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July 20, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

BNSF-41

Re: Docket No. FD 36873, Union Pacific Corp., et al. – Control – Norfolk Southern Corp. et al.

Dear Chief of Case Administration:

On July 7, Applicants filed their First Submission to Decision No. 21, responding to the Board's questions on the Terminal Railroad Association of St. Louis ("TRRA"), Kansas City Terminal Railway ("KCT"), and TTX Company ("TTX"). In that submission, Applicants also propose a separate procedural schedule to resolve their self-created TRRA control issues. *See* UP-68/NS-66. BNSF opposes the proposed (piecemeal) schedule for TRRA, and more broadly, Applicants' backward strategy of placing the burden of solving their merger-created problems on the Board and other stakeholders.

Applicants have submitted their case, and the Board should address TRRA, TTX, and KCT together as part of the omnibus merits review. BNSF welcomes a commercially and operationally reasonable path forward for these shared entities if the Board somehow finds that the UP/NS merger is in the public interest. These are issues that UP and NS need to solve through negotiation and by bringing a full proposal to the Board. The Board should reject the proposed separate schedule related to TRRA, and, instead, set an omnibus schedule to review all the issues related to the Revised Application after the abeyance period ends.

Applicants' July 7 submission underscores a fundamental problem with the UP/NS approach to these proceedings: UP and NS filed a major merger application without resolving critical issues in advance. In the past, major merger applicants have worked with other stakeholders in advance of filing an application to address a variety of issues—including providing shippers that would lose a railroad option with a competitive replacement or restructuring jointly-owned facilities to address a new balance of power. In this case, Applicants chose not to follow that course. They filed first, declined to meaningfully engage with affected parties, and now demand that the Board solve their problems for them. For TRRA, Applicants present five options palatable to UP without selecting one, leaving the Board and other parties to evaluate a menu of hypotheticals rather than a concrete proposed transaction. For TTX, Applicants acknowledge that

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the merger would give them majority ownership and disproportionate influence over this critical industry resource, yet they offer only a conditional divestiture mechanism with no fully formed plan. For KCT, they dismiss competitive concerns that stakeholders—and the Board itself—identified.

The pattern is the same for each entity: Applicants preserve maximum optionality for themselves, flip the burden to other stakeholders and the Board, and ask the Board to cram down whatever option survives as a merger condition—overriding third-party contractual rights and state law as necessary to implement the path that Applicants ultimately choose. This is not consistent with good process, an informed review, or the public interest.

Applicants Cannot Recast Their Failures as Obstruction By Others

TRRA is a rail carrier collectively owned by UP, NS, BNSF, CSX, and Illinois Central Railroad (which is owned and operated by CN). UP-68/NS-66 at 5. If you combine UP’s and NS’s ownership, it would be well above 50% and indisputably provide a combined UP/NS “control” of TRRA. *See id.* Such control would require Board approval. But instead of filing a control application or making a concrete “non-control” proposal, Applicants point the finger at other stakeholders, suggesting that those stakeholders obstructed UP and NS’s purported good-faith efforts to reach a solution up front. They assert that avoiding control of TRRA would be “straightforward” if *other* owners cooperated, accusing those owners of “using TRRA as a pawn” to defeat the merger. *Id.* at 2. That accusation is baseless and in conflict with the record.

To start, Applicants point to a UP-directed notice issued less than two weeks prior to a February 2026 special meeting of TRRA’s board. *See id.* at 3. This meeting, Applicants say, was a function of “their efforts to cooperatively address the other owners’ purported concerns.” *Id.* But Applicants’ special meeting was *not* a good-faith session to discuss and develop solutions; it was a rushed attempt to force a formal vote and proxy process, which required other owners to commit to (or decline) purchasing TRRA shares on terms UP dictated, on short notice, and without any specifics necessary for an informed decision (not even a price term):

Make a Mark in the Box on the left to indicate your election

- ☐ Shareholder hereby commits to acquire the Subject Shares, subject to and conditioned upon the consummation of the merger transaction between Union Pacific and Norfolk Southern.
- ☐ Shareholder hereby does NOT commit to acquire the Subject Shares, subject to and conditioned upon the consummation of the merger transaction between Union Pacific and Norfolk Southern.

