

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36873

311297

ENTERED
Office of Chief Counsel
May 8, 2026
Part of
Public Record

**UNION PACIFIC CORPORATION, ET AL.—CONTROL—NORFOLK SOUTHERN
CORPORATION, ET AL.**

**NEW YORK CITY DEPARTMENT OF SANITATION
COMMENTS ON THE COMPLETENESS OF
UP-NS AMENDED APPLICATION**

Communications with respect to this pleading should
be addressed to:

Madelynn Liguori
Director, Regulatory Compliance & Enforcement/
Executive Agency Counsel
New York City Department of Sanitation
125 Worth Street
New York, NY 10013

MLiguori@dsny.nyc.gov

*Counsel for the New York City Department of
Sanitation*

Dated: May 8, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

**UNION PACIFIC CORPORATION, ET AL. - CONTROL—NORFOLK SOUTHERN
CORPORATION, ET AL.**

NEW YORK CITY DEPARTMENT OF SANITATION
COMMENTS ON THE COMPLETENESS OF
UP-NS AMENDED APPLICATION

The New York City Department of Sanitation (“DSNY”) provides its views on the completeness of the revised major merger application filed on April 30, 2026, by Union Pacific (“UP”) and Norfolk Southern (“NS”) (together, the “Applicants”). The application is incomplete because it fails to include information indicating how the operations of the merged railroad will adequately address the matters most consequential to the residents of New York City. DSNY reserves the right to file more detailed comments on the merits of the application.

DSNY is the municipal agency responsible for the lawful collection, transfer, and disposal of municipal solid waste (“MSW”) including recyclables generated by residents, Agencies, and Institutions within the City of New York and is among the **largest freight rail customers in New York City**. DSNY operates a network of marine and rail transfer stations from which several thousand containers of MSW are exported annually by rail to disposal facilities located in the Mid-

Atlantic, Southeast, and Midwest. The majority of DSNY's rail traffic moves on CSX Transportation, Inc. ("CSX"), with meaningful volumes also moving on or interchanging with NS—directly via Conrail Shared Assets Operations ("CSAO") in North Jersey and indirectly through interchanges further west.

DSNY thus comes to this proceeding as a *captive shipper of an essential public health service*. The lawful and timely export of MSW is not a discretionary commercial activity; it is a core sanitation and public-health function for the most populous city in the United States. The reliability of freight rail service is, accordingly, a matter of direct concern to the eight-and-a-half million residents DSNY serves. DSNY takes no position at this time on whether the proposed transaction should ultimately be approved. DSNY does, however, believe that the amended application submitted by UP and NS lacks critical information to ensure the adequacy of essential MSW services that is required by the Board's regulations. DSNY urges the Board to require that this information be made available in order for the Board to accurately assess the merger's impacts on the shipment of MSW.

The Revised Application Contains Inadequate Discussion of the Effects on Efficient and Competitive Service in the New York-New Jersey Market

DSNY's most fundamental concern across this proceeding is the **quality and reliability of service** for traffic moving to and from the New York metropolitan region. DSNY's waste-export operations—and the orderly functioning of the City's sanitation system—depend on consistent rail service across multiple long-haul lanes. The City and its residents cannot absorb the kind of multi-month service disruptions that have followed prior Class I integration events, including the 1999 split of Conrail. Even short-duration rail service disruptions can cause loaded MSW containers to accumulate at City marine and rail transfer stations and delay return of replacement containers for refill, with cascading public health, traffic, and environmental consequences for densely populated neighborhoods.

UP and NS are required under the Board's regulations to submit a Service Assurance Plan that allows "individual shippers to evaluate the projected improvements and changes, and respond to the potential areas of service degradation for their customary traffic routings." *See* 49 C.F.R. 1180.10. Yet the application submitted to the Board avoids discussion or analysis of how the merged railroad's operations will impact CSAO territory in the City and Northern New Jersey, which serves as a critical lynchpin in connecting shippers to the new major transcontinental routes that UP and NS propose. Moreover, because there is no discussion of the CSAO network, there is

no explanation regarding how the competitive dynamics between NS and CSX, which own the CSAO network, will affect shippers.

Because the majority of DSNY's rail traffic ultimately moves on CSX, **efficient and non-discriminatory interchange between the merged UP-NS carrier and CSX is essential to the continued functioning of the City's waste-export system.** DSNY is particularly concerned that the operational disruptions historically associated with Class I integrations—and the kinds of interchange failures that have, in past consolidations, manifested as missing cars, extended dwell, and degraded car-supply performance—not be permitted to repeat themselves at any major UP-NS-CSX interchange. The City's waste-export operations cannot tolerate a new Class I configuration that substitutes one set of interchange failures for another.

DSNY operates today with **limited competitive leverage** in its long-haul waste-export markets. With only two effective Class I options for waste exports, DSNY already faces constrained and at times opaque and inconsistent pricing discipline for both line-haul service and the equipment rentals—intermodal containers, flatcars, and other specialized equipment—on which its operations depend. The proposed transaction, which would consolidate one of those two options into a much larger system controlling roughly 40 percent of U.S. freight rail traffic, threatens to further reduce what limited competitive tension exists in this market today.

This concern is heightened by DSNY's status as a captive public-agency shipper. Unlike a private commercial shipper, DSNY cannot meaningfully shift its volumes to alternative modes; trucking the City's MSW long distances would impose unacceptable congestion, emissions, and infrastructure costs on the region's roadways and is inconsistent with the City's state-approved Solid Waste Management Plan. The revised application fails to reflect how the merged operations will support such significant essential services.

