



By Dan Bostek - Steve Blin - J. Vann Cunningham

## A Disciplined Reading of the April 30 UP-NS Refiling: Questions That Remain

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### **An Inquiry, Not an Argument, Into Where the Amended Application Has Not Yet Closed the Loop**

**By Dan Bostek, Steven Blinn, and J. Vann Cunningham**

The April 30 Union Pacific-Norfolk Southern amended merger application is the most data-rich rail merger filing in U.S. history. Four volumes. More than 7,000 pages. Verified statements from senior operating, commercial, financial, and legal witnesses. A traffic study based on 100% waybill data from all six Class I carriers. A capital plan, an operating plan, a service assurance plan, an alternative dispute resolution program, and the full merger agreement, including the previously redacted Schedule 5.8.

It is a substantial record. The following questions are not arguments for or against the merger. They are questions where the record, in our reading, has not yet provided the

level of detail the scale of the transaction would seem to require. The Surface Transportation Board, the shippers, the short lines, the competing carriers, and the public will reach their own conclusions on the merits. The purpose here is to make visible what still requires explanation.

On the evening of May 14, 2026, Union Pacific CEO Jim Vena addressed the Traffic Club of Chicago's annual dinner, speaking to an audience of approximately 600 industry professionals. Attendee reports indicate that he spoke at length, with limited substantive questions and answers about the application itself. The questions below are the kind of questions that an industry audience preparing comments on this filing might want answered, in writing, on the record.

The 49 CFR Part 1180 framework requires applicants to demonstrate operational feasibility, assess project competitive impacts, identify employee impacts, and address environmental considerations. The 2001 enhanced standards require applicants to show that the merger will affirmatively enhance competition. A complete record under either standard answers questions specifically and concretely, not in summary form. Here are the questions that still appear open.

## **1. On Structural Remedies Versus Behavioral Oversight**

The application offers an extensive set of behavioral commitments: the Committed Gateway Pricing framework, the Service Assurance Plan, the Alternative Dispute Resolution program, gateway preservation language, service reporting and monitoring, passenger rail protections, and labor protections. The sole structural commitment in the entire amended application is the TRRA divestiture, which UP and NS explicitly ask the Board to condition approval upon (Joint Verified Statement on PPU, TRRA, and TTX, Volume 1, paragraph 70).

The application does not commit to systemwide reciprocal switching frameworks, broad open-access structures, broad trackage rights, haulage rights commitments, systemwide proportional rate protections, enforceable trip-plan or service standards, or automatic penalties for service failures. Schedule 5.8 of the merger agreement defines most of these as walk-away triggers.

*If structural is the right answer at TRRA, where applicants have voluntarily proposed governance changes that remove the underlying competitive concern, why is structural not on the table elsewhere? On what specific evidentiary basis can readers conclude that behavioral commitments will deliver the same competitive discipline over a 5-, 10-, or longer-year horizon as independent commercial behavior between separate Class I carriers does today?*

## 2. On Physical Network Constraints and Operating Realities

The Operating Plan outlines an Optimized Plan and a Growth Plan, with projected capacity additions and train-start changes by corridor. The Service Assurance Plan (Volume 2) identifies a roughly \$923 million merger-related capital plan covering main lines, yards, and terminals. UP's operating philosophy, centered on longer trains, higher locomotive utilization, and corridor optimization, is built around the continuous gradients and long sidings that characterize most of the UP network west of the Mississippi.

Much of the legacy NS eastern network operates under different physical conditions: shorter sidings, denser terminals, steeper grades, urban congestion, more complex interchange operations, and tighter crew districts. The Sidings Don't Match the Synergies analysis published earlier used the Alabama East End and the Pittsburgh Line as concrete examples.

