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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

COMMENTS: Reject the proposed UP–NS merger.

1 November 2026

Dear ALJ Soulikias and Parties of Record,

The UP–Norfolk Southern Merger: Executive Intimidation, Regulatory Pressure, Suppression of Opposition, and the Threat to North American Rail Competition

An Examination of Union Pacific CEO Jim Vena's Conduct, CPKC's Demand for Termination, the Treatment of Shippers and Competitors, and Why the Surface Transportation Board Should Reject the Proposed Merger

STB Finance Docket No. 36873
October 31, 2026

Executive Summary

The proposed acquisition of Norfolk Southern Railway by Union Pacific Railroad is not simply another railroad merger. It is an attempt to combine two major railroad systems into a single enterprise with the potential to control approximately half of U.S. rail freight traffic. The consequences would extend well beyond the two companies involved, affecting competing railroads, shortline and regional railroads, shippers, manufacturers, agricultural producers, employees, ports, consumers, and the broader North American economy.

What makes this proceeding particularly troubling is not just the size of the proposed transaction, but the conduct and attitude demonstrated by Union Pacific's leadership throughout the regulatory debate.

Union Pacific CEO Jim Vena's remarks to an audience of railroad customers at the March 2026 Southwest Association of Rail Shippers (SWARS) conference in Houston have raised serious questions about whether customers can freely express opposition to this merger without fear of commercial retaliation. His reported statement that, if the merger failed and he remained in charge, he would "probably increase everybody's rates" who opposed the transaction is not an

insignificant comment. It goes directly to the relationship between a dominant railroad, its customers, and the regulatory process established to protect the public interest.

The controversy has since escalated. An administrative law judge ruled on October 23, 2026, that the recording of Vena's remarks should be redesignated as public. On October 30, Canadian Pacific Kansas City (CPKC) filed a substantial submission asking the Surface Transportation Board (STB) to terminate the UP–NS merger proceeding altogether, arguing that Union Pacific's conduct has undermined the integrity of the review and discouraged meaningful participation by stakeholders.

Docket Yard+2

These developments raise a fundamental question:

Should a railroad seeking permission to become one of the most powerful freight transportation companies in North America be allowed to pressure, intimidate, or commercially threaten the very customers, competitors, labor organizations, and industry groups whose interests the STB is required to consider?

The answer must be **no.**

The STB's responsibility is not to accommodate the ambitions of Union Pacific's management, meet a corporate timetable, or accept assurances that everything will work after the merger. Its responsibility is to examine the evidence, protect competition, preserve the integrity of the regulatory process, and determine whether the transaction serves the public interest.

This paper argues that the STB should reject the proposed merger. At a minimum, the Board must fully investigate the conduct surrounding this proceeding, evaluate CPKC's request for termination, require meaningful and enforceable competitive protections, and refuse to approve a transaction whose operational, economic, and competitive consequences remain inadequately demonstrated.

THE UP–NORFOLK SOUTHERN MERGER: EXECUTIVE INTIMIDATION, REGULATORY PRESSURE, SUPPRESSION OF OPPOSITION, AND THE THREAT TO NORTH AMERICAN RAIL COMPETITION

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1. The Conduct of Union Pacific's Leadership Raises Serious Questions About This Merger

The proposed acquisition of Norfolk Southern Railway by Union Pacific Railroad is not simply another railroad merger. It is an attempt to combine two major railroad systems into a single enterprise with the potential to control approximately half of U.S. rail freight traffic. The consequences would extend well beyond the two companies involved, affecting competing railroads, shortline and regional railroads, shippers, manufacturers, agricultural producers, employees, ports, consumers, and the broader North American economy.

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His reported statement that, if the merger failed and he remained in charge, he would "probably increase everybody's rates" who opposed the transaction is not an insignificant comment. It goes directly to the relationship between a dominant railroad, its customers, and the regulatory process established to protect the public interest.

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Board (STB) to terminate the UP–NS merger proceeding altogether, arguing that Union Pacific's conduct has undermined the integrity of the review and discouraged meaningful participation by stakeholders.

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2. Jim Vena's SWARS Remarks: A Threat to Customers and the Regulatory Process

The March 2026 SWARS conference was an opportunity for Union Pacific's CEO to discuss the proposed merger with an audience that included the very customers whose businesses depend on reliable and competitive railroad transportation.

Instead, Vena made remarks that have become one of the most serious controversies in the entire merger proceeding.

