

SERVICE DATE – JULY 21, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32760 (Sub-No. 48)

BNSF RAILWAY COMPANY—PETITION FOR ENFORCEMENT—
SERVICE TO GRANITE MOUNTAIN QUARRIES

Digest:¹ The Board denies the amended petition by BNSF Railway Company (BNSF) seeking enforcement of conditions imposed by the Board as part of the Union Pacific Corporation/Southern Pacific Rail Corporation merger approval. The Board finds that BNSF has failed to demonstrate that the merger conditions give it the right to serve a facility known as Granite Mountain Quarries.

Decided: July 21, 2026

On February 8, 2024, BNSF Railway Company (BNSF) filed a petition seeking enforcement of the Board’s 1996 decision approving the merger between Union Pacific Railroad Company (UP) and Southern Pacific Rail Corporation (SP) (UP-SP Merger). Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 44), 1 S.T.B. 233, 364 (1996). BNSF asks the Board to issue an order stating that a facility known as Granite Mountain Quarries (Granite Mountain) is a “2-to-1 Shipper Facility” located at a “2-to-1 Point” pursuant to the terms of the revised BNSF-UP settlement agreement that was imposed as a condition of approval of the UP-SP Merger. BNSF sought such a determination so that it may invoke what it believes to be its right under the revised settlement agreement to serve Granite Mountain.

In a decision served on June 30, 2025, the Board found that there was insufficient information in the record to determine if Granite Mountain is a 2-to-1 Shipper Facility. BNSF Ry.—Pet. for Enf’t—Serv. to Granite Mountain Quarries (June 2025 Decision), FD 32760 (Sub-No. 48), slip op. at 5-6 (STB served June 30, 2025). However, because there was information in the record to suggest that Granite Mountain may have been served by affiliates of UP and SP at the time of the UP-SP Merger, the Board provided BNSF an opportunity to take discovery from UP to determine if there was evidence that supported BNSF’s request. Id. at 6-7.

On November 20, 2025, BNSF filed an amended petition (Amended Petition), again requesting that the Board enforce the merger condition that would enable BNSF to serve Granite Mountain. On December 22, 2025, UP filed a reply disputing BNSF’s right of access. For reasons discussed below, the Board finds that BNSF has not demonstrated that Granite Mountain

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

was open to reciprocal switching (or was otherwise dual-served by UP and SP) at the time of the UP-SP Merger and, therefore, BNSF's Amended Petition for enforcement will be denied.

BACKGROUND

History of this Proceeding. The history of the UP-SP Merger conditions and the procedural history of the current proceeding were discussed in detail in the June 2025 Decision, FD 32760 (Sub-No. 48), slip op. at 2-4. In short, as a condition of the UP-SP Merger, the Board imposed the terms of a settlement agreement between UP and BNSF that (among other things) were intended to ameliorate potential competitive harms and protect shippers that would lose access to a second rail carrier, i.e., "2-to-1" Shippers. Decision No. 44, 1 S.T.B. at 242-43, 246-47, 419. The settlement agreement did so by allowing BNSF to replicate, to a large extent, the competitive service that would be lost when SP was absorbed into UP. Id. at 368, 372-73. In 2001, UP and BNSF updated the settlement agreement to incorporate the additional conditions imposed by Decision No. 44 and the Board's subsequent interpretations thereof. The updated settlement agreement, which was entered into on March 1, 2002, is titled the Restated and Amended Settlement Agreement (RASA). The Board approved the RASA in the context of its oversight of the implementation of the UP-SP Merger. See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 5 S.T.B. 1173, 1174, 1178 (2001). A copy of the RASA is provided as Exhibit 1 of BNSF's Amended Petition.

In its initial petition in this proceeding, BNSF stated that it had sought to invoke its rights under the RASA to access Granite Mountain but that UP had refused on three separate occasions, providing different explanations for its refusal each time.² (BNSF Pet. 3-4.) BNSF asserted that, under the RASA, Granite Mountain was a 2-to-1 Shipper Facility at a 2-to-1 Point, based on a specific tariff provision (Item 2525) in place at the time of the merger. (Id. at 5-8.) On February 26, 2024, a customer of Granite Mountain, CRH Americas, Inc., filed a letter in support of BNSF's petition.

On reply, UP disputed BNSF's assertion that Granite Mountain was served by both UP and SP via reciprocal switching at the time of the merger. According to UP, the tariff provision cited by BNSF did not allow SP to provide line-haul service to Granite Mountain via reciprocal switching but only granted SP inter-terminal switching rights, i.e., movements to points within the limits of the Little Rock switching district. (UP Reply 3-6, Mar. 13, 2024.) BNSF filed a rebuttal claiming that UP's reading of Item 2525 was incorrect, to which UP submitted a brief surrebuttal.