*What were UP and NS's actual on-time origination rates, dwell times, and cars-online metrics by major terminal in 2024 and 2025, and how do those baselines compare with the post-merger benchmarks the Service Assurance Plan commits to? Where the Optimized Plan increases train counts on a corridor, how does the projected utilization rate compare with that corridor's recent peak performance? On corridors where merger-related growth is concentrated, but capital investment is signal-only or modest, what specific capacity headroom analysis supports the conclusion that current infrastructure will absorb the projected volume?*

The capital execution assumptions merit scrutiny. BNSF's Southern Transcon is, in the professional experience of the authors, the industry gold standard for corridor expansion discipline: unified ownership, a singular strategic focus, coordinated engineering execution, and no distractions from mergers and integrations. Double- and triple-tracking key portions of that corridor required more than 25 years of sustained capital allocation and remains incomplete in segments today. By contrast, Union Pacific's history includes long-duration modernization efforts with intermittent starts and stops, such as the Sunset Route expansion (Service Assurance Plan, Volume 2, Section IV.B Main Line Capacity Improvements, which describes pre-merger Yuma-to-Fortuna and Bosque-to-Shawmut double-track projects expected to complete in 2027) and the extended modernization of terminal capacity in Houston (Service Assurance Plan, Volume 2, Settegast intermodal facility expansion from 140,000 to a projected post-merger requirement of 266,000 lifts per year).

*Given that BNSF's expansion of its Southern Transcon required decades of disciplined capital allocation under optimal, non-merger-distracted conditions, what specific multi-year engineering, permitting, and capital-staging models support the applicants' claims that a*

*combined UP-NS can execute comparable, sweeping eastern-corridor upgrades faster and more consistently, particularly while navigating the historical disruptions of a major integration?*

*The application repeatedly frames single-line service as a means of eliminating interchange friction. Yet the physical realities of transcontinental intermodal do not necessarily eliminate block-handling complexity. Southern California port traffic is fragmented across dozens of inland destination markets, requiring multi-block train construction. Meridian Speedway train-length limitations and eastern terminal geometry mean that much of the work currently performed at Chicago and St. Louis may not disappear at all but instead shift southward into nodes such as Shreveport, Houston, Longview, Pineville, and other already constrained facilities. Because transcontinental intermodal trains built at California ports often require organization into multiple destination blocks, and the Meridian Speedway carries rigid train-length constraints, how much block-handling work is actually being eliminated from the national network versus simply being displaced to southern infrastructure nodes that are already facing capacity or geometric limits?*

### **3. On the PSR Legacy, Reduced Network Elasticity, and the Growth Paradox**

For the better part of a decade, the Union Pacific pursued lower operating ratios, fewer train starts, workforce reductions, terminal consolidation, asset rationalization, simplified operating plans, and the elimination of excess capacity. Those strategies delivered the financial performance that rewarded shareholders. They also reduced surge capacity, lowered operating elasticity, and removed flexibility for incremental growth.

The amended application now presents consolidation as the path to growth, density, and resiliency the industry needs. That is a coherent strategic argument, but it raises a sequencing question worth asking openly.

*Should regulators view this transaction, in part, as an acknowledgment that the prior decade's rationalization optimized near-term efficiency at the expense of long-term elasticity? If so, what evidence supports the conclusion that consolidation will restore the network elasticity removed by PSR-era decisions, rather than embedding the same efficiency-driven incentives at greater scale? What organizational and operating-philosophy commitments distinguish the post-merger operating plan from the pre-merger UP operating model that produced the current network?*

The tension becomes sharper when the application's forward-looking assumptions are compared with the industry's recent historical trend lines. The Oliver Wyman diversion analysis included with the application projects an increase of 13 percent over combined

UP-NS 2023 base-year traffic from merger-driven diversions (Verified Statement of David Hunt, Oliver Wyman, Volume 2, Section 2.3 Summary of Key Findings, paragraph 3 and footnote 12). Industry analyses of the preceding decade indicate that combined UP-NS volumes have been essentially flat over that period, while U.S. for-hire truck tonnage grew by approximately 13 percent and U.S. GDP grew by approximately 26 percent (FreightWaves, "CEOs say Union Pacific-Norfolk Southern merger will reverse rail freight decline," July 29, 2025; AAR Rail Industry Overview reporting on Class I carload trends 2015-2024). The application projects the same single-digit-decade percentage gain from a single transaction that the combined networks did not capture over the entire preceding decade of available growth in the broader freight economy.

*The Oliver Wyman analysis projects an immediate 13 percent gain over 2023 base-year traffic. How do the applicants reconcile that projection with the empirical reality that combined UP-NS volumes have been essentially flat for the preceding decade, in a period when truck tonnage and the broader economy both grew, and what is the specific basis for concluding that a single transaction will deliver in three years a percentage gain that the same two networks did not capture in ten?*

Network elasticity is not merely a question of physical infrastructure. It also depends on labor availability, dispatching resilience, locomotive utilization, crew starts, mechanical forces, and terminal staffing. A railroad cannot absorb millions of additional annual truck diversions through signal software alone.