According to reporting on the conference, Vena told the audience that if the merger did not happen and he remained in charge, he would "probably increase everybody's rates" who opposed the transaction.

Consider the implications.

A customer that publicly questions the merger, files opposition with the STB, or expresses concern about the consequences of combining these two railroads could reasonably wonder whether doing so might result in higher transportation costs.

For a company dependent on rail service, that is not an idle concern. Rail transportation is often an essential component of its supply chain. Many shippers have limited transportation alternatives, substantial investments in rail-served facilities, and long-term commercial relationships with the railroad.

A railroad CEO suggesting that opposition could result in higher rates creates an atmosphere in which customers must consider whether exercising their right to participate in a federal regulatory proceeding could have commercial consequences.

This is precisely the type of environment that should concern the STB.

The issue is not whether Vena subsequently characterizes the remarks as humor, sarcasm, or something taken out of context. The issue is the effect those remarks can have on the willingness of customers to participate openly in a proceeding where their testimony and evidence are essential.

If customers believe their business could suffer because they oppose a merger, some will remain silent.

And if customers remain silent, the STB receives an incomplete picture of the actual consequences of the transaction.

The October 23 ruling ordering the SWARS video to be made public is particularly important. The recording should be available to the public and all parties so that the Board can evaluate the complete remarks, their context, and their implications rather than relying solely on competing characterizations.

Union Pacific's request to maintain confidentiality over the recording also raises a legitimate transparency question. A statement made by the CEO of a publicly regulated railroad to an audience of approximately 900 shippers, concerning a transaction requiring federal approval, should not be shielded from scrutiny without a compelling justification.

3. CPKC's October 30 Filing: Terminate This Proceeding

On October 30, 2026, Canadian Pacific Kansas City submitted a 193-page filing, including exhibits, asking the STB to immediately terminate Union Pacific's proposed acquisition of Norfolk Southern.

CPKC's filing is significant because it moves the controversy beyond disagreement over merger conditions, competitive access, or the commercial merits of the transaction.

CPKC is challenging the integrity of the regulatory process itself.

Its submission argues that Union Pacific's conduct, including alleged intimidation of shippers and efforts that discouraged public participation, has undermined the Board's ability to obtain the honest and complete stakeholder input required to evaluate the merger.

CPKC contends that customers cannot reasonably be expected to speak freely if they believe the railroad seeking greater market power can retaliate against them commercially.

This argument deserves serious consideration.

CPKC is not alone in its opposition to the transaction. BNSF, CSX, competing railroad interests, shipper associations, labor organizations, and other industry participants have raised concerns about the proposed merger.

These groups do not necessarily share the same commercial interests or seek identical remedies. However, their opposition demonstrates that the merger raises questions extending throughout the rail transportation industry.

The STB should not dismiss these concerns as competitors simply attempting to protect their own businesses.

The Board must evaluate the evidence each party presents, including the competitive consequences for customers and the national rail network.

CPKC's request for termination should be considered on its legal and evidentiary merits. The Board should determine whether the alleged conduct has compromised the proceeding to such an extent that a fair and complete review is no longer possible.

At a minimum, the allegations warrant a full investigation and a clear determination on the record.

If the Board concludes that the applicants' conduct has materially undermined the integrity of the proceeding, termination of the application should be considered an appropriate remedy.

The public should not be expected to accept a different standard of conduct simply because the transaction is large, expensive, or important to the applicants.

4. An Attempt to Control the Conversation Outside the Public Regulatory Process?

Another issue that deserves attention is Union Pacific's approach to communications with the STB.

The merger process exists to provide an orderly, transparent mechanism through which applicants, competing railroads, customers, labor organizations, government entities, and the public can present evidence and arguments.

No applicant should be permitted to obtain an advantage by moving important discussions outside that process or by seeking private access that prevents other interested parties from responding.

The procedural history is important.

On May 28, 2026, the STB accepted the revised merger application for consideration but denied the applicants' earlier motion seeking permission for ex parte stakeholder communications.

That distinction matters. The Board did not authorize the applicants to bypass the established procedural protections through private stakeholder communications.

There is a legitimate difference between ordinary regulatory meetings conducted under applicable agency procedures and attempts to influence the decision-making process through communications that exclude other interested parties or avoid public scrutiny.

The Board must preserve that distinction.

