53189 SERVICE DATE - NOVEMBER 17, 2026
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42188

UNION PACIFIC RAILROAD COMPANY v. BNSF RAILWAY COMPANY

Digest:[1] This decision denies a motion to dismiss the complaint in this proceeding as well as motions to hold the proceeding in abeyance and to suspend discovery pending resolution of the motion to dismiss. This decision also establishes a procedural schedule.

Decided: November 17, 2026

BACKGROUND

On May 15, 2026, Union Pacific Railroad Company (UP) filed a complaint (Complaint) against BNSF Railway Company (BNSF) under 49 U.S.C. § 11701 pertaining to alleged switching practices and associated rates at six locations on BNSF's system. UP states that, at those and other locations, BNSF offers switching service that enables shippers to take line-haul service from UP. The complaint alleges that, effective May 1, 2026, BNSF changed its switching rates at the locations in question, including by cancelling unit train reciprocal switch rates previously in effect, now offering only switching rates for manifest traffic. According to UP, the changes "almost tripled" the switching rate for unit train grain shipments bound for UP. (Complaint 2.)

UP alleges that the changes to BNSF's rates are unrelated to any change in (1) the costs of switching, (2) operational or network needs, or (3) the market for switching services. (Id. at 22.) According to UP, BNSF acted "in retaliation" against the affected customers and UP "for the customers' utilization of [UP]" following UP's successful efforts to win business from those customers. (Id. at 27; see also id. at 1-4.) UP further alleges that BNSF's tariffs are "misleading" because they appear to offer switching service for unit trains of grain whereas BNSF is unwilling to provide that service at the locations in question. (Id. at 24, 25.)

In Counts 1 and 2 of the Complaint, UP asks the Board to enjoin BNSF's actions as unreasonable practices in violation of 49 U.S.C. § 10702 and to order damages. Count 1 targets the changes in BNSF's rates; this count pertains to all six of the affected locations, including Grand Island, Neb.; Hastings, Neb.; Havelock, Neb.; Island Park, Iowa; Lincoln, Neb.; and

[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).

Saginaw, Tex. (See Complaint 21-23.) Count 2 targets an alleged discrepancy between BNSF's tariffs and BNSF's practices with respect to switching for unit trains; this count pertains to all of the affected locations except Grand Island. (Id. at 24.) In Count 3 of the Complaint, UP asks the Board to prescribe reciprocal switching agreements under 49 U.S.C. § 11102(c) for the affected locations that are within a terminal area. UP identifies the affected customers as those in Saginaw, Lincoln, and Island Park. (Id. at 26.) UP asserts that the proposed prescriptions are "necessary to provide competitive rail service" within the meaning of § 11102(c) and that BNSF's actions constitute anticompetitive conduct for purposes of the Board's regulations under § 11102(c), 49 C.F.R. part 1144. (Id. at 4.)

BNSF's answer

On June 25, 2026, BNSF filed an answer (Answer) to the Complaint, asserting that UP's allegations are meritless and that UP's requested relief is unwarranted and inappropriate. BNSF asserts that it updated its switching tariffs at the locations in question simply to match the operational practices at those locations. According to BNSF, the work that is required to switch UP's traffic at affected locations is commensurate with the work that is required for standard manifest traffic because railcars interchanged at the locations are not "simple hook-and-haul" movements of full trainloads. (Answer 3.) According to BNSF, UP's requested relief would put UP in a better position than if UP served the locations directly because, under the requested relief, BNSF would be required to undertake operationally complex and costly switching operations to build or break down 90-plus railcar unit trains on UP's behalf. (Id. at 1-3.) BNSF asserts that no shipper has lost competitive rail service as a result of BNSF's actions and that UP's claims of retaliation are "fanciful." (Id. at 4.)

BNSF's motion to dismiss

On July 6, 2026, BNSF moved to dismiss the Complaint (Motion to Dismiss). According to BNSF, Counts 1 and 2 of the Complaint fail to warrant intervention under 49 U.S.C. § 10702 because (1) BNSF's switching services at the locations in question are voluntary and hence not subject to regulation by the Board unless ordered under § 11102(c); and (2) the Complaint, in failing to allege misrepresentation, challenges a practice manifested exclusively in the level of BNSF's switching rates, without alleging market dominance as required to initiate rate review under 49 U.S.C. §§ 10701 and 10707. (Motion to Dismiss 7-12, 15-22.) With respect to one location that is implicated in Count 1, BNSF argues that, pursuant to 49 U.S.C. § 10709, the Board lacks jurisdiction over the carriers' switching arrangements at Grand Island because those arrangements are governed by contract. (Id. at 13 and 14 n.7.) According to BNSF, Count 3 of the Complaint also fails to present grounds for relief under section 11102(c) and/or part 1144 because it does not allege (1) a compelling need for a prescribed reciprocal switching agreement, (2) that BNSF has provided inadequate service, (3) that BNSF holds market power, and (4) that BNSF's actions have had an anticompetitive effect. (Id. at 3-4, 22-34.)

