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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32760 (Sub-No. 52)

BNSF RAILWAY COMPANY—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

Digest:[1] This decision institutes a proceeding and directs the parties to meet and confer on a procedural schedule.

Decided: November 18, 2026

On August 26, 2026, BNSF Railway Company (BNSF) filed a supplemental petition (Supplemental Petition) seeking to enforce the equal dispatching provisions of the Restated and Amended Settlement Agreement (RASA). (Suppl. Pet. 3.) BNSF asks the Board to open a proceeding and order the parties to meet and confer on a procedural schedule. (Suppl. Pet. 38.)

The Board finds that the Supplemental Petition satisfies the Board's directive that BNSF provide clarity on the scope of the proceeding and the nature of the relief requested, and BNSF has thus properly raised issues that warrant consideration by the Board. Therefore, a proceeding will be opened and the parties will be directed to meet and confer on a procedural schedule.

BACKGROUND

BNSF initially filed its petition on November 28, 2025, seeking "review, enforcement, and modification" of conditions imposed when the Board approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (UP) and the rail carriers controlled by Southern Pacific Rail Corporation (SP) in 1996 (the UP/SP merger).[2] (Pet. 1.) Specifically, BNSF asked the Board to review UP's compliance with the RASA, and to enforce and/or reform the RASA as necessary to preserve competition and address UP's alleged pattern of obstructive behavior. (Id. at 2-3.) In the petition, BNSF did not request any specific remedies to address what it characterized as a "pattern of conduct" by UP that undermines the competition that the RASA was meant to preserve. (Id. at 12, 23, 26-28.) Rather, BNSF asked the Board to

[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).

[2] For additional background information, please see the Board's earlier decision in this docket. BNSF Ry.—Pet. for Rev.—UP/SP Merger Conditions (May 2026 Decision), FD 32760 (Sub-No. 52), slip op. at 1-2 (STB served May 26, 2026).

issue a procedural schedule that would allow BNSF to conduct discovery before submitting its request for remedies, "including necessary modification to the RASA," to the Board. (Id. at 27.)

On January 7, 2026, UP filed a reply opposing BNSF's petition. UP argued that BNSF's petition relied on unsupported assertions rather than evidence. (UP Reply 2, 14-18.) UP disputed many of the facts and RASA interpretations outlined in BNSF's petition and asserted that many of BNSF's allegations are too vague to identify the nature of its complaint. (Id. at 8-9, 14-17.) UP also argued that BNSF's petition neither states how the merger conditions should be modified nor adequately explains why modifications are necessary. (Id. at 3, 15-18.) Finally, UP contended that BNSF had not shown that the available remedy of private arbitration (and Board adjudication where needed) is insufficient to resolve the disputes BNSF describes. (Id. at 2-3, 7, 11.) UP therefore asked the Board to deny the petition. (Id. at 19.)

In a decision served on May 26, 2026, the Board declined to open a proceeding based on the record at the time but gave BNSF the option to "supplement its petition to clarify the scope of the proposed proceeding and the exact nature of the relief requested" by July 27, 2026. May 2026 Decision, FD 32760 (Sub-No. 52), slip op. at 6. The deadline for filing the supplement was later extended to August 26, 2026, following a motion by BNSF requesting a 30-day extension. BNSF Ry.—Pet. for Rev.—UP/SP Merger Conditions, FD 32760 (Sub-No. 52), slip op. at 2 (STB served July 22, 2026).

On August 26, 2026, BNSF filed the Supplemental Petition, in which it narrowed the requested relief sought. BNSF now seeks enforcement of the equal dispatching provisions of the RASA, specifically RASA § 9(d), which provides that "[t]rains of the parties utilizing [lines over which they have granted each other trackage rights under the RASA] shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier;" and Exhibit D, which sets forth specific dispatching protocols.[3] (Suppl. Pet. 3, 25-26; id., Ex. 1 at 36.) BNSF contends that UP's obligation to dispatch BNSF trains in an equal, non-discriminatory manner is one of the key competition-preserving conditions in the RASA. (Id. at 5.) BNSF argues that UP "routinely violates" the dispatching provisions "by engaging in a range of prohibited conduct, including imposing absolute operating windows on BNSF trains only and not on UP trains; imposing dispatching processes that favor UP without BNSF's consent; replacing first-come, first-served access with UP-dictated windows; and forcing BNSF trains to hold while UP local trains operate with de facto priority." (Id. at 6-7.) According to BNSF, UP's discriminatory dispatching practices have harmed shippers by causing delays and unreliable service, and have made it difficult for BNSF to compete with UP. (Id. at 7.) BNSF provides specific examples of UP's alleged misconduct, (see id. at 9-13, 24-36; see also, e.g., id. at V.S. Baranowski, V.S. Brewer, V.S. Power, Exhibits 26-39), and cites specific data that it contends reflects this harm, (id. at 7, 24-36).

[3] BNSF does not specifically identify Section 4(a), which requires parity and equal access to the Mexican border crossing at Eagle Pass, as a RASA provision it seeks to enforce. But BNSF claims that UP is failing to comply with this provision. Section 4(a) is analogous to Section 9(d) and Exhibit D in that it too involves UP's obligations regarding dispatching. Accordingly, the Board will also consider compliance with RASA § 4(a) as part of BNSF's request for relief.