The application projects significant volume growth while simultaneously operating within lean labor structures and operating-ratio disciplines largely associated with the PSR era. This structural contradiction between commercial growth projections and operating headcount realities is precisely the type of tension that has contributed to prior major integration failures, most notably the 1997-1998 UP-SP integration crisis in Houston (STB Service Order in Ex Parte No. 573, 1998; GAO Report on the UP-SP Service Crisis).

*The applicants project a 13 percent expansion in traffic over 2023 base-year combined UP-NS volumes, which would require materially greater network fluidity than the combined networks have delivered in recent years. How do the applicants reconcile those growth assumptions with operating plans and crew-ratio targets that maintain lean, PSR-era labor headcounts, and what specific safeguards are in place to ensure that headcount rationalization does not trigger an operational service crisis during the integration phase?*

The labor discussion itself raises additional questions. The applicants highlight guaranteed-employment-for-life agreements to signal labor stability to the Board. However, these assurances do not fully address the fact that major labor organizations

representing over half of the combined existing workforce have either rejected them or have not accepted them as structurally adequate.

*The Operating Plan relies on high network velocity to absorb millions of new truck diversions. How do the applicants reconcile these ambitious throughput goals with the fact that labor organizations representing a substantial share of the combined workforce have rejected the applicants' labor assurances as inadequate? What specific mitigation strategies are in place to prevent a labor-scarcity service crisis during the critical integration phase?*

#### **4. On Intermodal Growth and Execution Risk**

The application projects approximately 2.1 million truckloads diverted from highway to rail in a normal year, \$3.504 billion in annual shipper savings from truck-to-rail diversion (the application's own figure, rounded in headlines to \$3.5 billion), and approximately 1,230 well-paid craft jobs created within three years (Application Volume 1 Executive Summary, page 113; Verified Statement of David Hunt, Oliver Wyman, Volume 2). These figures are based on the David Hunt verified statement and the broader traffic study.

Sustained intermodal growth at the projected scale would require additional crews, locomotives, well cars, chassis supply, drayage support, terminal throughput capacity, dispatching flexibility, and corridor infrastructure across multiple regions, with these resources expanding in concert with volume.

*What share of the 2.1 million projected truckloads represents new freight rather than existing rail-to-rail shifts? What share of the \$3.5 billion in projected shipper savings reflects efficiencies uniquely created by the merger, as distinct from the existing rail-versus-truck pricing spread already available to shippers in the current market?*

*Where the application assumes capacity expansions at intermodal facilities, in chassis pools, in dray operations, and in terminal throughput, what is the specific schedule, the funding source, and the third party capable of delivering each piece in the sequence required by the projection? For the projected conversion lanes, what specific operational comparison shows that rail will be competitive with trucking on speed, service, and total landed cost?*

#### **5. On Sensitivity Analysis and Downside Risk**

49 U.S.C. § 11324(b)(3) requires the Board to evaluate, among other things, the financial impact of a proposed transaction on the affected railroads, including the merged carrier's ability to service its fixed charges. The amended application discloses that the transaction would carry approximately \$20.4 billion in incremental transaction debt, on top of UP's roughly \$34.4 billion and Norfolk Southern's roughly \$13.8 billion in net debt, and projects

a combined post-merger Debt-to-EBITDA ratio of approximately 3.3x at closing (UP-NS Merger Joint Press Release and Form S-4, July 2025, as filed with the SEC and summarized in UP Investor Relations materials).

The amended application relies heavily on future traffic growth, truck-to-rail diversion, and the realization of synergies. The 49 CFR § 1180.1(c)(1) safe harbor recognizes that an approved merger may not be implemented exactly as anticipated in the application and that applicants are not held accountable for failing to achieve anticipated public benefits when they act reasonably in light of changing circumstances (49 CFR § 1180.1(c)(1); the same regulation is quoted in the application's own footnote 5 of the Boyles/Mathur Committed Gateway Pricing verified statement).