BNSF's motion to hold in abeyance

On July 14, 2026, BNSF submitted a motion to hold this proceeding in abeyance pending resolution of BNSF's motion to dismiss (Motion to Hold in Abeyance). BNSF reasons that

BNSF and the Board should not have to conduct discovery on an insufficient complaint, that resolution of BNSF's motion to dismiss will affect the scope of issues in this proceeding, and that abeyance would not be fundamentally unfair to any party. (Motion to Hold in Abeyance 3-4.)

UP's reply to motion to dismiss

On July 27, 2026, UP responded in opposition to BNSF's motion to dismiss (UP Response I). UP asserts that dismissal would be inappropriate because § 11701(b) merely requires complainants to "state reasonable grounds for investigation and action." (UP Response I 1-2.) UP also contests BNSF's statutory arguments, asserting that BNSF's switching service constitutes transportation that is subject to § 10702, (id. at 5); that §§ 10701 and 10707 do not apply because UP does not challenge BNSF's switching rate per se, (id. at 6); that UP is not required to establish an "overt misrepresentation" for an unreasonable practice claim, (id. at 3, 16-17); that neither the "necessary to provide competitive rail service" standard in § 11102(c) nor 49 C.F.R. part 1144 requires a finding of compelling need or inadequate service, or "antitrust-style inquiry into market power," (id. at 19-23); and that interchange agreements between rail carriers (like the one between BNSF and UP at Grand Island) are not contracts for purposes of § 10709, (id. at 10-14).

UP's reply to motion to hold in abeyance

On August 3, 2026, UP submitted a response in opposition to the Motion to Hold in Abeyance (UP Response II). According to UP: (1) BNSF's claim that resolution of the Motion to Dismiss would affect the scope of discovery is "entirely speculative," (2) BNSF has failed to demonstrate that discovery based on UP's claims would be unduly burdensome, and (3) delay of the proceeding would be fundamentally unfair in light of the ongoing harm that BNSF's actions cause for UP and affected shippers. (UP Response II 2-4.)[2]

Proposed procedural schedules

On July 14, 2026, UP submitted a proposed procedural schedule (UP Procedural Schedule) that would allow 73 days for discovery, 27 days thereafter for the submission of opening evidence, 31 days thereafter for the submission of reply evidence, and 30 days thereafter for the submission of rebuttal evidence. (UP Procedural Schedule 1.) In its Motion to Hold in Abeyance, BNSF proposed to allow 120 days for discovery, 30 days thereafter for the submission of opening evidence, 45 days thereafter for the submission of reply evidence, and 30 days thereafter for the submission of rebuttal evidence. (Motion to Hold in Abeyance 4.)

[2] Three shippers (Farmers Cooperative, Cooperative Producers, Inc., and Miller Milling Company, LLC) submitted letters related to this matter, although none has moved to intervene and therefore none has party status in this proceeding. See 49 C.F.R. § 1101.2. The Board will accept the letters into the record, as no party has objected to submission of the letters. The Board will also accept BNSF's August 12, 2026 response to the letters.

BNSF's motion to suspend discovery

On November 13, 2026, BNSF moved for a "protective order staying all discovery in this proceeding" until the Board rules on BNSF's Motion to Dismiss. (BNSF Motion for a Protective Order Staying Discovery Pending Resolution of Motion to Dismiss (Motion to Suspend Discovery) 1, Nov. 13, 2026.) BNSF states that UP served discovery requests on BNSF on November 6, 2026. (Id. at 1.)

