Transportation Update

May 2026

STB Accepts but Pauses UP-NS Merger Application, Demands Supplemental Information

On May 28, the Surface Transportation Board (STB) accepted as complete the revised merger application filed by Union Pacific and Norfolk Southern (collectively, Applicants). However, the STB placed the entire proceeding in abeyance and ordered the Applicants to submit extensive supplemental information by July 27, 2026. The STB's decision raises serious questions about the adequacy of the Applicants' competitive-enhancement proposals, diversion projections, service assurance commitments, and plans for terminal railroads and TTX, all of which directly affect shippers.

Background

Union Pacific is attempting to acquire Norfolk Southern, which would create the nation's first transcontinental railroad. To finalize the deal, the railroads must obtain the STB's approval.

This is the first proposed merger under the STB's 2001 Major Merger Rules, which impose a "heavier burden" on applicants to demonstrate that a Class I consolidation serves the public interest. They place "greater emphasis in the public interest assessment on enhancing competition while ensuring a stable and balanced rail transportation system." The STB's decision makes clear that it will apply this framework rigorously.

The Applicants originally filed their application on December 19, 2025. The STB rejected it as incomplete on January 16, 2026, finding deficiencies in market share projections, missing merger agreement documents, and a misclassified related transaction involving a terminal railroad. The Applicants filed their revised application on April 30, 2026.

Key Elements of Decision No. 21, Issued May 28

Revised application accepted. The STB determined that the revised application satisfies the minimum completeness requirements of 49 CFR Part 1180, notwithstanding objections raised by BNSF, CSXT, CN, CPKC, and other commenters. The STB acknowledged that the filing "does not contain the level of detail on certain issues that the Board would have preferred" but concluded that the deficiencies do not warrant rejection and relate to the merits of the proposed merger.

Proceedings held in abeyance. Instead of issuing a procedural schedule, the STB placed the proceeding on hold and required the Applicants to submit detailed supplemental information by July 27, 2026. Finding that "information in the Revised Application lacks clarity and detail," the STB stated that it "will not launch a procedural schedule that in effect places undue burden on the commenting parties to ascertain and evaluate information about the Transaction and how it corresponds to the [2001 Major Merger Rules]." The STB will issue a procedural schedule after evaluating the Applicants' supplemental filing. The STB noted that the detailed nature of the supplemental material may require more time and states that it would entertain a request for a 30-day extension. Likewise, it stated that its "assessment of the supplemental filing may include an evaluation as to whether Applicants have presented a prima facie case" for the merger.

Supplemental information required. The STB ordered the Applicants to provide detailed information across several subject areas, including:

- *Enhanced competition:* The STB expressed substantial concern about the Applicants' sole competitive-enhancement proposal, Committed Gateway Pricing (CGP), noting that CGP "appears to exclude a significant amount of traffic hauled or proposed to be hauled by Applicants, terminates with the conclusion of the STB's oversight period, and may harm some shippers by incentivizing UP/NS to compete less aggressively for some traffic." The Applicants must quantify the impact of each CGP exclusion, justify the program's time limitation, and address service performance benchmarks for CGP-eligible traffic.
- *Access for 2-to-1 and 3-to-2 shippers:* The Applicants must list every shipper facility facing a reduction in direct Class I carrier access and explain how pre-merger competition will be maintained. They must also confirm they do not intend to reduce or eliminate the access of any Class II or III carrier, or any port, to a Class I carrier.
- *Public benefits and diversion analysis:* The STB questioned the reliability of the Applicants' projection of 2.1 million annual truck-to-rail diversions and approximately $3.5 billion in annual shipper savings, noting "prior major mergers … have fallen short of truck-to-rail conversion projections on past applicants' timelines." The Applicants must confirm whether their models assume no competitive response, identify likely competitive responses, and discuss an oversight framework and relief mechanisms if benefits fail to materialize.
- *Service assurance plan:* The STB found the Applicants' proposed arbitration system thin, stating "additional information is needed to assess the usefulness of the proposed arbitration process and allow parties to understand rights and remedies associated with [it]." The STB directed the Applicants to define key terms such as "substantial deterioration in service" and "reasonable service." The Applicants must also explain compensation available under the program, including remedies for shippers of exempt commodities and contract traffic who are excluded from arbitration.
- *Gateways and car supply:* The STB raised concerns about the Applicants' combined ownership interests in terminal railroads at St. Louis (TRRA) and Kansas City (KCT) and in TTX Company, the dominant railcar pooling entity. The Applicants must provide details on divestiture plans, governance documents, and competitive impacts.
- *Downstream merger impacts:* The Applicants must address whether subsequent Class I mergers involving BNSF, CSXT, CN, or CPKC could reduce geographic competition and whether conditions proposed in this transaction would be rendered less effective by a subsequent merger.

Ex parte communications denied. The STB denied the Applicants' motion to waive the prohibition on ex parte communications (off-the-record communications between parties and the STB) established in STB precedent. The STB left open the possibility of targeted waivers on specific issues as the record develops.

Environmental review. The STB will prepare a full Environmental Impact Statement (EIS) due to the potentially significant impacts of the transaction on communities across the United States. The STB waived the requirements for a Draft EIS and Final Scope of Study and streamlined the environmental process, consistent with the 2023 NEPA amendments and recent CEQ guidance. OEA will hold at least 12 in-person public meetings. One will be held in Houston; details regarding time and other locations to be announced when the abeyance is lifted.

Next Steps for Shippers

This decision signals that the STB intends to conduct a thorough, skeptical review of the proposed transaction. Shippers should consider the following aspects of the merger and next steps now:

- Assess competitive exposure to facilities.
- Evaluate any impact from truck conversion projections.
- Evaluate the adequacy of UP-NS proposed conditions.
- Prepare to seek conditions to address merger harms
- Become a party of record by filing a notice of intent to participate with the STB.

We are closely monitoring this proceeding and are available to discuss how this development may affect our clients' businesses, to assist in evaluating competitive exposure, or to support participation before the STB.

FOR MORE INFORMATION

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