

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
April 29, 2026
Part of
Public Record

Docket No. FD 36873

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

**APPLICANTS' REPLY TO CN'S MOTION TO
COMPEL PRODUCTION OF DATA AND DOCUMENTS
RELATED TO APPLICANTS' 2025 RAIL TRAFFIC**

WILLIAM A. MULLINS
SPENCER M. NAAKE
Mullins Law Group PLLC
2001 L St., NW
Suite 720
Washington, DC 20036
Tel.: (202) 663-7823

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

*Attorneys for Norfolk Southern
Corporation and Norfolk Southern
Railway Company*

MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
MATTHEW J. GLOVER
PEGAH NABILI
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

*Attorneys for Union Pacific
Corporation and Union Pacific
Railroad Company*

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* This pleading is numbered NS-36 to account for the inadvertent use of NS-33 for two prior filings on April 1 and April 7. There is no pleading numbered NS-35.

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Applicants¹ oppose CN's April 10, 2026 Motion to Compel Production of Data and Documents Related to Applicants' 2025 Rail Traffic (the "Motion"). Decision No. 10 prohibits compelled pre-application discovery, and production of the requested data is not required by any Board order or rule. The Board should deny the Motion.

ARGUMENT

A. CN's Motion to Compel Discovery Responses is Untimely

Decision No. 10 provides that applicants are not required to respond to party discovery during the pre-application phase of a major merger proceeding. A party "may be entitled" to certain discovery after a merger application "is accepted by the Board," but cannot compel discovery "during the pre-application phase." Decision No. 10 at 3, *appeal denied*, Decision No. 13.

¹ "Applicants" are Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP") (collectively, "Union Pacific") and Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NS") (collectively, "Norfolk Southern").

CN flouts Decision No. 10 by seeking to compel Applicants to respond to discovery before the Board has received, much less accepted, Applicants' Amended Application. CN filed its Motion on April 10, 2026, twenty days before the announced filing date for the Amended Application.² The Motion is thus untimely.

B. CN's Motion To Compel Does Not Seek Information Required By Either a Board Order or a Board Merger Rule

Pursuant to Decision No. 10, the only information Applicants can be required to produce during the pre-application phase is information required by either a Board order or the Board's merger rules. CN's Motion is improper because Applicants' traffic tape, reciprocal switching, and interchange data for 2025 do not fall into either category.

1. CN is not seeking discovery of information that the Board ordered Applicants to produce.

The Board has not ordered Applicants to produce traffic tape, reciprocal switching, or interchange data for 2025. In Decisions No. 2 and 3, the Board ordered Applicants to produce 100% traffic tapes for the period from 2019 to 2024 and certain other information as described in those Decisions. However, the Board did not order Applicants to produce 100% traffic tape, reciprocal switching, or interchange data for 2025. Thus, CN "has not asked to compel any of the *specific* things that the Board considered necessary and ordered." Decision No. 10 at 3 (emphasis added).

² See UP-27/NS-26. CN's choice of this filing date ensured that Applicants would need to respond to CN's Motion on or before April 30, 2026.

2. CN is not seeking information that Applicants are required to produce under the Board's merger rules.

The Board's merger rules also do not require Applicants to produce traffic tape, reciprocal switching, or interchange data for 2025. CN claims that 49 C.F.R. § 1180.4(b)(4)(iii)'s requirement that applicants produce 100% traffic tapes obligates Applicants to produce traffic tape, reciprocal switching, and interchange data for 2025. *See* Mot. at 5. However, § 1180.4(b)(4)(iii) does not require applicants to produce reciprocal switching or interchange data. Further, § 1180.4(b)(4)(iii)'s context establishes that applicants must produce 100% traffic tapes only for the year they use for their impact analysis. *See* 49 C.F.R. § 1180.4(b)(2)(ii); *cf.* Notice of Proposed Rulemaking, *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), at 140 (summarizing comment tying the benefit of making 100% traffic data available with fact that such data would be used in merger impact analysis). Here, Applicants are using 2023 for their impact analysis, so the Board's rules do not require them to produce 100% traffic tapes for 2025.³

CONCLUSION

The Board specifically ordered Applicants to produce traffic tapes for the period from 2019 to 2024. If the Board wanted Applicants to produce traffic tapes and other information for 2025, it could have ordered that production in Decision Nos. 2 or 3, or in Decision No. 9, when it provided instructions regarding the content of a potential

³ CN's claim that Decision No. 10 is "not applicable" because it "is specifically seeking traffic tapes, and minimal related data necessary to understand the traffic tapes," Mot. at 6, is not correct. Decision No. 10 directly addresses traffic tapes by requiring production of materials ordered by the Board, which include multiple years' worth of traffic tapes—just not the year that CN now seeks to compel.

amended application. However, the Board did not order production of this additional data that is not required by its merger rules. Accordingly, the Board should deny CN's Motion to Compel.

Respectfully submitted,

/s/ William A. Mullins
WILLIAM A. MULLINS
SPENCER M. NAAKE
Mullins Law Group PLLC
2001 L St., NW
Suite 720
Washington, DC 20036
Tel.: (202) 663-7823

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

*Attorneys for Norfolk Southern
Corporation and Norfolk Southern
Railway Company*

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
MATTHEW J. GLOVER
PEGAH NABILI
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
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CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

*Attorneys for Union Pacific
Corporation and Union Pacific
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April 29, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Molly Brown