When a transaction affects the competitive structure of an entire industry, the public deserves to know what arguments are being presented, what commitments are being made, and whether those commitments are being challenged.

Any material communication concerning the merits, competitive consequences, or proposed conditions of this merger should be handled in accordance with the STB's applicable ex parte, disclosure, and docketing requirements.

The applicants should not be allowed to dictate the pace or manner in which the Board conducts its review.

Nor should the STB permit a situation in which corporate executives can privately press their preferred outcome while customers, competitors, unions, and other interested parties must rely exclusively on formal public filings.

The STB is the regulator. Union Pacific is the applicant. Those roles must never become confused.

5. The Treatment of Railroad Competitors and the Refusal to Accept Meaningful Concessions

One of the most concerning aspects of this proposed merger is Union Pacific's apparent resistance to meaningful concessions requested by competing railroads.

BNSF, CPKC, and CSX have identified specific areas where the combination of UP and NS could diminish competition and restrict their ability to serve customers.

These are not merely requests for commercial favors.

They address the fundamental problem of allowing one company to combine extensive railroad infrastructure, gateways, customer relationships, and operating control into a system that could substantially reduce competitive alternatives.

BNSF, for example, has identified a need for access to Norfolk Southern's network between Chicago and eastern Pennsylvania. Its proposed route includes approximately 824 miles of

trackage rights extending to Bethlehem, Pennsylvania, through the Pittsburgh and Harrisburg corridors.

BNSF has explained that the merger could give the combined company the ability and incentive to weaken BNSF's existing competitive position in markets where BNSF and Norfolk Southern currently cooperate.

CPKC and CSX have also identified concerns involving the Kansas City–St. Louis corridor, Texas, Louisiana, and other strategically important routes.

These requests should not be dismissed simply because Union Pacific does not want to grant them.

The applicants are asking the federal government for permission to fundamentally change the competitive structure of the railroad industry. They should not expect that approval to come without substantial changes to the underlying ownership and control of railroad infrastructure.

Trackage rights are not the same as ownership.

This distinction is critical.

Trackage rights and haulage agreements can provide another railroad with access to a line, but they do not necessarily transfer the underlying infrastructure or the operational independence that comes with ownership.

Under trackage rights, the owning railroad generally retains important responsibilities and controls over the infrastructure, including dispatching and maintenance, subject to the applicable agreement and regulatory requirements.

Under haulage arrangements, the owning railroad performs the physical transportation of the traffic, even when another carrier markets or arranges the service.

These arrangements can provide benefits, but they do not automatically create an independent competing railroad.

A competitor that depends on its rival for access, dispatching, maintenance, scheduling, or other essential operating arrangements may remain commercially disadvantaged.

The STB should therefore examine whether ownership transfers would provide a more effective and durable competitive remedy.

Required ownership-based concessions

If the merger is approved, any railroad that demonstrates a legitimate need to acquire a particular line or corridor to restore meaningful competition should be permitted to purchase that infrastructure at independently established fair market value.

For example:

- If BNSF demonstrates that ownership of the relevant Norfolk Southern lines into Harrisburg, Pennsylvania, is necessary to preserve an independent competitive route, the STB should consider requiring the sale of those lines to BNSF at fair market value.
- If CPKC or CSX demonstrates that ownership of particular Kansas City–St. Louis segments is necessary to restore meaningful competition, those requests should receive the same consideration.
- If a shortline or regional railroad loses essential yard access, interchange access, or a viable route because of the merger, the affected infrastructure should be considered for sale to that railroad.
- Lines that do not form an essential part of the combined railroad's core trunk system should be evaluated for divestiture to independent competitors, regional railroads, and shortline operators.

Where a competing railroad can establish that ownership is the only practical means of achieving independent service, a temporary or conditional trackage-rights arrangement should not automatically be considered an adequate substitute.

The objective must be to create actual competition, not simply the appearance of competition.

6. A Merger of This Size Requires a Much Longer and More Comprehensive Review

The proposed UP–NS combination is unprecedented in its potential reach and consequences.

The applicants are seeking approval to combine two enormous railroad networks, their operating systems, employees, dispatching functions, customer relationships, information technology, maintenance programs, and commercial structures.

This is not a transaction that should be evaluated simply by examining projected efficiencies and anticipated revenue growth.

The STB must understand what happens when the two companies actually attempt to operate as one.

