53302 SERVICE DATE – NOVEMBER 4, 2026
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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. 46

Digest:[1] This decision denies Colorado Pacific Rio Grande Railroad LLC's request to require UP to supplement its response to Decision No. 3 regarding its existing interchange commitments. In addition, this decision grants in part and denies in part Canadian Pacific Railway Company's (CPKC) and Grand Trunk Corporation's (CN) petitions for waiver and/or clarification with respect to their anticipated responsive applications.

Decided: November 3, 2026

On July 30, 2025, Union Pacific Corporation (UPC) and Union Pacific Railroad Company (UP) (collectively, Union Pacific) and Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NS) (collectively, Norfolk Southern) (Union Pacific and Norfolk Southern collectively, Applicants) notified the Board of their intent to file an application seeking authority for the acquisition of control by UPC, through its wholly owned subsidiary Ruby Merger Sub 1 Corporation, of NSC and, through it, NS, and for the resulting common control by UPC of UP and NS (Proposed Transaction).

On August 28, 2025, the Board issued a decision that, among other things, requested additional information from the Applicants, including a "list of interchange commitments—agreements that limit or may limit interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in financial terms, positive economic inducement, or other means—involving UP or NS." Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 3), FD 36873, slip op. at 4 (STB served Aug. 28, 2025). On September 29, 2025, UP and NS filed their responses to the Board's request for additional information in Decision No. 3.

[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).

On November 19, 2025, Colorado Pacific Rio Grande Railroad LLC (CXRG) filed a petition asking the Board to order UP to supplement its response to Decision No. 3 to include an interchange commitment between CXRG and UP at Walsenburg, Colo. On December 10, 2025, UP filed a reply in opposition to CXRG's petition, arguing that CXRG is not subject to an interchange commitment and, therefore, it was appropriate not to include it on the list.

On May 28, 2026, the Board accepted for consideration (1) the revised, primary application filed on April 30, 2026, by Applicants, and (2) a related application in Union Pacific Corp.—Control—Peoria & Pekin Union Railway, Docket No. FD 36873 (Sub-No. 1). On August 18, 2026, the Board issued a decision that, among other things, established the procedural schedule for these proceedings, including setting October 5, 2026, as the deadline to file petitions for waiver or clarification with respect to responsive, including inconsistent, applications. Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 30), FD 36873 et al., slip op. at 13 (STB served Aug. 18, 2026).

On October 5, 2026, Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City, on behalf of itself and its U.S. rail carrier subsidiaries (collectively, CPKC), and Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively, CN), each filed a petition for waiver and/or clarification with regard to their respective anticipated responsive applications.

On October 13, 2026, Applicants filed a response opposing CPKC's petition for waiver and/or clarification in part. Specifically, Applicants oppose CPKC's request that the Board clarify that four of the transactions for which CPKC anticipates filing responsive applications are "minor."

DISCUSSION AND CONCLUSIONS

CXRG's Petition for Order Directing UP to Supplement Its Response to Decision No. 3. CXRG argues that there is both a "steel" barrier and a "paper" barrier that prevents CXRG from interchanging with BNSF Railway Company (BNSF) at Walsenburg, Colo. (CXRG Pet. 1, Nov. 19, 2025.) Therefore, according to CXRG, UP should have included it on the list of interchange commitments that UP filed with the Board in response to Decision No. 3. (Id. at 3-4.) CXRG requests that either UP supplement its filing to include the interchange commitment or that the Board add the interchange commitment to the list. (Id. at 5.)

UP opposes CXRG's request. (UP Reply 2, Dec. 10, 2025.) UP argues that CXRG is not subject to an interchange commitment. (Id.) UP contends that CXRG "cannot interchange with BNSF in Walsenburg because five miles of UP track separate its line from a connection with BNSF." (Id.) Thus, according to UP, it was appropriate for UP not to include CXRG's interchange at Walsenburg on the list. (See id. at 3.) UP also argues that CXRG's request is moot because the requested relief would not affect CXRG's interests or those of any other party in this proceeding. (Id. at 2.)