In the June 2025 Decision, the Board found there was insufficient information in the record to determine conclusively whether Granite Mountain received line-haul service from both UP and SP at the time of the merger. June 2025 Decision, FD 32760 (Sub-No. 48), slip op. at 5-

² BNSF stated that in response to its request for access, UP first claimed that Granite Mountain did not qualify as a 2-to-1 Shipper because it was open to both SP and another carrier, Little Rock & Western Railway (LRWN). (BNSF Pet. 2-4.) According to BNSF, UP switched rationales, ultimately taking the position that SP had only inter-terminal switching rights to Granite Mountain. (Id. at 3-4.)

7. The Board explained that, on the one hand, a plain reading of the tariff from that time supported UP's interpretation, as the tariff listed those shippers open to reciprocal switching by SP, and Granite Mountain was not among them. Id. at 5-6. On the other hand, the tariff provision included an additional limitation: it could only be used by shippers not served by UP's predecessor, Missouri Pacific (MP). BNSF argued that under this limitation, there would be no shippers permitted to request an inter-terminal switch, which would have made the tariff provision superfluous. Id. at 6. Unable to make a determination based on the record that had been developed, the Board found that additional information regarding the nature of any service provided by SP to Granite Mountain at the time of the UP-SP Merger could be helpful in determining the meaning of Item 2525. Because UP was the party most likely to possess such information, the Board allowed BNSF to take discovery from UP regarding any matter relevant to whether SP provided service to Granite Mountain at the time of the merger. Id. at 6-7. The decision provided that, after discovery was completed, BNSF could file an amended petition for enforcement based on any additional relevant information and argument.³ If such a petition were filed, UP would be permitted to reply. Id. at 7.

BNSF's Amended Petition and UP's Reply. BNSF filed its Amended Petition on November 20, 2025, renewing its request for a Board order confirming it may serve Granite Mountain. BNSF states that it served discovery on UP requesting records relating "to any service by SP to Granite Mountain prior to the [UP-SP] Merger regardless of the manner of service" but that UP responded that it could not identify any such records. (BNSF Am. Pet. 10-11.) BNSF nonetheless argues that "the evidence in this proceeding establishes that Granite Mountain was open pre-merger to both UP and SP," reiterating arguments from its original filings as to why its interpretation of Item 2525 is correct. (BNSF Am. Pet. 4-5, 9-10.) BNSF also reiterates how UP's position has changed throughout this proceeding. (Id. at 6-9.) BNSF argues that the Board should take UP's original position—that Granite Mountain was open to reciprocal switching (but could not invoke the RASA because it was also served by LRWN)—as a "binding admission" or, alternatively, as "strong evidence" in support of BNSF's petition. (Id. at 6.)

BNSF also argues that UP did not adequately search its records. In particular, BNSF states that in response to its request for documents relating to "reciprocal switching movement by UP for Granite Mountain," UP responded that it did not locate any records "from 1997 to July 2025." (Id. at 11.) BNSF asserts that this means UP did not search for the years prior to 1997, which is the relevant time period to determine whether a shipper facility was a 2-to-1 Shipper Facility. (Id.). According to BNSF, it is thus unclear whether UP possesses relevant pre-merger records. (Id.)

On December 22, 2025, UP filed a reply in which it argues that the Board should dismiss BNSF's Amended Petition because BNSF fails to present any evidence that SP provided line-

³ The Board directed BNSF to address two additional legal questions in any amended petition: (1) whether Item 2525 permitted SP to provide only carload service to Granite Mountain, and (2) whether Granite Mountain's ability to be served by a third carrier, LRWN, would make the facility a "3-to-2" point. June 2025 Decision, FD 32760 (Sub-No. 48), slip op. at 7-8.

haul service to Granite Mountain at the time of the UP-SP Merger. UP responds to BNSF's allegations that UP's search of its records was incomplete, stating that it "conducted a thorough, good faith search for *any* documents showing SP provided *any* service to Granite Mountain at or before the time of the UP-SP Merger," but no such documents exist "because SP did not serve Granite Mountain at or before" the merger. (UP Reply 3-5, Dec. 22, 2025.) UP also provides and cites to a verified statement submitted by Granite Mountain in support of the UP-SP Merger in which Granite Mountain stated that its "rail service is handled by the Union Pacific Railroad." (Id. at 5-6; see also UP Reply, Ex. 2, Mar. 13, 2024.)

DISCUSSION AND CONCLUSIONS

After considering the record, the Board will deny BNSF's Amended Petition. Despite having conducted discovery of UP, BNSF has provided no additional evidence to demonstrate that SP accessed, or had access to, Granite Mountain for any service other than inter-terminal switching.

