Transportation Update

December 2025

BNSF Requests STB Review of UP/SP Merger

BNSF has asked the Surface Transportation Board (STB) to review, enforce, and, if needed, modify the conditions from the 1997 UP/SP merger, arguing that post-merger practices have eroded the competitive options the STB meant to preserve – especially at former "2-to-1" locations. BNSF seeks the review under the STB's ongoing authority under 49 U.S.C. § 11327 to revisit and enforce merger conditions to protect competition. BNSF proposes a procedural schedule that would include a defined discovery period and allow for submission of statements and evidence from shippers 146 days after the procedural schedule is set. On December 10, the STB granted UP's request for more time to reply, and replies from all interested parties are now due January 7, 2026.

BNSF's core allegation is a pattern of "delay and deny" tactics by UP that impede shipper choice and degrade reliability across customer access, trackage rights, siting, infrastructure improvements, and dispatching – resulting in fewer options, higher costs, and uncertainty for shippers.

What Shippers Should Know

- **2-to-1 elections:** BNSF reports systemic delays, denials, and gaps by UP that slow or deter elections. It seeks tighter timelines and interim access where UP delays would impede competition.
- **Trackage rights and the Omnibus Clause:** BNSF seeks to modernize legacy agreements and promptly implement new rights where needed, alleging UP has stalled access or imposed terms inconsistent with the settlement agreement imposed as a condition to the merger, that inject uncertainty for shippers.
- **Customer siting transparency:** BNSF challenges one-sided protocols that allow UP to engage prospects without informing them of BNSF service options. It proposes reforms to ensure shippers can make informed carrier choices.
- **Neutral dispatching and infrastructure parity:** BNSF alleges dispatching favoritism and restricted access to jointly funded infrastructure. It asks the STB to enforce first-come/first-served protocols and operational parity.
- **Comprehensive enforcement path:** BNSF contends piecemeal enforcement litigation and arbitration have not safeguarded merger-policy objectives and seeks a structured STB process to deliver durable, systemwide remedies.

Bottom Line for Shippers

If granted, the requested relief would create clearer rules and faster timelines, require neutral dispatching and infrastructure access, and increase transparency in siting, thereby restoring the two-carrier competition that was imposed as a condition in the UP/SP merger approval and is necessary to support shippers' service quality, and resilience in rail supply chains. Shippers should consider filing a letter in support of the STB opening a proceeding to review the UP/SP merger conditions, which would also be due January 7. Shippers filing in support may also be able to participate in the proceeding on the merits but would not be obligated to do so.

FOR MORE INFORMATION

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