

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36873<sup>1</sup>

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

Decision No. 15

Decided: April 30, 2026

On December 19, 2025, Union Pacific Corporation (UPC), Union Pacific Railroad Company (UP), Norfolk Southern Corporation (NSC), and Norfolk Southern Railway Company (NS) (collectively, Applicants) filed an application (the Application) seeking Board approval for (1) the acquisition of control by UPC of NSC, and through NSC of NS and NS's rail carrier subsidiaries, and (2) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. After the Board rejected the Application as incomplete without prejudice to refile, Applicants filed a letter informing the Board that they anticipate filing a revised application on April 30, 2026. (Applicants Letter, Feb. 17, 2026); see Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 et al., slip op. at 2 (STB served Jan. 16, 2026).

On March 18, 2026, the Board issued a decision directing Applicants to submit additional information deemed necessary to facilitate the Board's review of a revised application. Union Pac. Corp.—Control—Norfolk S. Corp. (Decision No. 13), FD 36873 et al., slip op. at 2 (STB served Mar. 18, 2026). The Board specified that Applicants must submit ordinary course documents, including certain competition documents; confidential information memoranda; third-party studies, surveys, analyses, and reports; and documents evaluating or analyzing synergies and efficiencies. Id. at 6-7.

In response to Decision No. 13, NS and NSC (collectively, Norfolk Southern), submitted 38 documents designated as Highly Confidential. (See Norfolk S. Letter 1-2, Apr. 7, 2026.) Norfolk Southern also submitted privilege and production logs. Similarly, UP and UPC (collectively, Union Pacific) submitted 36 documents designated as Highly Confidential, as well as a privilege log. (See Union Pac. Letter, Apr. 7, 2026.)

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<sup>1</sup> This decision embraces the following docket: Union Pacific Corp.—Control—Peoria & Pekin Union Railway, Docket No. FD 36873 (Sub-No. 1).

On April 27, 2026, BNSF Railway Company (BNSF) filed a motion to enforce Decision No. 13. BNSF argues that Union Pacific and Norfolk Southern did not satisfy Decision No. 13 because they produced only “selective documents,” rather than “internal candid assessments . . . [that] the Board ordered them to turn over.” (BNSF Mot. 3.) BNSF asserts that missing documents include “emails to and from officers, directors and supervisory deal team leads, as well as other electronic and hard copy files,” competition analyses, and analyses pertaining to synergies and efficiencies. (Id. at 6-12.) BNSF asks the Board to direct Union Pacific and Norfolk Southern to produce all documents required by Decision No. 13, along with a signed affidavit from an officer at each company memorializing their efforts to comply with the Board’s decision. (Id. at 13.)

Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC (CPKC) filed a reply in support of BNSF’s motion on April 28, 2026. CPKC states that Applicants submitted only 74 documents generated over a 140-day period, despite the Board’s order to submit records created between July 30, 2024 and February 17, 2026. (CPKC Reply 1-2, Apr. 28, 2026.) According to CPKC, “[i]t is not credible that the sum total of non-privileged records created or reviewed by senior executives of UP and NS analyzing the alleged synergies of the most consequential merger in this industry’s history would number in the double digits.” (Id. at 2.) CPKC also argues that information UP submitted to the U.S. Securities and Exchange Commission “confirms Applicants’ failure to comply with the Board’s order.” (Id.) CPKC urges the Board to sanction Applicants, including by holding this proceeding in abeyance, drawing adverse evidentiary inferences on certain issues, and precluding Applicants from introducing certain evidence in this proceeding. (Id. at 5-7.)

The Board will order Applicants to file a reply to BNSF’s motion and CPKC’s reply by May 8, 2026 at noon EDT. See 49 C.F.R. § 1104.13(a) (permitting a reply to any motion within 20 days after the pleading is filed, “unless otherwise provided”).

It is ordered:

1. Applicants are directed to reply to BNSF’s April 27, 2026 motion and CPKC’s April 28, 2026 reply by May 8, 2026 at noon EDT.
2. This decision is effective on its service date.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.