DISCUSSION AND CONCLUSIONS

Motion to Dismiss

The Board will deny the Motion to Dismiss. Under section 11701(b) of the Interstate Commerce Act, 49 U.S.C. § 11701(b), any person may file with the Board a complaint alleging that a rail carrier subject to the Board's jurisdiction violated part A of the Act, 49 U.S.C. Subtitle IV, Part A. The complaint must state the facts that are the subject of the alleged violation. 49 U.S.C. § 11701(b). Under the Board's regulations, a complaint should also include a reference to pertinent statutory and regulatory provisions, an indication of how those provisions have been violated, and a statement of the requested relief. 49 C.F.R. § 1111.2(a). The Act grants the Board discretion to dismiss a complaint where the complaint does not state reasonable grounds for investigation and action. 49 U.S.C. § 11701(b). As the Board has explained before, motions to dismiss are disfavored and are rarely granted. See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co., NOR 42104, slip op. at 3 (STB served Dec. 30, 2009).

Reviewing the alleged facts in the light most favorable to the complainant, see, e.g., Central Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co., NOR 42159, slip op. at 4 (STB served July 25, 2018), the Complaint does not fail to state reasonable grounds for investigation and action. The Complaint alleges specific facts, identifies statutory provisions that might be implicated, presents a theory for relief under those provisions, and makes specific claims for relief. The Complaint's central allegation is that, after certain shippers shifted business from BNSF to UP, BNSF retaliated by changing its switching practices and fees at those shippers' locations. The Complaint suggests that it was BNSF's objective to make UP's service less competitive in the market for transportation service after UP was able to win some business from BNSF. These allegations could be relevant to an analysis of anticompetitive conduct, a finding which is presently required by the Board's precedent for a reciprocal-switching prescription under part 1144, or to whether BNSF engaged in an unreasonable practice. Thus, these claims, taken as true for present purposes, are enough to establish reasonable grounds for investigation.[3]

[3] In the case BNSF cites for the dismissal standard, (see Motion to Dismiss 7), the Board dismissed a portion of a complaint that sought to define a rail carrier's hypothetical future statutory obligations without reference to any specific service request. See Evergy, Inc. v. BNSF Ry. Co., NOR 42180, slip op. at 4 (STB served Nov. 14, 2024); see also Grain Land Coop v. Canadian Pac. Ltd. & Soo Line R.R. Co., NOR 41687, slip op. at 3 (STB served Dec. 8, 1999) (dismissing a portion of a complaint that challenged a surcharge on a rate that the complainant never paid). UP's complaint does not have any such deficiency.

In addition, the Board disagrees with BNSF's suggestion that resolution of certain disputed legal issues at this juncture would be appropriate as a means to narrow the scope of discovery. (Mot. to Hold in Abeyance 3, 4.) All three of the Complaint's counts rest in part on allegations that BNSF engaged in anticompetitive conduct, and the Board is disinclined to make a determination at this stage of the proceeding regarding how those allegations could be relevant under the statutory provisions cited by UP. Nor has BNSF otherwise explained how elimination of any of UP's particular claims would substantially change the scope of discovery.

Nothing in this order prejudges the outcome of the case, whether with respect to any future factual findings or legal conclusions by the Board. Moreover, the Board's denial of BNSF's motion to dismiss is without prejudice to BNSF's right to renew, at an appropriate stage of this proceeding, the challenges that BNSF made in that motion.

Motions to Hold in Abeyance and to Suspend Discovery

In light of the Board's denial of the Motion to Dismiss, the Board will deny as moot the Motion to Hold in Abeyance and the Motion to Suspend Discovery. Both motions requested action pending resolution of the Motion to Dismiss.

Procedural Schedule

The Board will establish a procedural schedule as set forth in the Appendix hereto. The procedural schedule departs from the timing that was proposed by UP insofar as the schedule allows 120 days for discovery (measured from the date of this order), 30 days for opening evidence, and 45 days for the submission of reply evidence. The Board recognizes the importance of timely resolution of this case but does not view these modest extensions as inconsistent with that objective, particularly given the issues to be resolved. The parties are encouraged to cooperate on discovery matters and resolve any disputes promptly.

It is ordered:

1. BNSF's motion to dismiss is denied without prejudice to BNSF's right to renew, at an appropriate stage of this proceeding, the challenges that it made in that motion.

2. BNSF's motion to hold this proceeding in abeyance is denied as moot.

3. BNSF's motion for a protective order suspending discovery is denied as moot.

4. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision.

5. This decision is effective on its service date.

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

APPENDIX

PROCEDURAL SCHEDULE

March 18, 2027	Discovery closes.
April 19, 2027	Opening evidence due.
June 3, 2027	Reply evidence due.
July 6, 2027	Rebuttal evidence due.