Transportation Update

January 2026

STB Rejects Union Pacific and Norfolk Southern Merger Application

On January 16, 2026, the Surface Transportation Board (STB or Board) rejected the application filed by Union Pacific Corporation (UP) and Norfolk Southern Corporation (NS) seeking approval to create the nation's first transcontinental railroad. Importantly, the rejection is without prejudice, meaning the applicants may refile a revised application that remedies the identified deficiencies.

The STB gave Applicants until February 17, 2026, to file a letter indicating whether and when they anticipate refiling their merger application. If Applicants choose to refile the application, they must do so by June 22, 2026.

Why the Board Rejected the UP/NS Application

The STB rejected the application because it was incomplete in three ways: (1) the Applicant's impact analyses lacked forward-looking market projections; (2) portions of the application were missing; and (3) an accompanying application to acquire two other rail carriers should have been classified as a "significant" transaction.

First, Applicants' impact analyses did not contain market share projections for the entity to be created by the transaction. Board regulations require major merger applications (like the UP/NS application) to include "projected market shares" of revenue and traffic volumes as a result of a merger. Instead of projecting these post-merger conditions, Applicants simply summarized their 2023 shares and labeled them "projected." This approach failed to account for the substantial traffic growth that Applicants themselves anticipated, including assertions made elsewhere in the application that the merger would divert 442,000 carloads from other railroads and increase their market share by 15-26%. The Board concluded that this was not a forward-looking projection and did not reflect the combined company's marketing plan and, as a result, rendered the application incomplete. The Board also noted the absence of analysis on the reduction in independent routes where UP and NS serve different legs (vertical or end-to-end effects) within the required projected market share framework.

Second, portions of the application were missing. Board regulations require merger applications to include any contract or agreement pertaining to the proposed transaction. However, Applicants omitted (and in some cases refused to provide) certain schedules and exhibits expressly incorporated into the agreement. The Board highlighted the omission of Schedule 5.8, which defines "Materially Burdensome Regulatory Condition" and could allow UP to abandon the deal if the STB imposes certain conditions. Some parties commented that this schedule is among the most material terms of the agreement because it reflects the Applicants' own assessment of the transaction's potential anticompetitive harms. The omitted schedules and exhibits impact the Board's own public interest analysis and, in addition to the proposed transaction's unprecedented size and novel application of the Board's 2001 merger policy, supported the Board's finding that the application was incomplete.

Third, an accompanying application to acquire two other rail carriers should have been classified as a "significant" transaction. The application also proposed that Applicants acquire control of the Terminal Railroad Association of St. Louis (TRRA), a terminal and switching carrier operating approximately 170 miles of rail line in and around St. Louis. Applicants classified this transaction as a "minor" transaction, but the Board determined that it should be classified as a "significant" transaction because the Board could not find that the transaction would clearly lack anticompetitive effects and because the Applicants did not identify public benefits that would outweigh potential anticompetitive effects.

What Happens Next

- Although the rejection is a procedural setback, the STB rejected the application "without prejudice" and will permit the Applicants to refile a complete application.
- Applicants must file a letter by **February 17, 2026,** stating whether and when they intend to refile. Applicants must refile the application **no later than June 22, 2026.**
- Any refiled application must be a fully self-contained submission. The Board prohibited Applicants from incorporating by reference any materials or statements made in the application filed on December 19, 2025. In addition, the application must include the missing market impact projections and complete merger agreement documents, including Schedule 5.8.
- If the application is refiled, the Board will decide within 30 days whether to accept the revised application as complete and will then set a procedural schedule.

What This Means for Shippers

A new application will likely contain a revised impact analysis, requiring a fresh look at the claimed benefits and detriments. Additionally, if the impact analyses project higher market shares than in the original application, applicants may offer stronger conditions to improve the merger's claimed benefits. Shippers with interests potentially affected by this transaction should continue to monitor the docket and consider whether to participate in any future proceedings.

Notices of Intent to Participate may still be filed at this time. The deadline for filing a Notice of Intent will be set in a future procedural schedule. Thompson Hine plans to host a webinar on **February 20, at 2:00 p.m. ET**, to further discuss the Board's rejection of the UP/NS application and related developments. More information will be forthcoming.

FOR MORE INFORMATION

If you have any questions regarding the UP/NS merger, please contact a member of our Transportation practice group.

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