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BNSF did not refuse to engage; it exercised its right to object to UP's deficient notice (consistent with TRRA's governing documents and Missouri law). BNSF had, and *has*, no obligation to acquiesce to an improper meeting or vote, and BNSF made UP and NS aware of that position well in advance of the meeting date.

To be clear, UP has neither proactively engaged BNSF to negotiate a resolution nor made an attempt at meaningful conversation on a path forward. While BNSF remains ready to discuss a sensible solution, it will not agree to a cram-down restructuring that offloads Applicants' merger-created problems while risking harm to TRRA, shippers, and the St. Louis gateway. BNSF also notes that CN's argument that the proceeding should remain in abeyance is complementary; the Board should not be rushed into evaluating hypothetical restructuring options while the broader Revised Application is under merits review. *See* CN-23 at 2, 7.

TRRA: Applicants Seek a Cramdown Without Presenting a Concrete Solution

TRRA is *not*, as UP CEO Jim Vena has characterized it, just a "tiny little railroad."¹ St. Louis is a critical gateway in the heart of America's rail network. TRRA manages complex traffic and operational issues at that gateway, owns and operates the Merchants Bridge and MacArthur Bridge, a switching facility in Madison, Illinois, and rail lines through St. Louis and nearby Illinois counties. All six Class I railroads use TRRA to interchange traffic and it sits at the center of Applicant's much-touted "Watershed" growth region.²

The UP/NS merger would create direct control issues for TRRA, in which UP/NS would hold majority ownership (57% of the entity and four of the seven board seats). *See* UP-68/NS-66 at 5. TRRA ownership interests involve benefits—like a voice in the operations—and substantial

¹ Jim Vena was interviewed live on Fox Business's *Mornings with Maria*. He was asked: "What specifically do you need to provide in order to get this [proposed merger] across the finish line?" He responded in part: "They wanted more detail on what we're going to do with a *tiny little railroad* that we own in partnership in St. Louis." FOX BUSINESS, *Mornings with Maria* (streamed June 24, 2026, at 08:40 am ET), at 06.14.64-06.39.76, <https://www.foxbusiness.com/video/6399264675112>.

² UP/NS's merger marketing materials belie Mr. Vena's dismissive characterization: "Steel, grain, lumber, chemicals and manufactured goods move through the Watershed region each year. This is the stretch of the country within roughly 250 miles of the major gateways between eastern and western railroads. It includes Chicago, *St. Louis, Kansas City*, Memphis, Birmingham, Louisville and New Orleans — *some of the most important freight hubs in North America* . . . Of the 88,000 new county-to-county lanes enabled by the [new single-line service] network, 45,000 are in Watershed markets." *See A faster way across the country (The Impact-Watershed Markets)*, UP-NS TRANSCONTINENTAL, <https://www.up-nstranscontinental.com/the-impact/watershed-markets> (last visited July 20, 2026).

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burdens—like capital requirements. How these benefits and burdens are allocated, and to whom, are critically important to the long-term future of TRRA and the St. Louis gateway.

Rather than present a single TRRA “non-control” proposal, Applicants ask the Board to run a parallel mini-proceeding to adjudicate (but not necessarily choose between) their menu of five hypothetical options. Only after the record has closed in the main merger proceeding would Applicants select an option and then have the Board impose it as a condition to any approval of the primary transaction. Applicants ask the Board to make this “determination” for a TRRA restructuring that *Applicants’* proposed merger makes necessary, which they would cram down on BNSF and other TRRA owners by fashioning the transaction as a condition on merger approval. That is burden-shifting, not problem-solving. And it has fundamental flaws:

Control of TRRA is part of the Application, not a freestanding proceeding. The Board held this proceeding in abeyance pending supplemental information and review, and noted that TRRA, KCT, and TTX are part of its broader public-interest assessment. *See* Decision No. 21 at 27. Applicants should not be permitted to carve TRRA out of that process and select an option after the record has closed in the main proceeding. Nor should the Board be forced to pick among hypothetical, half-formed divestiture options. UP and NS’s choice was binary: control TRRA (and file the significant control application the Board already required) or not control TRRA (and present a complete non-control solution). It is too late to pursue either of these paths now, as though Applicants did not initiate proceedings a year ago.

