

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED FRCA-2
Office of Chief Counsel
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Public Record

FINANCE DOCKET NO. 36873

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

FRCA COMMENTS ON THE PROPOSED PROCEDURAL SCHEDULE

The Freight Rail Customer Alliance (“FRCA”) respectfully submits that the Surface Transportation Board (“Board” or “STB”) should adopt the longest procedural schedule permitted by statute in the proceeding. UP-NS’s proposal presented in their comments dated October 20, 2025, UP-7/NS-7, to shorten the schedule, and especially “to reduce the period allowed for other parties to file comments, protests, requests for conditions, and responsive applications by 15 days,” is untenable and should be rejected.

The UP-NS merger application will be the first under the Board’s “new” merger rules and, not coincidentally, the most significant ever brought before the Board. It will be the largest, by far, in terms of affected traffic volumes, geographic scope, revenue dollars, and market share, among other measures. It necessarily carries the most potential harm in terms of market foreclosure, coordinated effects, downstream effects, market concentration, competition reduction, rate increases, and service impairment and disruption. These factors are cumulative, but even if considered in isolation weigh strongly against any sort of expedited review and reduced opportunity for comment and participation.

UP's efforts in its filing and elsewhere to depict the merger as purely end-to-end, requiring regulatory treatment of only a small number of 2:1 locations, and "not present[ing] any complex competitive or operating issues," represent a gross misreading of the new merger rules and the concerns that led to their adoption. UP's not unrelated suggestion on its recent earnings call that its regional counterpart should find its own merger partner completely ignores key considerations whether shippers, including the carload shippers that are FRCA members, will or can benefit from the merger, whether the cost savings and efficiencies, if any, will be passed through or pocketed by the carrier, and whether the merger will continue and exacerbate the trend of the past twenty years for railroads to increase their rates in excess of cost increases and reduce their operating ratios and capital investment as a percentage of revenues with the concomitant loss of volume and deterioration of service. A related unknown is whether or how UP will seek to reconcile its merger proposal with its strong opposition to and requests for conditions on the CPKC merger that occurred under the "old" merger rules, as well as UP's backing away from its previously strong endorsement of the "one lump" theory.

Much of the current trouble in the industry flows from a lack of competition that in turn results from excess concentration. There is no good reason to think, especially based on what UP has said to date, that the UP-NS merger will stem, much less reverse, the established trend, and every reason to think that the merger will instead result in more of the same, particularly reduced competition among the few remaining Class I railroads.

An additional consideration is UP's less-than unblemished record as to such matters as complying with its common carrier obligation and other statutory and industry rules and requirements, investing in adequate capacity, staffing, and other resources, providing adequate service, avoiding repeatedly meltdowns, properly informing customers, and communicating cooperatively and in candor with the Board and other parties. *E.g.*, EP 772, *Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes*; FD 36609, *Foster Poultry Farms – Ex Parte Petition for Emergency Service Order*; NOR 42171, *Sanimax USA LLC v. Union Pacific Railroad Company*; NOR 42165, *Hasa, Inc. v. Union Pacific Railroad Company*; and FD 36501, *Union Pacific Railroad Company -- Construction And Operation Exemption -- In Maricopa County, Ariz.*

UP improperly claims credit for work on and/or the substance of an application it has not yet filed, even as it criticizes others for taking positions or raising concerns regarding the merger because that same application has not been filed. UP cannot have it both ways. UP similarly cannot rely on discovery requested before it has filed its application to limit the period for discovery and evidentiary development after it files its application. Whether UP has actually answered outstanding discovery is entirely unclear, all the more so because of the government shutdown, and numerous parties properly wish to reserve participation until they have a chance to see what UP has to say and whether and how UP has addressed their issues and concerns.

UP has elsewhere claimed credit for the broad support that its merger proposal has received. But, again, that support cannot be based on review of an application that is yet to be submitted. Questions also attach as to what representations or other consideration may have been extended to obtain that support and, more importantly, what suggestions or threats of retaliation may have been made. In that regard, FRCA/NCTA understand UP to have indicated that it is not in shippers' best interests to oppose the merger.

An unprecedented application provides no basis for schedule acceleration, and for truncating the period for filing comments, protests, requests for conditions, and responsive applications, particularly when the acquiring entity appears intent, at least so far, in ignoring everything that makes its merger proposal so problematic and then doubling down by claiming further mergers are the appropriate solution to any problems.

Under the circumstances the schedule should be expanded to the maximum extent possible rather than truncated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 17th of November 2025, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by more expeditious means to all parties of record.

/s/ Robert D. Rosenberg