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SERVICE DATE – SEPTEMBER 18, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36873

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

Decision No. 37

Digest:[1] This decision denies motions seeking summary denial of the revised Union Pacific-Norfolk Southern control application. Nothing in this decision prevents parties from renewing any arguments regarding the merits of the proposed transaction in their opening comments, and the Board reaches no conclusions on the merits of the transaction.

Decided: September 18, 2026

In this proceeding, Union Pacific Corporation (UPC), Union Pacific Railroad Company (UP) (collectively, Union Pacific), Norfolk Southern Corporation (NSC), and Norfolk Southern Railway Company (NS) (collectively, Norfolk Southern) (Union Pacific and Norfolk Southern collectively, Applicants) seek Board approval for (i) the acquisition of control by UPC of NSC, and through NSC of NS and NS's rail carrier subsidiaries, and (ii) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. This proposal is referred to as the Transaction.

To receive approval for the Transaction, Applicants filed a revised application (the Revised Application), which the Board accepted for consideration. The Board has since received several motions to summarily deny the Revised Application as well as other filings questioning whether Applicants have put forward a prima facie case. As discussed below, the Board will deny the motions and continue with the procedural schedule so that the Board may receive further arguments and evidence regarding the proposed Transaction. Nothing in this decision is meant to prevent movants and commenters from renewing the same or related arguments regarding the merits of the proposed Transaction in their comments that are due November 18, 2026.

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[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).

BACKGROUND

On April 30, 2026, Applicants filed the Revised Application seeking authority for the Transaction pursuant to 49 U.S.C. §§ 11323-25,[2] as well as a related application in Docket No. FD 36873 (Sub-No. 1). On May 28, 2026, the Board determined that the Revised Application is complete and accepted it, along with the related application, for consideration. Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 21), FD 36873 et al., slip op. at 1, 12-17 (STB served May 28, 2026). The Board found, however, that although Applicants had included sufficient information to satisfy the completeness requirement for a "major" transaction application, there were several aspects of the Revised Application that were unclear or underdeveloped and required supplementation. Id. at 17-18. As such, the Board held both proceedings in abeyance and directed Applicants to submit certain supplemental information. Id. at 17-32. In response to Decision No. 21, Applicants submitted supplements on July 7 and July 27, 2026 (the July Supplements).

On August 6, 2026, the Board received three motions for summary denial of the Revised Application for failure to present a prima facie case: one by BNSF Railway Company (BNSF), another by CSX Transportation, Inc. (CSXT), and a third filed jointly by a group of shipper associations (the Joint Associations), made up of the American Chemistry Council (ACC), American Fuel & Petrochemical Manufacturers (AFPM), Alliance for Chemical Distribution (ACD), National Industrial Transportation League (NITL), and The Fertilizer Institute (TFI). That day the Board also received comments from Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC (CPKC) to the same effect. Thereafter, other filings raising prima facie issues were submitted, including comments by the National Grain and Feed Association (NGFA), comments by the Allied Rail Unions[3] and Brotherhood of Locomotive Engineers and Trainmen (ARU/BLET), and a joint letter from the state attorneys general of Montana, Iowa, Florida, North Dakota, South Dakota, Tennessee, and Kansas (Joint Attorneys General).

In a decision served on August 18, 2026, the Board removed the proceedings from abeyance, including the environmental review,[4] and adopted a procedural schedule. Union Pac.

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[2] These proceedings are governed by those provisions as well as the Board's regulations, including 49 C.F.R. part 1180. See Major Rail Consol. Procs. (Major Merger Rules), 5 S.T.B. 539 (2001).

[3] The Allied Rail Unions include the Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; International Association of Machinists and Aerospace Workers District #19; and Transportation Communications Union/IAM.

[4] The Board stated that the environmental review will be based on the revised traffic projections submitted to the Board's Office of Environmental Analysis (OEA) on July 27, 2026. However, Applicants have since further revised their traffic projections. Therefore, the environmental review will be based on the updated traffic projections submitted to OEA on September 9, 2026.

