

BEFORE THE SURFACE TRANSPORTATION BOARD

310723

STB Docket No. 36873

ENTERED
Office of Chief Counsel
January 13, 2026
Part of
Public Record

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

JOINT SHIPPER ASSOCIATIONS STATEMENT IN SUPPORT

The American Chemistry Council, Alliance for Chemical Distribution, American Fuel and Petrochemical Manufacturers, and The Fertilizer Institute (collectively the “Joint Shipper Associations”), submit this statement in support of BNSF Railway Company’s (“BNSF”) Motion to Compel, filed with the Surface Transportation Board on January 9, 2026. The Joint Shipper Associations echo BNSF’s concerns that Applicants’ failure to produce basic discovery prevents stakeholders and the Board from meaningfully evaluating the proposed transaction. That failure is untenable in a transaction of this magnitude—the largest rail merger in U.S. history, the first major transaction the Board will decide under its 2001 merger rules, and a merger likely to trigger a complete restructuring of the North American rail industry.¹

¹ See ACC-2 / ACD-2 / AFPM-2 / NITL-2 / TFI-2, at 3 (Nov. 20, 2025).

Applicants have implied that other Class I railroads oppose the UP/NS merger because they are UP and NS's primary competitors.² But this ignores shippers' significant interest in this proceeding.

As BNSF aptly states, the proposed merger "will irreversibly shape American railroading for decades" and that "[t]o date, UP has been at war with its own positions."³ This merger raises enormous concerns for our member companies, who are among the Applicants' largest customers by traffic volume. Furthermore, the Applicants' contradictions undermine their claims that the merger will create tremendous public benefits with virtually no competitive consequences.

Discovery is critical to clarifying the merger's effects. When UP and NS refuse to meet fundamental discovery obligations, they harm all interested parties by withholding information needed to develop informed comments. The proposed merger's immense size and scope magnify this harm.

As interested parties, shippers have a right to review the Applicants' responses to discovery requests from other parties.⁴ But the Applicants' dilatory

² See e.g., UP-17/NS-15, at 2 (implying that the arguments made by other Class I railroad in opposition to the merger were because they are "primarily competitors of Applicants who will experience increased competition as a result of the merger"); Stephens, B., *Union Pacific CEO says merger filing shows strong case for transcontinental railroad*, TRAINS.COM (Dec. 22, 2025) (stating that the Class I railroads are opposing the merger because "[t]hey know competitively they have a competitor that's going to be able to provide a high level of service at a better price.").

³ BNSF-12, at 1.

⁴ To date, Joint Shipper Associations have not served separate discovery requests on Applicants so as not to burden the process with duplicative requests.

tactics prevent shippers from participating adequately in this proceeding. As a result, shippers cannot effectively assess and comment on the merger within the proposed procedural schedule.

To the extent Applicants have confidentiality concerns, they do not justify Applicants' refusal to produce core information. The Board's protective order in this proceeding provides robust safeguards that expressly permit Applicants to designate competitively sensitive materials as "Highly Confidential," with access limited to outside counsel of record and outside consultants who have executed the required undertakings.

Accordingly, the Joint Shipper Associations share BNSF's concerns about the Applicants' discovery responses (or lack thereof), support BNSF's Motion to Compel, and encourage the Board to grant the requested relief.

/s/Jason D. Tutrone
 Jason D. Tutrone
 Jeffrey O. Moreno
 Karyn A. Booth
 Richard M. Couch
 Thompson Hine LLP
 1919 M Street, NW Suite 700
 Washington, DC 20036
 (202) 331-8800

Jason.Tutrone@ThompsonHine.com

*Counsel for American Chemistry
 Council, Alliance for Chemical
 Distribution, American Fuel &
 Petrochemical Manufacturers, and The
 Fertilizer Institute*

Dated: January 13, 2026

Certificate of Service

I certify that on January 13, 2026, I served a copy of the foregoing Joint Shipper Associations' Statement in Support upon the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias and all parties of record in this proceeding by first-class mail, postage pre-paid, or electronically.

/s/ Richard M. Couch

Richard M. Couch