The Board declines to require UP to supplement its list of interchange commitments in response to Decision No. 3 to include the Walsenburg, Colo., location. The supplemental

information request in Decision No. 3 was intended to make the Board aware of agreements that limit or may limit interchange with a third-party connecting carrier. CXRG's petition and UP's supplemental filing identify the location, carriers, and restriction at issue, and requiring supplemental information would not materially assist the Board review at this time. Therefore, the Board will deny CXRG's petition. The Board notes, however, that the lack of inclusion of an interchange commitment on the lists submitted by Applicants in response to Decision No. 3 does not prevent any party or stakeholder from addressing the potential relevance or impact of any interchange limitations on the Proposed Transaction in their comments.

CPKC's Petition for Waiver and/or Clarification. In its petition, CPKC asks the Board to clarify or waive certain definitional requirements for responsive applications. First, CPKC requests that the Board clarify that the "applicants" with respect to each of its responsive applications "need include only the rail carrier affiliates 'involved' in the contemplated transaction and need not include any noncarrier parent or affiliates that are not so involved." (CPKC Pet. 2-3.) CPKC argues that this is consistent with what the Board has done in past major mergers. To the extent that the Board considers "applicants" to include these entities, CPKC asks the Board to waive that part of its regulations. (Id. at 3.)

The Board agrees that, as in past transactions, requiring information from entities not involved in the responsive application would not enhance the Board's ability to evaluate the proposed transaction. See Canadian Pac. Ry.—Control—Kan. City S., (CPKC Decision No. 13), FD 36500, slip op. at 5 (STB served Feb. 18, 2022). Therefore, the Board will grant CPKC's request to clarify that non-carrier parents and rail carrier affiliates are excluded from the definition of "applicant" in 49 C.F.R. § 1180.3(a) for the purpose of the proposed responsive applications if they are not involved in the responsive application.

Second, CPKC requests that the Board clarify that certain categories of entities are excluded from the definition of "applicant carrier" under 49 C.F.R. § 1180.3(b) for responsive applications, including:

> (i) the primary applicants [UP/NS] and any of their rail carrier affiliates; (ii) any rail carriers not subject to the Board's jurisdiction (such as those located wholly outside the United States); (iii) any rail carrier subsidiaries in which the responsive applicant (here, particular CPKC carrier affiliates) or its subsidiaries hold a non-controlling common stock interest of fifty percent or less; and (iv) any motor or water carrier affiliates.

(CPKC Pet. 4.) CPKC argues that the Board has granted such waiver requests in the past, finding that such information is "not necessary for a proper evaluation of their responsive applications." (Id. at 4-5 (quoting Can. Nat'l Ry.—Control—Ill. Cen., FD 33556, slip op. at 6 (STB served Sept. 18, 1998)).) The Board agrees that such information is not necessary to properly evaluate the proposed responsive applications and, thus, will grant this request. See CPKC Decision No. 13, FD 36500, slip op. at 5-6.

Third, CPKC requests that the Board clarify or waive its regulations to the extent necessary to permit the applicant CPKC carrier affiliates to submit information on a consolidated

basis with respect to CPKC's U.S. rail carrier affiliates "where doing so is less burdensome than providing information that is specific to a particular affiliate." (Id. at 5.) CPKC contends that having to provide "[s]eparate reporting for each operating subsidiary would impose burdens on CPKC without meaningfully assisting the Board's review." (Id.) The Board finds the request reasonable and will allow CPKC to submit the required corporate railroad information on a consolidated basis. See CPKC Decision No. 13, FD 36500, slip op. at 6 (granting similar request to submit data on a consolidated basis). This does not, however, diminish CPKC's obligation to provide information regarding the potential competitive and operational impacts of the transaction proposed in its responsive applications. See id.