A complete examination must address:

- How the two railroad networks will be integrated.
- How dispatching systems will communicate and operate.
- How train crews will be assigned across the combined network.
- How locomotives and railcars will be allocated.
- How mechanical and maintenance departments will be integrated.
- How customer billing, waybills, and transportation management systems will be combined.

- How interchanges with competing railroads will function.
- How service disruptions will be managed.
- How the combined company will maintain adequate staffing.
- How the railroad will protect customers during the transition.
- What happens if the integration fails.

These questions cannot be answered with general assurances that the companies have a plan.

They require documented operating plans, independent technical evaluations, realistic transition schedules, contingency procedures, and measurable performance standards.

A merger of this magnitude should be studied over multiple years, not rushed through a regulatory process simply because the applicants want to complete the transaction.

The Board should not confuse a procedural schedule with a requirement to approve the transaction quickly.

The review must take as long as necessary to establish whether the proposed merger is actually in the public interest.

7. The Railroad Industry's Merger History Should Not Be Ignored

Railroad history provides important lessons about the risks of combining large operating systems.

The Union Pacific–Southern Pacific merger and the Conrail integration experience demonstrate that railroad consolidations can create substantial operational problems when systems, personnel, infrastructure, and operating practices are not successfully coordinated.

The industry has experienced congestion, service interruptions, computer and dispatching problems, equipment imbalances, and difficulties coordinating crews and terminals during major transitions.

These are not minor inconveniences.

When a railroad experiences a major operational disruption, the consequences spread quickly through the national economy.

Manufacturers may not receive raw materials. Agricultural products may not reach elevators or ports. Chemical facilities may experience supply interruptions. Coal shipments may be delayed. Railcar owners may have equipment sitting idle. Customers may lose production time and incur additional costs.

The applicants must demonstrate how they will prevent these problems rather than simply promise to correct them after they occur.

The Board should require a detailed comparison of the proposed integration plan against the documented problems experienced during earlier railroad consolidations.

The lessons of the past should be incorporated into the conditions of any future transaction, not ignored in favor of optimistic projections.

8. The October 27, 2026 CSX Technology Outage Demonstrates How Vulnerable Railroad Operations Can Be

A recent event involving CSX Transportation illustrates why the STB must demand much greater detail about the technological integration of the UP–NS merger.

Beginning October 27, 2026, CSX experienced a major technology outage that disrupted important aspects of its operating and administrative systems.

Although the railroad reported that its core train-control and dispatching platforms remained functional, the outage affected important logistical systems, including crew calling and interchange communications.

According to reporting on October 28, the disruption required substantial manual work for crew calling, slowed operations, and prevented CSX from completing normal interchanges with other Class I railroads. Limited interchange continued with certain carriers using their paperwork and processes.

This is an important distinction: the incident did not establish that CSX lost control of train movements or that its safety systems failed. It demonstrated how a technology problem affecting supporting systems can nevertheless disrupt the movement of freight across a railroad network.

Now consider the proposed UP–NS merger.

Two enormous railroads will have to integrate computer systems, crew-management platforms, billing systems, customer information, dispatching interfaces, locomotive management, railcar tracking, and interchange communications.

What happens if those systems do not communicate correctly?

What happens if the combined railroad cannot accurately identify where locomotives and railcars are located?

What happens if crew assignments are delayed?

What happens if an interchange partner cannot receive accurate electronic documentation?

What happens if the combined company experiences a system-wide outage during the transition?

Will there be redundant systems? Will there be independent backup procedures? Will there be trained personnel available to operate manually? Will the company maintain sufficient staffing to recover from a prolonged technology failure?

The STB must demand answers before approval.

It is not acceptable to approve a merger first and determine the answers afterward.

9. The Employee Question: What Happens to the People Who Actually Know How to Run a Railroad?

The workforce implications of this transaction deserve considerably more attention.

The applicants' employee-impact materials and staffing projections must be examined carefully, particularly where projected staffing reductions are compared with the combined existing workforce.

The figures raised in this proceeding suggest a potential reduction from approximately 52,000 employees across the two companies to approximately 30,000 under the proposed combined structure.

If those figures represent the applicants' intended staffing assumptions, the STB must require a detailed explanation of how such a reduction would affect the ability to safely and efficiently operate the combined railroad.

A railroad is not operated by financial projections, investment presentations, or executive announcements.

It is operated by people who understand the physical railroad.