Corp.—Control—Norfolk S. Corp., (Decision No. 30), FD 36873 et al., slip op. at 1 (STB served Aug. 18, 2026). The Board explained that, after reviewing the July Supplements and comments, it found that the record was sufficient to allow record development in the proceedings to resume. Id. at 4. The Board made clear that its finding on resuming record development reflected no view on the merits of the Revised Application or on any matter raised in the motions and comments filed since July 27, which the Board said it would address separately. Id.

On August 26, 2026, Applicants filed a reply addressing the August motions and certain comments. The Board has also received comments from the Texas Office of the Attorney General, Atlantic Systems, Inc., the Rail Passengers Association, the United Sugar Producers and Refiners Cooperative, and J. Vann Cunningham regarding the motions and the prima facie standard.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11324(c), the Board must determine whether the proposed Transaction is "consistent with the public interest." And in proceedings involving at least two Class I railroads, the Board must consider at least five enumerated factors, including "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. § 11324(b)(5). The assessment of the Revised Application is also governed by the Major Merger Rules, which the Board adopted in 2001 to govern major transactions like this one. Those rules provide that Applicants must present a prima facie case. 49 C.F.R. § 1180.4(c)(8). Under that section, "Applicants can fail to meet their burden of proof and thus not present a *prima facie* case either by (i) disclosing facts that, even if construed in their most favorable light, are insufficient to support a finding that the proposal is consistent with the public interest, or by (ii) disclosing facts that affirmatively demonstrate that the proposal is not in the public interest." 49 C.F.R. § 1180.4(c)(8), referencing R.R. Consol. Procs. Expedited Processing, 363 I.C.C. 767 (1980).

Generally, the parties seeking summary denial of the Revised Application point to the "heavier burden" the Board imposed in Major Merger Rules and note that the Board has placed a "greater emphasis" on "enhancing competition while ensuring a stable and balanced rail transportation system." (See, e.g., Joint Ass'ns Mot. 15, Aug. 6, 2026, citing Major Merger Rules, 5 S.T.B. at 546.) While a variety of issues are raised, the August motions and comments focus their arguments on (1) concerns about competitive harm stemming from vertical foreclosure and the loss of geographic competition, including that Applicants' evidence addresses certain types of interline traffic categorically rather than using evidence specific to this Transaction, (see, e.g., Joint Ass'ns Mot. 21-28, Aug. 6, 2026; CSXT Mot. 20-26, Aug. 6, 2026), and (2) the alleged inefficacy—in both the short and long term—of Applicants' proposal to enhance rail competition, the Committed Gateway Pricing (CGP) program. In particular, opponents assert that CGP will be ineffective in enhancing competition because it impacts less than one percent of traffic, it terminates at the end of the oversight period, and it may raise rates for both shippers whose traffic sets the benchmark for CGP rates and those eligible for CGP. (See, e.g., BNSF Mot. 5, Aug. 6, 2026; Joint Attys. Gen. Letter 2, Aug. 11, 2026.) Joint Associations also argue that Applicants have not sufficiently addressed the requirement in the Major Merger Rules to specify which public benefits can only be achieved by the Transaction, (Joint Ass'ns Mot. 47-48, Aug. 6, 2026), and that Applicants' Service Assurance Plan (SAP) is flawed as its program to assist those with financial claims stemming from the merger transition excludes most potential traffic, (id. at 53-56; see also NGFA Comments 3-5, Aug. 13, 2026). Others argue that the Revised Application does not assess how additional Class I mergers would affect the eventual structure of the industry. (See, e.g., CSXT Mot. 44-48, Aug. 6, 2026; CPKC Comments 14-15, Aug. 6, 2026.) Based on these and other claimed weaknesses in the Revised Application, the opponents argue that Applicants have failed to make a prima facie case.