With no such evidence, the Board finds that UP has offered the more convincing interpretation of the relevant tariff—namely, that Granite Mountain was not open to SP via reciprocal switch at the time of the UP/SP Merger. As BNSF argues, inclusion of Granite Mountain in Item 2525 for purposes of inter-terminal (but not reciprocal) switching might have been of little utility given that inter-terminal switching was limited to facilities within the Little Rock switching district not served by MP.⁴ More persuasive, however, is that the UP tariff's list of shippers in the Little Rock area that SP had the right to access via reciprocal switching does not include Granite Mountain, a fact for which BNSF has offered no explanation. Moreover, Granite Mountain's verified statement in support of the UP-SP Merger that Granite Mountain's rail service "is handled by the Union Pacific Railroad," without mention of service by SP, suggests that Granite Mountain was not served by SP via reciprocal switch at the time of the merger. (UP Reply, Ex. 2, Mar. 13, 2024.) Further, in touting the benefits of the UP-SP Merger, Granite Mountain noted that the merger would "afford [it] the opportunity to sell rail ballast to the SP roadbeds in our market area and a variety of aggregates to the new, market areas served by the merged company." (Id.) If Granite Mountain did in fact have access to SP at the time of the merger, it is unlikely Granite Mountain would have made a statement about potentially accessing SP in the future.

BNSF argues that UP's search of its records for relevant materials was deficient. (BNSF Am. Pet. 11-12.) BNSF argues that because UP is the party that should have access to the information or records needed to determine if a shipper facility is a 2-to-1 Shipper Facility, UP has "the burden of proof regarding the historic status of shipper facilities." (Id.) BNSF claims

⁴ As the Board noted, the fact that UP has interchanged with LRWN on numerous inter-terminal moves for Granite Mountain has little relevance as to whether it interchanged with SP for reciprocal switch moves at the time of the UP-SP Merger. June 2025 Decision, FD 32760 (Sub-No. 48), slip op. at 6. However, UP's history of interchanging with LRWN may be evidence of UP's willingness to waive any restrictions in Item 2525 on the use of inter-terminal switching to MP-served facilities, and in turn may explain why Granite Mountain was included in Item 2525 notwithstanding any such limitations.

that if this were not the case, UP would have no incentive to retain such documents. (*Id.* at 12.) BNSF also argues that UP and SP bore responsibility to retain such records because they were the applicants in the merger proceeding. (*Id.* at 12 n.15.) BNSF argues that between UP’s “failure” to produce the requisite service records and its prior statement that Granite Mountain was open to reciprocal switching from SP, the Board should treat that UP statement as an “irrebuttable admission.” (*Id.* at 12.) In response, UP argues that BNSF’s position would amount to the imposition of a new merger condition to retain records and that the Board’s rules only require railroads to retain shipping documents for one year and tariff documents for three years. (UP Reply 7, Dec. 22, 2025.) It also points to a statement BNSF made to the Board in 2013 that “all of the two to one individual shipper facilities have been identified” pursuant to a “protocol” for “identifying which ones were open to UP and SP and no other carriers.” (*Id.* at 6 n.6 (citing Ex. B at 2-3).)

Under the RASA, a 2-to-1 Shipper Facility is one that was “open to both UP and SP . . . when the 1995 Agreement was executed.” (BNSF Am. Pet., Ex. B, RASA 3 (under definition of “‘2-to-1’ Shipper Facilities”).) While UP states that it only “searched for data regarding reciprocal switch movements by Union Pacific for Granite Mountain from 1997 to July 2025,” UP also explains to BNSF that this information “reflects the extent of the data reasonably available to Union Pacific on the subject of reciprocal switch moves.” (BNSF Am. Pet., Ex. 5 at 2.) UP also states in its reply that it searched for records “at or before the time of the UP-SP Merger” and that “[n]o evidence exists that SP served Granite Mountain at the time of the UP-SP Merger.” (UP Reply 4, Dec. 22, 2025.) UP further states that it “looked for all documents BNSF requested, in every location where such documents could reasonably exist, but found no evidence that SP served Granite Mountain at or before the time of the UP-SP Merger.” (*Id.* at 5.) Based on these representations, UP’s search of its records under the circumstances was sufficient.⁵

BNSF’s argument that UP bears the burden of establishing the historic status of its shippers’ facilities is unconvincing. The Board typically allocates the burden of proof to the party seeking a Board order. Walkersville S. R.R.—Discontinuance of Serv. Exemption—Frederick Cnty., Md., AB 1339X, slip op. at 8 (STB served July 21, 2025). BNSF has not met its burden because it has not shown that Granite Mountain was dual-served (or even likely dual-served) by SP and MP. Granite Mountain was not included in the list of shippers that SP had the right to access via reciprocal switching, Granite Mountain stated at the time of the UP-SP Merger that it received service from UP, and BNSF previously represented to the Board that it had already identified all individual 2-to-1 shippers. To the extent BNSF argues that the burden should be on UP because UP was more likely to have in its possession evidence relevant to its