Those people include:

- Locomotive engineers and conductors.
- Train dispatchers.
- Mechanical employees.
- Track inspectors and maintenance personnel.
- Signal and communications employees.
- Yardmasters and terminal personnel.
- Transportation supervisors.
- Crew management personnel.
- Operations planners and experienced railroad managers.

These employees possess institutional knowledge that cannot simply be replaced by a computer system or a new organizational chart.

A reduction of this magnitude raises questions about which positions will disappear, which employees will remain, and whether the company will retain enough experienced personnel to manage a complicated transition.

There is also a concern that financial objectives could become more important than operational knowledge.

The STB should require the applicants to explain precisely how they will retain the people necessary to maintain service quality, operational safety, infrastructure reliability, and customer relationships.

The Board should also examine the impact on collective bargaining agreements, work locations, seniority, job assignments, and the long-term employment outlook.

A merger that promises efficiency by removing thousands of experienced railroad employees must demonstrate that the remaining workforce can actually operate the system.

10. What Happens if the Merger Fails After It Has Been Approved?

One of the most overlooked questions in the entire proceeding is what happens if the merger is approved but the integration fails.

The applicants have explained the benefits they expect to receive from combining the two companies.

But where is the equally detailed contingency plan explaining what happens if those benefits never materialize?

Consider the possibilities.

A shipper may reorganize its supply chain around the promised single-line service. A manufacturing company may enter into new transportation agreements. A shortline may lose an interchange relationship. A competing railroad may lose access to a market. Employees may relocate or leave the industry. Terminals may be reorganized. Customer facilities may be modified to accommodate the combined railroad's operating plan.

What happens if the new railroad cannot deliver?

Who is responsible for the economic damage?

Who compensates customers who invested in new transportation arrangements based on promises that never materialized?

Who is responsible when a business loses customers because rail service becomes unreliable?

Who pays when a manufacturer experiences production losses?

Who is accountable when a shortline loses access to a critical interchange?

And what happens if the merger is so deeply integrated that returning to the original two-railroad structure is no longer practical?

The STB cannot simply assume that an unsuccessful merger can be reversed.

Once systems, infrastructure, employees, operating rights, customer contracts, and commercial relationships have been reorganized, the original companies may no longer be capable of operating independently in the manner they did before the transaction.

A rollback could be more disruptive than the original integration.

The Board should therefore require a comprehensive failure and recovery plan before approving any merger.

That plan must identify:

1. The specific events that would trigger corrective action.
2. The operational standards the combined railroad must maintain.
3. The independent party responsible for monitoring compliance.
4. The financial responsibility for failures that harm customers and other stakeholders.
5. The procedures for restoring lost competitive access.
6. The ability to reverse specific integration decisions where necessary.
7. The accountability of the applicants' senior management for failure to meet material commitments.

There must be consequences for failing to deliver what was represented to the STB.

The public should not be left holding the consequences of a corporate decision that primarily benefits its promoters and shareholders.

11. The Merger's Promised Benefits Should Be Demonstrated Before Approval

Union Pacific and Norfolk Southern have repeatedly promoted the benefits of their proposed combination.

Among those benefits are reduced interchange delays, improved single-line service, more efficient freight movements, expanded market reach, and the ability to move additional freight from highways to railroads.

These are legitimate objectives.

But why should the STB have to approve a massive consolidation before the applicants demonstrate that these benefits can be achieved?

If reducing truck traffic is a central objective, the applicants should begin implementing the practical measures necessary to move additional freight by rail today.

If improved interchange operations are a major selling point, the railroads should identify existing interchange bottlenecks and develop solutions now.

If the companies believe their combined network will improve service to eastern markets, they should demonstrate how those service improvements can be achieved through existing agreements, operating changes, and competitive access arrangements.

The Board should require the applicants to demonstrate measurable results.

The following should be established as pre-approval tests:

- Documented improvements in interchange efficiency.
- Reduced transit times on identified routes.
- Improved service reliability.
- Demonstrated capacity improvements.
- Additional freight moved from trucks to rail.
- Improved customer access to competitive transportation alternatives.
- Reduced congestion at identified terminals and gateways.
- Measurable reductions in service failures.

The applicants should not be allowed to respond that these benefits cannot be demonstrated without completing the merger.

That argument essentially asks the government to approve a transaction first and trust that the promised benefits will follow.

There are existing opportunities to improve railroad service without combining the companies into a single enterprise.

The STB should require the applicants to pursue those opportunities first.