Fourth, CPKC requests that the Board waive several other aspects of 49 C.F.R. § 1180.6(b), as applied to "significant" transactions by § 1180.6(c). In particular, CPKC asks the Board to waive § 1180.6(b)(3) (change in control); § 1180.6(b)(5) (issues); § 1180.6(b)(6) (corporate chart); § 1180.6(b)(7) (noncarrier information); and § 1180.6(b)(8) (intercorporate relationships). (Id. at 5-6.) CPKC argues that each of these requirements is "irrelevant to the conditions [it] intends to seek." (Id. at 6 (quoting CPKC Decision No. 13 at 5).) The Board agrees that this information is not necessary for the Board to evaluate the proposed responsive applications and will therefore grant CPKC's waiver request as to these provisions. See CPKC Decision No. 13, FD 36500, slip op. at 5.

Finally, CPKC asks the Board to clarify that the following four of its anticipated responsive applications involve "minor" transactions under 49 C.F.R. § 1180.2(c): (1) preservation of trackage rights on UP between Kansas City and Polo, Mo., (the Polo Line) and confirmation or grant of trackage rights on UP in the Kansas City Terminal; (2) preservation of trackage rights on UP's Techny line between Bryn Mawr, Ill., and Tower A20 (the Techny Line); (3) trackage rights on UP's Lufkin Subdivision between Shreveport, La., and Houston, Tex.; and (4) reconveyance of assets relating to Wylie Intermodal Terminal, if conveyed to NS before consummation. (Id. at 7-10.) CPKC contends that each of the four transactions is limited in geographic scope, "would not have any anticompetitive effects, and would not give CPKC access to any source of rail traffic to which it lacks access today." (Id. at 7.)

Applicants oppose CPKC's request, arguing that the "summary information that CPKC provided regarding each of the proposed transactions is insufficient to allow the Board to make the statutory finding that they are 'not significant.'" (Applicants Reply 2, Oct. 13, 2026.) Applicants contend that the only information offered by CPKC regarding operations of the subject rail lines, relevant markets, or competitive impacts consists of "unsupported summary assertions." (Id.) Without more, Applicants argue, CPKC's petition cannot support the requisite findings under 49 C.F.R. § 1180.2 to classify these transactions as "minor." (Id.)

Under 49 C.F.R. § 1180.2, a nonexempt transaction involving more than one railroad that does not involve the control or merger of two or more Class I railroads is to be classified as "minor"—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A nonexempt transaction not involving the control or merger of two or more Class I

railroads is to be classified as "significant" if neither of these determinations can clearly be made.

Based on the limited information contained in CPKC's waiver petition and its description of anticipated responsive applications, the Board cannot make the requisite findings under 49 C.F.R. § 1180.2 that the anticipated transactions clearly would not have any anticompetitive effects or that any such effects would clearly be outweighed by the transaction's anticipated contributions to the public interest in meeting significant transportation needs. (See CPKC Pet. 8-11, Oct. 5, 2026; CPKC Description 3-7, Sept. 9, 2026.) The Board needs additional information regarding the potential operational and service impacts of CPKC's proposed access to Kansas City Terminal Railway, the Polo Line, the Techny Line, and the Lufkin Subdivision, as well as CPKC's continued ownership of the Wylie Intermodal Terminal, to better understand the effects of those transactions on competition. Thus, CPKC's petition will be denied to the extent it seeks to designate in advance these four anticipated responsive application transactions as minor.

CN's Petition for Waiver and/or Clarification. In its petition, CN seeks waiver or clarification on three topics. First, CN seeks clarification from the Board that "its proposal to file four responsive applications, which will collectively cover all nine sub-dockets assigned to CN, is consistent with Board procedure." (CN Pet. 3.) CN contends that addressing six of the sub-dockets in one responsive application is appropriate "[g]iven the overlapping nature of the substance of many of these requests." (Id. at 7.) CN asks the Board to clarify "whether CN must file individual responsive applications to address each of the assigned sub-dockets." (Id. at 8.)

Nothing in the Board's rules or regulations prevents applicants from filing a single responsive application that covers multiple sub-dockets. However, any responsive application that includes more than one sub-docket should provide sufficient clarity and detail on each individual transaction so that the Board may easily discern the impact of each transaction included in the application both on the primary transaction and the rail network generally. This is especially important here because several of the conditions sought in the sub-dockets that CN seeks to combine into one application may overlap with the conditions sought in responsive applications that may be filed by another railroad. (See, e.g., CN Description 2-3, Sept. 9, 2026; CSXT Description 5-6, Sept. 9, 2026.) The Board needs sufficient information and evidence on each responsive application and each component thereof to be able to evaluate the competing requests for conditions. Failure to provide such information in a clear manner may result in rejection of the responsive application or denial of the requested condition.