Applicants’ July 7 submission leaves TRRA’s future structure unknown. With their menu of five options, Applicants have identified a list of hypotheticals, not a transaction for approval. Applicants identify no agreed counterparty, no price, no final terms or closing conditions, and no concrete documentation for assessing the operational, financial, and governance consequences *for any of the options*. Moreover, *every option* would require third-party action that Applicants still have yet to secure. The time for this work was Summer 2025, not the middle of a contested merger review.

Applicants fail to resolve key operational and financial questions. Restructuring ownership of an entity like TRRA is neither self-executing nor costless. Applicants acknowledge bridge repair plans and agreements, but they say they have no plan to invest in or assume TRRA liabilities beyond existing obligations. *See* UP-68/NS-66 at 35-36. They conclude that TRRA’s Operating Agreement supplies funding mechanisms, and they *say* that UP/NS would *support* rate and fee increases to cover fixed costs. *See id.* at 37. But TRRA is largely a cost center that provides gateway, bridge, switching, and terminal functions and could require significant additional investment beyond its fixed costs and maintenance expenses. If Applicants’ proposal would materially reduce traffic or shift costs away from UP/NS and onto the remaining owners, that would further threaten TRRA’s ability to continue serving its neutral gateway function for shippers and connecting railroads, and almost certainly result in increased rates for shippers who depend

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upon TRRA's services. Real questions remain about who will pay for TRRA investments, who will benefit, and how shippers will be impacted—particularly when Applicants claim the merger will materially *increase* rail traffic in the Watershed Region—exactly where TRRA sits.

In sum, the Board's merger rules do not contemplate a separate schedule for competitive remedies. Control of TRRA is part of the Application, not a freestanding proceeding. Applicants should not be permitted to create a parallel process for TRRA simply because they want to preserve the ability to select a preferred option *after* the evidentiary hearing. Applicants run afoul of the principle the Board identified in May: the Board "will not launch a procedural schedule that in effect places undue burden on the commenting parties to ascertain and evaluate important information about the Transaction." Decision No. 21 at 18.

TTX: Applicants Would Force Other Shareholders to Fund the Competitive Status Quo

Applicants' TTX proposal presents a distinct but equally serious problem. TTX is a railcar pooling company that supplies intermodal and other equipment across the entire rail industry. Applicants acknowledge the merger would give them majority ownership and disproportionate influence over TTX. *See* UP-68/NS-66 at 52. Put differently, the merger would obliterate the joint ownership balance that currently preserves competition. This is not a theoretical concern. Intermodal already represents a substantial volume on the U.S. rail network. UP and NS have specifically identified intermodal growth as the essential driving force of the proposed merger, *see* UP-NS Rev. Merger App. Vol. 1 at 29, and that scale of growth, if achievable, would depend in significant part on access to TTX's railcar fleet. Therefore, a combined UP/NS erases the neutral competitive status of TTX; a combined UP/NS could, for example, be incentivized and empowered to change the TTX rules that it touts as protecting competition.

Applicants say they prefer simultaneous divestiture on "commercially reasonabl[e] terms," but they are still only offering a bare "promise" to work it out later. *See* UP-68/NS-66 at 52. Applicants thus offer only a conditional mechanism—one that would result in a windfall profit of hundreds of millions of dollars to Applicants—rather than a completed divestiture plan that protects the public interest. Other TTX shareholders should not be forced to spend well into nine figures to preserve competition or to subsidize Applicants' merger. These problems are not limited to BNSF—they threaten all non-Applicant railroads and shippers who depend on these shared industry facilities remaining neutral, workable, and competitive after the merger. Applicants' merger-created problems are for *Applicants* to solve, not burdens to shift. Like TRRA, UP should have done all this work ahead of time. BNSF will address the substantive merits of these issues more extensively if the Board decides that Applicants have pleaded a sufficient case and proceeds to consider Applicants' proposal.