12. The Difference Between a Real Competitive Concession and a Temporary Operating Arrangement

The issue of concessions deserves particular attention because it goes to the heart of what the STB is supposed to protect.

The railroad competitors requesting access to UP and NS infrastructure are not simply seeking temporary permission to use another railroad's tracks.

They are trying to preserve the ability to compete for customers.

Trackage rights can be useful, but they are not always a permanent or sufficient competitive remedy.

A competing railroad operating over another company's infrastructure may remain dependent on that company for dispatching, maintenance windows, track availability, operating coordination, and other essential arrangements.

Even when the agreement contains protections, the underlying relationship is not necessarily one of equal competitive independence.

The STB should therefore distinguish between:

Access concessions: Arrangements that allow another railroad to operate over the infrastructure of the merged company.

Ownership concessions: The actual transfer of infrastructure to another independent railroad at fair market value.

The second approach can create a stronger and more durable competitive alternative.

This is particularly important where a line or corridor is essential to the competing railroad's ability to serve a market.

If a line is not necessary to the combined railroad's core trunk operations, there should be a presumption that the STB will seriously examine whether it should be sold to an independent railroad.

Shortlines and regional railroads should not be treated as secondary participants in this discussion.

They provide essential connections to local businesses, manufacturing facilities, agricultural producers, ports, and industrial customers.

If the merger eliminates or restricts a shortline's interchange or yard access, the STB should require an effective remedy, including a sale of the affected infrastructure where that is necessary to restore independent service.

The goal should be a railroad system with more competitive options, not one in which the largest railroad controls the infrastructure and determines which competitors are permitted to use it.

13. The STB Must Examine the True Economic Consequences of Controlling Approximately Half the Rail Freight Market

A combined UP–NS system would have extraordinary influence over North American freight transportation.

The transaction could fundamentally change how freight moves between the western and eastern United States.

The Board must examine not only the applicants' projected efficiencies but also the potential consequences of increased concentration.

Questions that must be answered include:

- How many customers would lose access to meaningful competitive alternatives?
- How many shippers would become dependent on the combined company?
- How would the transaction affect freight rates?
- How would it affect access to major ports and terminals?
- Would competing railroads have sufficient access to important gateways?
- Would independent shortlines retain meaningful interchange options?
- Would customers be forced into bundled transportation arrangements?
- Would the combined company have increased leverage in negotiating rates and service agreements?
- Would the transaction make it more difficult for new competitors to enter particular markets?

These are long-term economic questions.

The applicants cannot answer them merely by pointing to projected revenue growth, shareholder value, or a proposed increase in single-line service.

The public-interest test requires the Board to examine the consequences for the entire transportation system.

A merger that benefits the shareholders of two companies but reduces competitive alternatives for thousands of customers cannot automatically be considered beneficial to the public.

14. Union Pacific's Position on Opposition Is Itself a Reason for Greater Scrutiny

There is a larger issue here that extends beyond the individual remarks made at SWARS.

The applicants are asking the STB to authorize a transaction that would substantially increase their market power.

At the same time, the CEO of one of the applicants has made remarks interpreted by customers and competitors as threats of commercial retaliation against those who oppose the transaction.

Competitors have raised concerns about the adequacy of proposed concessions.

Labor organizations have raised concerns about employment, operating conditions, and the impact on railroad employees.

Shipper associations have questioned the economic and competitive consequences.

Industry groups have questioned whether the transaction can be implemented without serious operational risks.

These concerns should be treated as evidence requiring examination, not as obstacles to be overcome.

The STB must also consider the significance of Vena's reported response to requests for competitive concessions.

A railroad seeking permission to control a substantially larger portion of the national network should understand that meaningful competitive protections are an essential part of the regulatory discussion.

The applicants should not expect competing railroads to accept limited operating rights simply because a sale of infrastructure is inconvenient or inconsistent with management's preferred business plan.

The STB must make the determination based on the evidence and the public interest, not the applicants' willingness to negotiate.

The appearance that opposition is being treated as disloyalty, rather than a legitimate part of the regulatory process, is deeply troubling.

A federal regulatory proceeding is not a corporate meeting in which management expects everyone to agree with its preferred outcome.

15. The STB Should Require the Applicants to Implement Their Promised Benefits Before Any Merger Approval

The strongest test of the applicants' claims is whether they can deliver those benefits without first combining the companies.