⁵ Additionally, BNSF has been aware since at least August 2025, when UP served its responses and objections to BNSF’s first set of discovery requests, that UP intended to produce documents dating back only to 1997. If BNSF believed UP’s production was incomplete, it should have filed a motion to compel to resolve the issue. BNSF claims it did not do so because “UP failed to carry its burden based on the documents it produced” and so a motion to compel “would have only served to further delay the proceedings.” (BNSF Am. Pet. 12 n.16.) As discussed herein, however, UP did not have a burden of proof regarding the historic status of its shipper facilities or a duty to retain records longer than required by the Board’s rules.

shippers' historic status, that argument is outweighed by the fact the Board permitted BNSF to take discovery from UP so that BNSF could obtain any such materials in UP's possession. Even if the burden were on UP, it has demonstrated that there is a greater likelihood that Granite Mountain was not dual-served.

Also unpersuasive is BNSF's argument that UP failed in a duty to retain records. Neither the RASA nor the UP/SP Merger approval decision imposed a document retention requirement on UP. The RASA, which established an "Identification Protocol" for determining if a shipper facility is a 2-to-1 Point, required that UP provide the reasons and specific evidence supporting a denial of a request for access.⁶ But that is not a document retention provision and BNSF has not alleged that UP violated the Identification Protocol. UP correctly notes that the Board's regulations generally only require rail carriers to retain records on shipping orders for one year and tariff documents for three years.⁷ 49 C.F.R. § 1220.6.

BNSF also argues that UP was on notice that BNSF was interested in seeking access to Granite Mountain in 1999 and therefore should have retained records from that point forward. (BNSF Am. Pet. 12 n.15.) In support, BNSF provides copies of e-mails between itself and UP showing that BNSF originally requested access to Granite Mountain in 1999. (*Id.*, Ex. 2.) Those emails show that UP rejected the request on the same basis it has done so in this proceeding: that Granite Mountain was not listed as an open shipper in the tariff at the time of the merger. There is no indication that, after UP's denial of access in 1999, BNSF further pursued its claim or indicated to UP that it intended to do so. Instead of challenging the denial at that time, when

⁶ The Identification Protocol states as follows:

UP shall approve all such requests where, on the basis of all available information, UP concludes that a particular facility was open to service by both UP and SP, either directly or through reciprocal switching, joint facility or other arrangements and by no other rail carrier, as of September 25, 1995. If UP declines to approve a BNSF request for access to any facility, UP shall provide as part of its notification to BNSF a statement in writing or by electronic communication of its reasons and of the specific evidence supporting its determination that BNSF should not have access to the facility. A statement that UP lacks sufficient information to make a determination as to whether a facility is a 2- to-1 facility is not an adequate reason to deny a BNSF request for access to a facility

The version of the RASA provided by BNSF in its Amended Petition does not include the exhibits to that document. A full version of the RASA, including Exhibit E (which contains the Identification Protocol) was jointly submitted by BNSF and UP on March 1, 2002 in Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp. (General Oversight), FD 32760 (Sub-No. 21).

⁷ The Board has ordered additional document retention requirements in some individual proceedings. See e.g., Complaint & Pet. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak's Sunset Ltd. Trains 1 & 2, NOR 42175, slip op. at 18 (STB served July 11, 2023).

evidence may have been more accessible, BNSF waited 25 years to renew its claim.⁸ It would not be reasonable to expect UP to have anticipated that BNSF would bring the same claim after so much time had passed.

BNSF's argument also focuses on the fact that UP has switched positions since BNSF made its recent request for access, including the fact that UP stated in its initial 2023 denial letter that SP did have access to Granite Mountain. However, when BNSF made its original request for access in 1999, UP's response was that Granite Mountain was not listed in the tariff and therefore was not open to reciprocal switching. Thus, UP's original position in 1999 is consistent with the position it has ultimately taken in the current proceeding.

For these reasons, BNSF's request to treat UP's former statements as an irrebuttable admission will be denied. Because BNSF has provided no other evidence that Granite Mountain was open to reciprocal switching at the time of the UP-SP Merger, BNSF's Amended Petition will be denied.⁹

It is ordered:

1. BNSF's Amended Petition seeking enforcement of the conditions imposed on the UP-SP Merger is denied.
2. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

⁸ Notably, in the 2023 correspondence between BNSF and UP that is attached to BNSF's original petition, neither carrier mentions the original 1999 request.

⁹ Because BNSF's Amended Petition is being denied on these grounds, the Board need not address BNSF's arguments on whether SP's access was limited only to carload service or whether Granite Mountain's access to LRWN made it a 3-to-2 point.