In their August 26, 2026 reply, Applicants argue that opponents' filings are "a coordinated effort to litigate the merits before their own arguments face scrutiny." (Applicants Reply 38, Aug. 26, 2026.) Among other things, Applicants reiterate their contention that the Transaction will enhance competition between rail carriers and that CGP will further that end. (Id. at 24-28.) They also argue that their evidence addresses vertical foreclosure through analysis specific to the Transaction rather than through a presumption. (Id. at 14-21.) Additionally, Applicants defend their SAP and assert that the benefits of the Transaction can only be had by merging the systems. (Id. at 13-14, 28-32.)

The Board will deny the motions for summary denial filed by Joint Associations, CSXT, and BNSF. Although the motions and comments raise important questions and issues, the Board will exercise its discretion to allow the proceeding assessing the Revised Application to proceed. Rio Grande Indus.—Purchase & Related Trackage Rts.—Soo Line R.R., FD 31505, 1989 WL 246814, at *2 (ICC served Nov. 13, 1989) (citing R.R. Consol. Procs. Expedited Processing, 363 I.C.C. at 769). The Board's determination on this "unprecedented" Transaction will be better informed by a more complete record. (See Joint Ass'ns Mot. 12, Aug. 6, 2026; CSXT Mot. 19, Aug. 6, 2026; Rev. Appl. 1-15, Apr. 30, 2026.) Some of the issues raised by opponents involve significant factual questions. Furthermore, evaluating the Revised Application requires application of the Major Merger Rules for the first time. The Board anticipates that additional evidence and argument will aid the Board's decision-making in this consequential proceeding of first impression. The Board emphasizes, however, that its decision to proceed with record development does not reflect any determination on the merits of the Transaction nor is it an endorsement of Applicants' arguments, analyses, or positions. Movants and commenters should renew any challenges to or arguments regarding the merits of the Transaction in their opening comments. At the present stage of this proceeding, the Board has not reached any conclusions about the merits of the Transaction.

Pursuant to the procedural schedule, protests, comments, and requests for conditions are due November 18, 2026.

It is ordered:

1. The motions seeking summary denial are denied.

2. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz. Board Member Kloster concurred with a separate expression.

BOARD MEMBER KLOSTER, concurring:

I concur in today's decision denying motions seeking summary denial of the revised Union Pacific-Norfolk Southern control application. Reaching this decision did not come lightly to me. I gave much consideration to both sides of the argument to grant or to deny. In the end, the Board reached a unanimous decision to deny the summary denial requests and allow the application to move to the merits phase.

I believe that the filers of the summary denial motions (BNSF, CSX, and Joint Associations) had to pass a very high bar to convince the Board to deny the merger application at this stage of the proceeding. Conversely, the Board was required to construe the Applicants' evidence in its "most favorable light" in considering whether it could support a finding that the proposal is consistent with the public interest. 49 C.F.R. § 1180.4(c)(8). Even though I agree with our decision to allow more argument and evidence, I believe that the filers have raised significant, compelling arguments in their motions that Applicants will need to address in detail.

To be clear, I am not yet making any decisions on the merits of the application, and I look forward to development of the record. However, I will provide a couple of initial observations. First, I believe that there has been a lack of transparency and depth in the application. Applicants have submitted thousands of pages of documents, yet they do not offer a very robust plan for how they will address competitive concerns or mitigate potential harms. They also rely heavily on the benefits to intermodal shipments, a market segment which, by today's standards, is already competitive.

I would also note that, in my view, the Applicants have approached this proceeding with an apparent strategy of "letting the line out slowly." Opponents have suggested that it seems that the strategy is to offer conditions that provide minimal benefits on less significant matters, while waiting to gauge stakeholders' reaction before offering more meaningful conditions on important matters. But Applicants should come with their best case in the application filed to justify the merger so that the Board can decide on its merits. The Board should not have to sift through vague language to try and figure out where any deficiencies may be in the Applicants' proposal and what potential conditions could mitigate any harm.

In conclusion, I believe Applicants still have a long way to go to show that the Transaction is in the public interest once all stakeholder arguments on the record are fully considered. However, it is still early in the proceeding and, as the decision states, additional evidence and argument will aid the Board in its decision-making. I remain open-minded and will closely consider the arguments and evidence as the record develops.