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KCT Presents Analogous Concerns

KCT is owned by UP, NS, BNSF, and CPKC. *See id.* at 41. All four owners use KCT to interchange traffic with each other at a key gateway in the Watershed Region. If the merger is approved, a combined UP/NS would own 50% of KCT, while BNSF and CPKC would each own 25%. *Id.* Applicants claim there has been “no suggestion that [Applicants’ majority KCT] ownership stake will harm competition, shippers, or other railroads.” *Id.* at 38. That is wrong. The Board itself concluded that Applicants’ “substantial ownership interests” may have competitive impacts, which the Board must be able to consider in its review of the proposed Transaction. Decision No. 21 at 27. And BNSF (among others) raised concerns about a combined UP/NS’s stake in KCT in its May completeness comments. *See* BNSF-24 at 5. As the question then was completeness, *see* Decision No. 21 at 12, BNSF will address its merits concerns regarding KCT if and when the Board moves this proceeding into that phase. The Board has been clear that control is a fact-based inquiry. As a 50% owner of KCT, with two remaining 25% minority owners, UP/NS could dominate the KCT governance structure and control KCT’s decision-making. Notwithstanding any protections built into the KCT governance documents, UP/NS’s 50% ownership and control of six of the 12 directors on the KCT board could enable UP/NS to effectively block any proposal made by BNSF and CPKC that requires majority support.

Applicants’ Responses Only Underscore the Impropriety of Their Approach

Applicants’ responses as to TRRA, TTX, and KCT are not isolated deficiencies; rather, Applicants’ First Submission serves to highlight two fundamental problems consistent with Applicants’ overall approach to review of the proposed transaction:

Applicants Present an Incomplete Proposal. UP and NS filed a major merger application *before* taking the time to resolve key governance, control, and operational issues at critical gateways. Applicants should have applied for authority to control TRRA. *See* Decision No. 9 at 11; Decision No. 21 at 5. Instead, they now ask the Board to condition any approval of their merger on forcing BNSF and other TRRA owners to implement a TRRA restructuring transaction that would potentially solve Applicants’ self-created issue. They do this through a one-sided and tortured proposed schedule. Again, BNSF welcomes a path forward on TRRA, if the proposed merger is ultimately approved, but it is not BNSF’s responsibility to bear the costs of Applicants’ incomplete proposal.

Applicants Treat the Review Process as a Negotiation. UP and NS continue to treat the major merger application process like a negotiation rather than a regulatory review of a specific proposed (and non-changing) transaction that is governed by rules. A merger proceeding is not a bargaining process that leaves Applicants with the ability to switch course after the record closes. UP and NS must present an application that the Board can reject, approve with conditions, or approve as-proposed. The Board and other stakeholders should not be left to solve problems the

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proposed merger would cause—here, by picking a “favorite” among five options for TRRA, getting Board feedback, and then having UP and NS ultimately choose one *after* the evidentiary hearing on the primary application. *See* UP-68/NS-66 at 12.

* * * * *

The Board and other stakeholders should not be burdened with solving problems that Applicants chose not to resolve before filing their application. The Board should reject Applicants’ proposed separate procedural track for TRRA and review TRRA, TTX, and KCT as part of the broader merits review of the Revised Application. Applicants’ treatment of these entities creates and compounds issues that would be caused by the proposed merger and should be treated as such.

Sincerely,

/s/ Daniel T. Donovan

Daniel T. Donovan

CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be served electronically or by first-class mail, postage prepaid, on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Onika K. Williams

Attorney for BNSF Railway Company

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