
STB Docket No. FD 32760 (Sub-No. 52)

BNSF Railway Company
—Petition for Review—
UP/SP Merger Conditions

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American Chemistry Council's
Reply Comments in Support of the Petition

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The American Chemistry Council (ACC) submits these comments in reply to the Petition for Review that BNSF Railway Co. filed in this proceeding on November 28, 2025 (the Petition).

I. Identity and Interest of ACC

ACC is a trade association representing more than 190 companies engaged in the business of chemistry. ACC members apply the science of chemistry to provide innovative products and services that make people’s lives better, healthier, and safer. As a \$633 billion enterprise, the business of chemistry is a key element in the nation’s economy, one of the largest exporting sectors, and one of the largest customers of the U.S. freight rail system.

ACC’s predecessor, the Chemical Manufacturers Association (CMA), helped secure important conditions on the merger between Union Pacific Railroad Co. (UP) and Southern Pacific Rail Corp. (SP) to preserve rail competition. Recognizing the merger would reduce rail competition for chemical shippers, CMA negotiated a settlement agreement with UP, SP, and BNSF (the CMA Agreement) that gave shippers on the UP/SP network direct access to BNSF.¹ To “ameliorate competitive harm,” the Board imposed the CMA Agreement’s terms as a condition of the merger.² The CMA Agreement works in concert with and expands upon a separate agreement between UP and BNSF that the Board also imposed upon the merger.

¹ Applicant’s Submission of Settlement Agreement with CMA, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760 (filed Apr. 19, 1996); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 44)*, 1 S.T.B. 233, 254-55 (1996).

² *Decision No. 44*, 1 S.T.B. at 419.

II. ACC supports a review of Union Pacific's compliance with the UP/SP merger conditions.

The Petition describes a pattern of conduct that, if proven,³ significantly degrades the competitive protections the Board imposed as conditions of its approval of the UP/SP merger. Because these protections were central to the Board's approval and addressed shippers' serious concerns about losing rail competition from that merger, the Board should thoroughly review BNSF's assertions concerning Union Pacific's compliance with the merger conditions.

The Board approved the UP/SP merger subject to a comprehensive set of conditions to preserve rail competition for shippers.⁴ This included imposing the CMA Agreement as a merger condition.⁵ The Agreement addressed chemical shippers' concerns about losing competition from the merger by expanding their access to BNSF and establishing protocols to secure that access, such as reciprocal switch fees and limits on adjusting trackage rights fees.⁶ The Board also broadened the CMA Agreement's protections, including by extending new-facility access, expanding BNSF access to storage-in-transit facilities, and making build-out and build-in relief available to all shippers without time limits.⁷ These conditions demonstrate a clear intent to prevent the merger from reducing rail competition for

³ ACC takes no position on the ultimate accuracy of the specific factual allegations in BNSF's Petition.

⁴ *Id.* at 246-48.

⁵ *Id.*

⁶ Applicant's Submission of Settlement Agreement with CMA, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760 (filed Apr. 19, 1996).

⁷ *Decision No. 44*, 1 S.T.B. at 373.

shippers and to provide enduring competitive access rights and protocols.

The Petition details alleged patterns of delay, denial, and obstruction that contradict the merger conditions' core purpose: to preserve two-carrier rail competition.⁸ The alleged conduct—abusing the customer election process, delaying trackage rights agreements, using siting practices to obscure access to BNSF, discriminatory dispatching, and restricting infrastructure access—implicates the protections that shippers negotiated and the Board imposed to safeguard competition. These allegations raise substantial questions about whether the conditions are working as intended to preserve competition for shippers.

III. Conclusion

In light of BNSF's allegations, reviewing Union Pacific's compliance with the UP/SP merger conditions would serve the public interest by clarifying how the conditions are functioning, ensuring compliance, and reinforcing the competitive expectations central to the Board's approval of the UP/SP merger. ACC thus urges the Board to conduct that review.

⁸ *Id.* at 393.

Respectfully submitted,

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Certificate of Service

I certify that I have this day served copies of this petition upon all parties of record in this proceeding by e-mail.

/s/Jason D. Tutrone

Jason D. Tutrone

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