312820

ENTERED
Office of Chief Counsel
November 9, 2026
Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

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

COMMENT AND PETITION FOR RELIEF OF CONCERNED RAIL SHIPPERS AND INDUSTRY STAKEHOLDERS

Comes now the undersigned Concerned Rail Shippers and Industry Stakeholders ("Commentators"), pursuant to 49 U.S.C. § 11321 et seq. and 49 C.F.R. Part 1180, and respectfully submits this Comment and Petition for Relief in opposition to the joint control and consolidation application of Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS").

8 November 2026

Dear ALJ Soulikias and Parties of Record,

In support whereof, Commentators state as follows:

I. PRELIMINARY STATEMENT AND STATEMENT OF INTEREST

1. Commentators represent industrial freight shippers, logistics managers, and supply chain stakeholders dependent upon reliable, competitively priced, and uncoerced Class I rail transportation services across North America.

2. The integrity of Surface Transportation Board ("STB" or "Board") proceedings requires an uninhibited, non-coerced administrative record. Captive shippers must be able to exercise their statutory rights under 49 U.S.C. § 11321 et seq. to provide candid evidence regarding reciprocal switching, bottleneck rates, trackage rights, and service disruptions without fear of commercial retaliation.

3. As detailed herein, public and explicit statements made by Union Pacific Chief Executive Officer Jim Vena at the Southwest Association of Rail Shippers ("SWARS") conference have unlawfully corrupted the administrative record, placed captive shippers under economic duress, and established a chilling effect that undermines the Board's statutory mandate to evaluate the public interest.

II. FACTUAL BACKGROUND AND EXECUTION OF RETALIATORY THREATS

4. During a keynote address before rail customers at the SWARS conference, UP Chief Executive Officer Jim Vena stated on the record regarding shipper opposition to the proposed transaction:

> *"If we don't do that, Union Pacific will still be there. And if I stick around, which I probably will, I'll probably increase everybody's rates that said they didn't want a seamless railroad by three or four extra*

> *percent to teach you a lesson."*
>
> **— Jim Vena, CEO of Union Pacific Railroad (SWARS Keynote Address)**

5. Rather than reassuring the shipping public of a commitment to competitive, non-discriminatory service, executive leadership of the applicant carrier explicitly declared an intent to levy financial penalties (a 3% to 4% rate surcharge) against customers exercising their regulatory right to participate in Board proceedings.

6. The applicant carrier subsequently sought to shield the recording of this address under confidentiality designations. However, following formal opposition from competing Class I railroads including BNSF Railway Company ("BNSF") and Canadian Pacific Kansas City ("CPKC"), the Surface Transportation Board rejected UP's confidentiality claims, and Administrative Law Judge Jenifer J. Soulikias ordered the speech unsealed for full public scrutiny.

III. ARGUMENT

A. Executive Intimidation Destroys the Integrity of the Administrative Record

7. Rail transportation remains a captive market for high-volume bulk commodities. Where shippers lack modal or geographic alternatives, Class I carriers hold dominant market power.

8. By conditioning future freight rate structures on a shipper's regulatory stance, UP leadership has placed the shipping public under constructive economic duress.

9. This conduct forces shippers into an untenable dilemma: either remain silent, file sanitized comments withholding operational concerns, or risk severe commercial penalties. Consequently, any absence of formal shipper opposition cannot be interpreted by the Board as evidence of public benefit, as the record has been artificially suppressed.

B. Commercial Retaliation Directly Impacts Capital Markets and Economic Planning

10. Freight rates are foundational input costs for industrial manufacturing, agriculture, and energy sectors. Threatening arbitrary, punitive rate hikes creates artificial market volatility.

11. Corporate decisions regarding capital expenditures, facility expansions, plant site selections, and labor hiring must account for regulatory risk. Punitive rate actions directly impair supply chain predictability, manipulate corporate earnings, and introduce distorted signals into public equity markets.

C. Broad Inter-Railroad Opposition and Alignment with CPKC and BNSF Filings

12. The unlawful impact of executive retaliatory statements is confirmed by widespread opposition across the Class I rail industry. Rival carriers have actively intervened before the Board to challenge UP leadership's procedural maneuvers and anti-competitive threats:

a. Canadian Pacific Kansas City (CPKC Motion to Terminate, Filing CPKC-64): CPKC formally petitioned the Board to terminate the merger proceeding, emphasizing that UP leadership's retaliatory threats inflict irremediable taint upon the administrative process. CPKC correctly noted that framing such statements as 'humor' or 'offhand remarks' cannot erase the severe chilling effect on shipper participation.

b. BNSF Railway Company Interventions: BNSF formally opposed UP's efforts to suppress and conceal the SWARS speech recording, explicitly warning the Board that allowing UP to keep the speech confidential or control its distribution would enable UP to manipulate public perception and track viewer data, while granting inappropriate procedural protections for illegal executive conduct.

c. Industry-Wide Consensus: Inter-railroad filings and joint shipper coalition petitions collectively confirm that public administrative proceedings under 49 U.S.C. § 11321 cannot co-exist with explicit executive threats of commercial reprisal.

D. Corporate Governance and Professional Conduct Standards

14. Under standard corporate governance policies and federal antitrust frameworks, lower-level carrier representatives threatening client retaliation for participation in federal administrative proceedings would be subject to immediate termination. Executive officers cannot enjoy immunity for conduct that violates baseline administrative fairness.

15. Vena's public threats disqualify applicant leadership from serving as credible stewards of a merged transcontinental rail network. The Board of Directors of Union Pacific Railroad has a fiduciary and public obligation to address leadership whose actions compromise regulatory proceedings and expose the carrier to severe legal liabilities.

E. Statutory Authority for a 60-Month Moratorium on Class I Rail Consolidations

16. Beyond terminating Docket No. FD 36873, the Board must exercise its broad statutory oversight under 49 U.S.C. § 11321 to protect the national rail network from systemic destabilization. Allowing major Class I consolidations to proceed under current market conditions threatens total regulatory capture and permanent anti-competitive concentration.

17. A mandatory 60-month (5-year) moratorium on the filing, acceptance, or consideration of all Class I railroad control and consolidation applications is essential to restore market stability, conduct comprehensive market impact studies, and allow captive shippers to participate in administrative proceedings without systemic fear of executive reprisal.

IV. PRAYER FOR RELIEF

WHEREFORE, Commentators respectfully request that the Surface Transportation Board issue an Order granting the following relief:

1. Formally REJECT AND TERMINATE Docket No. FD 36873 with prejudice, granting CPKC's Motion to Terminate (Filing CPKC-64);

2. Impose a mandatory 60-Month (5-Year) Moratorium halting the acceptance, review, or approval of all proposed Class I railroad mergers and consolidations to restore national supply chain stability and protect shipper regulatory participation;

3. Institute a Formal Investigation into Union Pacific's marketing, pricing, and customer communication practices regarding regulatory filings in Docket No. FD 36873;

4. Issue an Administrative Protective Order prohibiting applicant carriers, their officers, and agents from taking any adverse pricing, car supply, or service actions against any shipper participating in this docket; and

5. Grant such other and further relief as the Board may deem necessary and appropriate to preserve the integrity of the public record and the public interest.

Respectfully submitted,

Dated: November 8, 2026

/s/ Concerned Rail Shippers
CONCERNED RAIL SHIPPERS AND INDUSTRY STAKEHOLDERS
By Their Representative / Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2026, a true and correct copy of the foregoing Comment and Petition for Relief was served by electronic mail or first-class mail, postage prepaid, upon all parties of record in STB Docket No. FD 36873.

/s/ Representative Signature



CC “All Parties of Record”