The STB should consider a structured pre-approval demonstration program.

Under this approach, the applicants would be required to identify specific routes, interchange points, terminals, and customer markets where they claim the merger will produce substantial improvements.

They would then be required to implement those improvements through existing commercial arrangements, coordinated operations, reciprocal agreements, or other lawful mechanisms.

The Board could independently monitor performance.

The results would be measured against established benchmarks, including:

- Transit times.
- Interchange dwell times.
- On-time performance.
- Service reliability.
- Freight volumes.
- Customer service performance.
- Capacity utilization.
- Competitive access.
- Operating costs.

If the applicants cannot demonstrate substantial improvements under existing arrangements, that raises legitimate questions about whether the merger itself will produce the promised benefits.

If they can demonstrate those improvements, customers and the public benefit without necessarily requiring a massive consolidation.

This approach would also provide the STB with actual operating evidence rather than relying exclusively on forecasts and corporate presentations.

The applicants should not be allowed to argue that the benefits are impossible to test until the merger is approved.

The public should not have to accept that proposition.

16. Requested Action by the Surface Transportation Board

Based on the issues described above, the STB should take the following actions:

First: Reject the proposed UP–NS merger.

The applicants have not demonstrated that the long-term competitive, operational, employment, and economic consequences of this transaction will serve the public interest.

Second: Fully investigate the allegations concerning Jim Vena's SWARS remarks.

The complete video should be available as part of the public record. The Board should examine the statements, their context, the responses of affected shippers, and any evidence that customers or industry groups were discouraged from participating.

Third: Give full consideration to CPKC's October 30, 2026 request to terminate the proceeding.

The Board should make an express determination concerning whether the alleged conduct has undermined the integrity of the review.

Fourth: Enforce the established regulatory procedures.

Material communications concerning the merits of the merger must comply with applicable STB requirements. The applicants should not receive preferential private access or be permitted to circumvent public participation and disclosure requirements.

Fifth: Require ownership-based competitive concessions where necessary.

Where a competing railroad demonstrates that ownership of a line or corridor is necessary to establish meaningful independent competition, the Board should consider requiring a sale at independently determined fair market value rather than relying exclusively on trackage rights or haulage arrangements.

Sixth: Protect shortline and regional railroads.

Any shortline or regional railroad that loses essential interchange, yard, or route access should receive a meaningful remedy, including ownership of affected infrastructure where appropriate.

Seventh: Require an independent, comprehensive operational integration study.

This study must address technology, dispatching, employee requirements, infrastructure, equipment, customer service, interchange operations, and contingency planning.

Eighth: Require a complete merger-failure contingency plan.

The applicants must explain who will be accountable if the integration fails, how affected customers and competitors will be protected, and how the Board can restore competitive conditions.

Ninth: Require proof of the promised merger benefits.

The applicants should demonstrate measurable improvements through existing operating arrangements before the Board considers authorizing the consolidation.

Tenth: Do not rush the proceeding.

The STB should allow sufficient time to examine the complete evidentiary record, including the economic, operational, environmental, employment, and competitive consequences of the transaction.

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17. Conclusion: This Is About the Future of the Railroad Industry, Not the Ambitions of Two Corporate Executives

The proposed Union Pacific–Norfolk Southern merger is being presented as an opportunity to create a more efficient national railroad.

But efficiency cannot simply be assumed because two large companies decide to combine.

It must be demonstrated.

The applicants must show that the transaction will improve service, strengthen competition, protect customers, maintain a reliable workforce, and produce measurable benefits for the American economy.

They must also demonstrate that they can successfully integrate two enormous railroad systems without creating unacceptable operational risks.

The conduct surrounding this proceeding raises additional concerns that cannot be ignored.

When a CEO tells an audience of customers that those who oppose his merger could face higher rates, the STB must take notice.

When shipper organizations express concerns about intimidation, those concerns must be investigated.

When competing railroads request meaningful competitive protections, those requests must be evaluated on their merits.

When labor organizations raise concerns about the future of railroad employment, the Board must examine the evidence.

And when CPKC files a 193-page submission asking the STB to terminate the proceeding because it believes the integrity of the review has been compromised, the Board cannot simply treat that filing as another routine objection.

This merger is too important to be decided on executive confidence, shareholder approval, corporate presentations, or assurances that everything will work after approval.

It must be decided on the evidence in the record.

