications, accessorial charges, failure to perform, and meaningful remedies. The Model Contract should operate as a floor, not a ceiling, and should not waive or restrict a shipper's statutory rights or access to the Board on matters within the Board's jurisdiction.

As part of the Model Contract, the combined railroad should provide advance contractual consent to final and binding private arbitration, at the shipper's election, for legally arbitrable disputes concerning the interpretation, performance, or alleged breach of the contract. Such consent would constitute an agreement to an alternative remedy within the meaning of 49 U.S.C. § 10709(c)(2). Arbitration should provide a neutral decisionmaker, expedited procedures appropriate for time-sensitive agricultural traffic, written decisions, and meaningful relief. Matters committed by statute to the Board should remain with the Board, and the Board's enforcement of this merger condition should not be construed as general Board regulation of contracts governed by § 10709. The Board's merger rules already favor commitments to submit claims of failure to provide reasonable service due to merger implementation problems to arbitration. 49 C.F.R. § 1180.1(h)(5). This condition responds specifically to bargaining and

enforcement problems that could be created or intensified by the loss of an independent carrier, increased market power, and merger integration. It cannot recreate an independent railroad or replace the price discipline, service incentives, routing alternatives, and negotiating leverage that would be lost through further Class I consolidation. ARA therefore offers this condition only as a partial safeguard if the Board approves the proposed merger despite ARA's opposition.

XIII. CONCLUSION

ARA members' request is straightforward: preserve the rail competition that remains and provide shippers with a common carrier obligation they can rely on. Agricultural shippers report higher transportation costs, less frequent and less predictable service, limited equipment availability, weak accountability, and few practical alternatives. A proposed merger of this scale should not be approved on promises alone.

ARA respectfully requests that the Board deny the revised application. If the Board approves the proposed merger, it should impose binding, measurable, and enforceable conditions that protect rail competition, agricultural service, equipment availability, routing flexibility, and accountability at the facility and corridor level, including a clearly defined common carrier obligation that gives shippers a meaningful alternative when contract negotiations fail.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on November 17, 2026, I served by electronic mail a copy of the foregoing filing on all Parties of Record in this proceeding for whom electronic service is acceptable, and served by first-class mail, postage prepaid, or another method permitted under 49 C.F.R. § 1104.12, each required recipient for whom electronic service is not acceptable.



Richard D. Gupton
Senior Vice President, Public Policy & Counsel
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