The Board will also clarify that each responsive application may incorporate by reference information to the extent allowable under 49 C.F.R. § 1180.4. (See CN Pet. 8.)

Second, CN requests a waiver or clarification that "CN need not include a responsive application requesting trackage rights to the Macoupin Energy LLC Shay Mine #1 facility [Shay Mine #1] near Carlinville, Illinois, because the mine is currently idled, with CN reserving the right to seek such trackage rights in the future if the mine resumes operations." (Id. at 3.) CN argues that because the Shay Mine #1 is idle, the need for such trackage rights is not presently "ripe." (Id. at 4.) CN contends that if the Shay Mine #1 resumes operations in the future it

should be allowed to seek trackage rights over UP's line between Springfield and Carlinville, Ill., at that time. (Id. at 5.) According to CN, requiring it to file a responsive application now, though, would "impose unnecessary costs and burdens on the parties and the Board without any corresponding benefit to competition or the public interest." (Id.)

The Board declines to opine on whether CN needs to include a responsive application for the Shay Mine #1 facility.[2] Consideration of responsive applications is part of the Board's review and its authority to condition the primary transaction, if approved. (See CPKC Decision No. 13, FD 36500, slip op. at 4 (citing 49 U.S.C. § 11324(c)).) The decision whether to request such a condition lies with CN.

Third, CN seeks clarification from the Board that its anticipated request for trackage rights over the Terminal Railroad Association of St. Louis (TRRA), a non-applicant, need not be included in CN's responsive applications. (CN Pet. 3.) CN contends that it is "entitled to such trackage rights by virtue of its existing ownership interest in TRRA and will obtain those rights directly from TRRA, subject to separately seeking STB approval for such trackage rights as described below under 49 C.F.R. § 1180.2(d)(7) rather than through an STB-imposed condition as part of this merger proceeding." (Id.) CN argues that because TRRA owns the track at issue and TRRA is not an applicant, seeking trackage rights over TRRA's lines via a responsive application is not appropriate. (Id. at 6.) CN, instead, intends to seek such rights via a separate proceeding. (Id.)

The Board agrees that because TRRA is a non-applicant, CN is not requesting that the trackage rights agreement be made a condition to the Proposed Transaction, and the anticipated trackage rights agreement would be entered into voluntarily and available to CN regardless of the proposed Transaction, it is appropriate for CN to seek authority for such trackage rights outside of this proceeding. However, nothing prohibits CN from discussing in its comments how such trackage rights would impact the primary transaction or any other aspect of these proceedings.

Paper Copy Requirement. The Board will also waive, for all responsive applications, the requirement in 49 C.F.R. § 1180.4(a)(1) that applicants file paper copies of their responsive applications.

It is ordered:

1. CXRG's Petition for Order Directing UP to Supplement Its Response to Decision No. 3 is denied.

[2] The Board disagrees that CN's request is necessarily analogous to the grant of trackage rights in BNSF Ry. Co.—Trackage Rights Exemption—Union Pac. R.R. Co., FD 36547 (STB served Oct. 22, 2021). There, BNSF right to serve all "2-to-1" shipper facilities was a pre-existing right pursuant to a settlement agreement that the Board imposed as a condition to the combination of UP and Southern Pacific Rail Corporation (SP). See Union Pac.—Control & Merger—S. Pac. Rail, 1 S.T.B. 233, 368 (1996). The subsequent authorization of trackage rights in 2021 cited by CN was simply implementing that pre-existing right.

2. CPKC's Petition for Waiver and/or Clarification is granted in part and denied in part as described above.

3. CN's Petition for Waiver and/or Clarification is granted in part and denied in part as described above.

4. The requirement in 49 C.F.R. § 1180.4(a)(1) to file paper copies is waived for all responsive applications.

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

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