

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
July 21, 2026
Part of
Public Record

DOCKET NO. FD 32760 (SUB-NO. 52)

BNSF RAILWAY COMPANY—PETITION FOR REVIEW—UP/SP MERGER
CONDITIONS

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO BNSF RAILWAY
COMPANY'S MOTION FOR EXTENSION OF TIME TO RESPOND**

Union Pacific Railroad Company (“Union Pacific”) opposes BNSF Railway Company’s (“BNSF’s”) motion to extend the “60-day time limit” that the Board gave BNSF to clarify and substantiate the claims in the Petition it filed on November 25, 2025. Decision at 6, *BNSF Ry. Co.—Petition for Review—UP/SP Merger Conditions*, STB Fin. Docket No. 32760 (Sub-No. 52) (served May 26, 2026) (“*May 26 Decision*”). BNSF’s motion for an extension only confirms that it still does not have support for the allegations it made last November, and the Board should not extend BNSF’s time to come up with evidence that it should have had in hand before starting this proceeding.

In the *May 26 Decision*, the Board held that BNSF’s November 28, 2025 Petition to reopen the three-decade-old Restated and Amended Settlement Agreement (“RASA”) failed to provide “a clear and well-supported showing to justify the proposed proceeding.” *May 26 Decision* at 5. The Board noted that its supplemental conditioning authority is used “sparingly and cautiously,” especially for a condition like the RASA that “BNSF and UP agreed to in an arms’ length

negotiation” decades ago. *Id.* at 4-5. For these reasons, the Board reaffirmed its prior admonitions to BNSF that any attempt to modify *UP/SP* merger conditions must include “as much evidentiary detail as necessary” to justify a specific request for relief; must “set forth, at length the precise remedies” requested; and must “explain, with as much detail as circumstances require, why it is that the desired remedies are necessary.” *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight)*, Decision No. 13, 3 S.T.B. 987, 995 n.32 (1998) (“*UP/SP Oversight Decision No. 13*”) (cited in *May 26 Decision* at 5, 6).

BNSF was given 60 days to decide whether it “wish[ed] to continue pursuing this matter.” *May 26 Decision* at 6. If it did, BNSF was instructed to “clearly identify the incidents or disputes that make up the alleged pattern of behavior,” to clearly state for each claim “whether it seeks enforcement of an existing condition set forth in the RASA, a change to a condition, or both,” and to provide factual support for the relief it was seeking. *Id.*

BNSF’s Motion for an Extension cites only a desire for BNSF’s experts to complete some sort of analysis of three decades of Confidential Carload Waybill Sample (“CCWS”) data as support for a 30-day extension of that 60-day period. But BNSF does not explain why it needs a historical waybill analysis to provide factual support for allegations BNSF has already made in a verified petition. Indeed, BNSF is uniquely positioned to explain the factual support for already-made allegations and claims regarding Union Pacific’s RASA compliance. BNSF has unfettered access to its own waybill data, an understanding of its own traffic, and knowledge of

its commercial dealings with Union Pacific. An as-yet unperformed or incomplete analysis of CCWS data should not now be needed to support allegations BNSF made in November of last year.

Although BNSF argues an additional extension would not cause prejudice, ending this ill-conceived proceeding is the only outcome that would not prejudice either party. If BNSF eventually identifies specific RASA provisions it believes are being violated and concludes it can satisfy the legal standard, then BNSF may seek a reopening with the Board, pursue an arbitration under the RASA, or (better yet) start a dialogue with Union Pacific to resolve the issue. But allowing BNSF to continue this case while it creates evidence it should have had before filing its petition eight months ago lends BNSF continued cover for its meritless narratives regarding Union Pacific's merger compliance history.¹ The continuance of this matter for another 30 days is therefore a prejudicial misuse of procedure against Union Pacific and a waste of Board resources.

The Board already gave BNSF 60 post-decisional days to assemble the threshold evidence *UP/SP Oversight Decision No. 13* requires. There is no basis for giving BNSF even more time. Union Pacific respectfully submits that the Motion for Extension should be denied.

¹ See, e.g., <https://bnsf.com/news-media/news-releases/newsrelease.page?relId=bnsf-ceo-katie-farmer-statement-on-up-merger-application-filing> (claiming that “UP has a long history of making promises in past mergers that they back away from once they’ve secured approval”).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2026, a copy of the foregoing Reply to BNSF Railway Company's Motion for Extension of Time to Respond was served by email or first class mail on the service list for Finance Docket No. 32760 (Sub-No. 52).

/s/ Matthew J. Warren
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