UP filed a reply in opposition to the Supplemental Petition on September 25, 2026, urging the Board to dismiss it. UP argues that BNSF's claim that it "has not provided equal dispatching is incorrect and unsupported" by the evidence BNSF includes with its filing. (UP Suppl. Reply 1-2.) According to UP, "much" of what BNSF submitted with its Supplemental Petition "has nothing at all to do with the dispatching claim." (Id. at 4.) And to the extent the documents do address BNSF's dispatching claims, UP contends that they are "in large part" "years-old" complaints that BNSF has taken out of context by not including relevant information (including UP's responses). (Id. at 4-5.) UP asserts that reconstructing the circumstances around these incidents "would be fact-intensive and time-consuming for the adjudicator." (Id. at 5.) Moreover, UP argues that even if BNSF has stated a claim for unequal dispatching, that claim should be resolved via arbitration, as required by the RASA. (Id. at 2, 6-8.) UP claims that the Board need only become involved in such a dispute if BNSF were seeking modification of a merger condition, which it is not. (Id. at 7.) However, UP requests that, if the Board does institute a proceeding, it allows the parties to meet and confer on a procedural schedule. (Id. at 8.)

DISCUSSION AND CONCLUSIONS

As the Board explained in its May 2026 Decision, by imposing the BNSF/UP settlement agreement, as amended by the Board and memorialized in the RASA, as a condition to the UP/SP merger, the Board was seeking to remedy (among other things) the loss of competition at 2-to-1 points. May 2026 Decision, FD 32760 (Sub-No. 52), slip op. at 4. The settlement agreement was meant to do so by allowing BNSF to "replace, to a large extent, the competitive service that [would be] lost when SP [was] absorbed into UP." Union Pac. Corp.—Control & Merger—S. Pac. Corp. (Decision No. 44), 1 S.T.B. 233, 367-75, 418-21 (1996). The Board found in the May 2026 Decision that "BNSF must be more specific about the facts of the alleged violations, the RASA provisions implicated, and the details of the requested remedies" before the Board would consider BNSF's claims. May 2026 Decision, FD 32760 (Sub-No. 52), slip op. at 4. BNSF's Supplemental Petition has satisfied that standard.

BNSF clarified that it is seeking enforcement of the equal dispatching provisions of the RASA, specifically RASA § 9(d) and Exhibit D. (Suppl. Pet. 3.) BNSF has provided specific examples of instances in which it alleges that UP violated the equal dispatching provisions of the RASA, along with supporting evidence. (See id. at 9-13, 24-36 (and documentation cited therein).) And BNSF has narrowed the remedies sought to:

> an order (1) enforcing Section 9(d) of the RASA and the Dispatching Protocols, (2) imposing retroactive civil penalties pursuant to 49 U.S.C. §§ 11901 and 11323–27 against UP for its noncompliance with the RASA and the Dispatching Protocols, and (3) requiring UP to report on a quarterly and annual basis whether and how it is meeting its equal dispatching requirements under the merger conditions.

(Suppl. Pet. 36-37.) These clarifications are sufficient to allow the Board to identify the issues and claims in BNSF's petition for review.

UP argues that because BNSF no longer seeks modification of the RASA, BNSF's claims are more suited for arbitration. (UP Suppl. Reply 2, 6-8.) The Board disagrees. As the Board noted in the May 2026 Decision, "a Board proceeding may be appropriate when a petition raises issues that have broad implications for implementing the merger conditions." May 2026 Decision, FD 32760 (Sub-No. 52), slip op. at 5. "It is the Board's responsibility to determine whether the conditions it has imposed in merger proceedings are being properly implemented in a manner consistent with the public policy underlying those conditions." Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., FD 32760, slip op. at 3 (STB served May 5, 2017). Here, BNSF is alleging a consistent pattern of conduct by UP that, if substantiated, could undermine the equal dispatching requirements of the RASA, a key condition of the RASA aimed at preserving the competition lost as a result of the UP/SP merger. And while BNSF no longer seeks modification of the RASA to address its concerns, it is seeking other unique relief that is more appropriately addressed by the Board, such as an order requiring quarterly and annual reporting by UP. For these reasons, BNSF's claim that UP has violated the equal dispatching requirements of the RASA is appropriately before the Board.

The Supplemental Petition raises issues that require consideration by the Board. Therefore, the Board will institute a proceeding and direct the parties to meet and confer on a procedural schedule. The parties shall submit, if possible, a joint proposed schedule by December 3, 2026. If the parties cannot reach agreement on a joint proposed schedule, they should submit their individual proposed schedule by December 3, 2026.

It is ordered:

1. A proceeding is instituted.

2. The parties shall meet and confer on a scheduling order and, if possible, jointly submit a proposed schedule by December 3, 2026. If the parties cannot reach agreement on a joint proposed procedural schedule, parties are to submit their individual proposed schedules by December 3, 2026.

3. This decision is effective on its service date.

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