There is also a fundamental question that the applicants have not adequately answered: Why must the merger happen before the benefits they are promising can be pursued?

If the goal is to move more freight from trucks to rail, begin doing it now.

If the goal is to improve interchange operations, begin improving them now.

If the goal is to create better connections between eastern and western markets, demonstrate those improvements now.

If the goal is to reduce congestion and improve service, identify the bottlenecks and correct them now.

The railroad industry does not need to wait for a corporate merger to pursue better operating practices.

The STB should not be forced into an all-or-nothing decision in which the public must accept the merger first and hope that the promised benefits eventually materialize.

There is no reason to dismantle or fundamentally restructure the competitive balance of the North American railroad industry when many of the claimed benefits can and should be pursued through existing infrastructure, commercial agreements, and operating improvements.

The consequences of this merger could last generations. The people who approve it today may not be the people who are held responsible if it fails tomorrow.

That is precisely why the Board must exercise caution.

A merger of this magnitude should not be approved because its applicants want it, because their executives believe in it, or because they want the process completed on their timetable.

The Surface Transportation Board has an obligation to protect the national transportation network, its customers, its employees, and the competitive structure that makes the railroad industry work.

My position is clear: The UP–Norfolk Southern merger should not be approved. The STB should give serious consideration to CPKC's request to terminate the proceeding and, at a minimum, require the applicants to demonstrate the promised benefits before any consolidation is permitted.

The future of North American rail transportation is too important to gamble on promises, pressure, and an attitude that the details can be worked out later.

The public interest must come before the interests of Union Pacific's management and shareholders.

PRINCIPAL REFERENCE MATERIAL

1. **STB Decision, October 23, 2026:** Decision No. 53305, Finance Docket No. 36873, redesignating the SWARS video recording as public.
2. **Brotherhood of Locomotive Engineers and Trainmen, October 30, 2026:** "UP-NS Merger: Judge rules speech where UP's CEO threatened to punish shippers if and when the proposed merger with NS fails must be made public."
3. **Railway Age, October 30, 2026:** "CPKC to STB: 'Terminate This Poisoned Proceeding, Now'." Reporting on CPKC's 193-page submission and request for termination.
4. **Surface Transportation Board:** UP-NS Merger Resources, Finance Docket No. 36873. Procedural decisions, filings, revised merger application, and environmental review materials.
5. **STB Decision, May 28, 2026:** Acceptance of the revised merger application and denial of the applicants' request for permission to engage in ex parte stakeholder communications.
6. **FreightWaves/Trains.com, September 14, 2026:** "BNSF, CPKC, and CSX to request broad access to a combined UP-NS network." Discussion of proposed competitive conditions, BNSF's eastern Pennsylvania route, and other railroad access requests.
7. **News4JAX, October 28, 2026:** "Technology outage slows CSX operations; security team rules out cyberattack." Reporting on the operational consequences of the CSX technology outage.
8. **BNSF, September 10, 2026:** "Our Latest Filing on the UP-NS Merger—and What It Means." BNSF's statement of opposition and proposed competitive conditions.
9. **STB Decision, September 18, 2026:** Denial of motions seeking summary rejection of the revised UP-NS application, without a determination on the merits.

This paper presents an opposition position and identifies allegations and concerns requiring examination by the STB. Statements attributed to executives, competitors, and other parties should be evaluated against the underlying recordings, filings, and evidence in Finance Docket No. 36873.

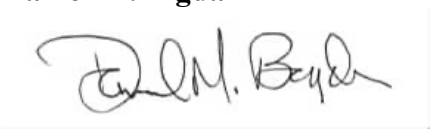
1. **Railway Age, October 30, 2026:** "CPKC to STB: 'Terminate This Poisoned Proceeding, Now'." Reporting on CPKC's 193-page submission and request for termination.
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This paper presents an opposition position and identifies allegations and concerns requiring examination by the STB. Statements attributed to executives, competitors, and other parties should be evaluated against the underlying recordings, filings, and evidence in Finance Docket No. 36873.

M4 Railcar Group respectfully submits that the proposed transaction should not be approved unless the record demonstrates that its projected benefits are **physically achievable, adequately funded, properly staffed, operationally sustainable, and capable of being delivered without unacceptable deterioration in transportation service, safety, competition, or reliability.**

Respectfully submitted,
M4 RAILCAR GROUP
Daniel M. Bigda



Senior Partner – Rail

CC “All Parties of Record”