As Canadian National (CN) argued, and as the Board has previously recognized, the lessons of prior Class I mergers point unambiguously to the need for an enforceable, **merger-specific service assurance plan.** Such a plan should establish, at minimum, defined service-quality metrics, a public reporting cadence, escalation procedures, and a backstop mechanism to compensate affected shippers in the event of demonstrated service degradation. DSNY respectfully submits that the revised application's general assertions of growth and improvement do not perform the function of a true service assurance plan, and that the application is accordingly incomplete. DSNY asks that the application detail information sufficient to enable shippers to adequately assess whether, at a minimum, the principal lanes serving the New York metropolitan region—both westbound lanes that enable the export of the City's MSW and eastbound lanes that enable the

timely return of critical equipment—are adequately and efficiently served by competitive rail service.

The Revised Application Fails to Consider MSW as an Essential Public-Health Function

The application fails to adequately discuss MSW as an essential rail service with unique public interest considerations as is required under the Board’s regulations. *See* 49 C.F.R. 1180.1(c)(2)(i). MSW is not a discretionary commodity. It cannot be warehoused, deferred, or rerouted to alternative facilities without significant public health and environmental risk. Disruption of MSW rail service, even of short duration, can cause containers to accumulate at the City’s transfer stations, generate odor and pest issues in surrounding communities, and impair the City’s ability to discharge its core sanitation function for more than eight million residents. It perfectly fits the definition of an essential service that the Board is required under its regulations to ensure is preserved and strengthened, not undermined. *See* 49 C.F.R. 1180.1(c)(2)(i).

Under the Board’s regulations, UP and NS are required to provide supporting information regarding “[t]he effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.” 49 C.F.R. 1180.6(a)(2)(iv). Yet UP and NS’s application fails to provide any detail regarding the continuation of essential MSW, other than noting that its new Northeast to Southeast Route “see considerable shipments of waste” in its Operating Plan. UP-NS Application at 2-665. While UP and NS use 20 pages of their Service Assurance Plan to explain coordination of freight and passenger operations, another essential service, municipal solid waste shipments are not even mentioned here. This is simply not an adequate description of the effect of the proposed transaction upon the adequacy of MSW shipments.

The lack of any discussion constitutes a significant inadequacy, particularly given the scope of this transaction and the disruptive impacts it could have on the rail network. DSNY’s waste-export operations **require timely and predictable availability of intermodal containers, flatcars, and other specialized equipment**. Service-quality degradation following prior Class I integration events has frequently manifested first as equipment shortages and uneven car-supply performance, well before broader service disruptions become visible. The service assurance plan and reporting requirements adopted in this proceeding should expressly include car-supply and equipment-availability metrics and should provide a clear escalation path when equipment shortfalls threaten the continuity of essential municipal services.

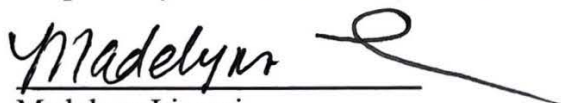
DSNY accordingly requests that the Board require UP and NS to adequately address the adequacy of essential MSW service, and reject the application with leave to file an amended application that contains adequate discussion of this service for the City and all municipalities. This recognition is consistent with the Board's statutory mandate to consider the public interest, including the strengthening of essential rail service, and with longstanding federal policy treating sanitation services as essential public functions. *See* 49 C.F.R. 1180.1(c)(2)(i).

Conclusion

DSNY does not take a stance on the merits of the application and does not at this time formally object to the Board's ultimate acceptance of the revised application once adequate information is provided regarding ensuring efficient and competitive service are available to serve essential MSW service. DSNY does, however, wish to put the Applicants and the Board on notice of the matters set forth above, and reserves the right to file additional comments, evidence, and proposed conditions at the merits stage of this proceeding; including conditions developed in coordination with other public-agency commenters such as the New York City Economic Development Corporation, the Port Authority of New York and New Jersey, the New York Metropolitan Transportation Council, and the New York State Department of Transportation.

DSNY appreciates the Board's consideration of these comments and stands ready to provide any additional information that may be useful as the Board discharges its statutory responsibility to ensure that any approval of this transaction is consistent with the public interest. DSNY is a firm believer in the value of the nationwide rail network as a key component, with growth potential, of an efficient resource management system, contributing to domestic economic activity and industrial development.

Respectfully submitted on May 8, 2026.

A handwritten signature in black ink, appearing to read "Madelynn", followed by a long, sweeping horizontal line that extends to the right.

Madelynn Liguori

Director, Regulatory Compliance & Enforcement/Executive Agency Counsel

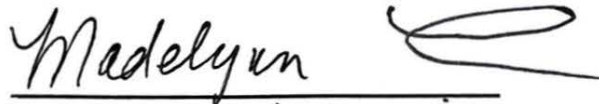
New York City Department of Sanitation
125 Worth Street
New York, NY 10013

mliguori@dsny.nyc.gov

Counsel for New York City Department of Sanitation

CERTIFICATE OF SERVICE

I certify that on May 8, 2026, I caused to be served a copy of the foregoing Comments on the Completeness of UP-NS Amended Application upon all parties of record in this proceeding by email or U.S. Mail.



Madelyn Higuori

Dated: May 8, 2026