*What sensitivity analysis does the application provide for scenarios in which projected truck-to-rail diversion underperforms by 25, 50, or 75 percent over a five-year period? In a recessionary or low-growth environment, how does the combined entity's ability to service its fixed charges change, and at what level of underperformance does that ability become a regulatory concern under § 11324(b)(3)? If the projected synergies are not realized, which capital commitments in the Service Assurance Plan remain in force, and which fall away under the safe harbor?*

*Historically, financial pressure within rail systems has led to pricing pressure on captive shippers, operating-ratio-driven cost reductions, workforce reductions, and deferred infrastructure investment. What in the application protects against that pattern in the downside case?*

## **6. On Narrative Strength Versus Operational Proof**

The amended filing is significantly more polished and procedurally complete than the original January submission. The narrative on growth, resiliency, and national supply-chain benefits is sophisticated and coordinated with the verified statements. That work is real.

A separate question, however, lies beneath the narrative. The strength of an application's storytelling and the strength of its operational proof are distinct, and the Board's review under the 2001 standards is concerned primarily with the latter.

*When the application projects an operational outcome (longer trains, higher utilization, faster transit, expanded intermodal), what specific operational evidence (current capacity utilization, historical service performance, demonstrated comparable operating practice on the legacy NS network) supports that projection? When the application describes a future commitment (a capital project, an integration milestone, a service standard), what trigger converts that description into an enforceable obligation post-approval? When the original*

*application was rejected as procedurally incomplete in January, in what specific ways do the assumptions in the amended filing regarding substantive growth, savings, operational integration, and competitive preservation differ from those in the rejected original?*

## **7. On Coalition Opposition as a Diagnostic Signal**

The opposition coalition that formed ahead of the April 30 refiling is unusually broad. It includes competing Class I railroads (BNSF, CPKC), shipper organizations (American Chemistry Council, American Farm Bureau Federation, National Industrial Transportation League, Alliance for Chemical Distribution, Vinyl Institute), the Teamsters Rail Conference, and bipartisan policymakers at the state and federal levels (Stop the Rail Merger Coalition launch announcement, April 29, 2026; [stoptherailmerger.com](http://stoptherailmerger.com)). Many of these entities rarely align on industry issues.

Industry coalitions of this breadth do not form around routine merger objections. They tend to form when the underlying concern is structural rather than tactical.

*What specifically in the amended application constitutes the application's response to the structural concern animating the coalition, as distinct from its response to specific tactical objections from individual parties? Are there elements of the proposed transaction (gateway control, captive shipper bargaining leverage, long-term competitive optionality, concentration risk in interchange relationships) on which the coalition's stated concerns and the application's stated commitments could be tested side by side, allowing the Board and the public to evaluate the gap?*

## **8. On Gateway Competition and Practical Access**

The application emphasizes that gateways remain open and that routing options continue to exist after the merger. It commits to keeping major gateways open and to avoiding the creation of new regulatory bottlenecks. The Committed Gateway Pricing framework provides BNSF and CSX with a pricing mechanism for traffic interchanged at Chicago, St. Louis, Memphis, and New Orleans.

Theoretical gateway access and commercially practical gateway access are not the same. A gateway is operationally meaningful when interchange runs efficiently, pricing is competitively neutral, dispatching is non-discriminatory, and commercial incentives at the consolidated carrier reward (rather than penalize) interline movement.

The Committed Gateway Pricing framework explicitly excludes intermodal traffic, unit train traffic, contract service, and exempt commodities. It applies only to manifest carload traffic moving east-west between BNSF or CSX sole-served facilities and UP/NS sole-served

facilities at four named interchange points (Verified Statement of Michael Boyles and Dr. Divya Mathur, Volume 1, paragraphs 23-25 and 45-49). It sunsets at the end of the STB oversight period unless extended. Its enforcement mechanism is a commitment to nondiscriminatory treatment, with no specified monitoring metric or remedy schedule.

*What share of freight currently using each of the four named gateways falls within the Committed Gateway Pricing scope, and what share falls outside it? Outside the Committed Gateway Pricing framework, what specific protections ensure that the gateways remain commercially competitive in practice, including pricing, dispatching, interchange dwell, and commercial incentives, after consolidation? When the framework sunsets, what regulatory mechanism replaces it, and on what trigger?*

## **9. On Customer Leverage Versus Single-Line Efficiency**

Many shippers stand to benefit operationally from single-line efficiencies, fewer handoffs, and simplified routing after consolidation. The application makes that case at length. At the same time, independent railroads competing at gateways and interchange points provide negotiating leverage and commercial optionality that single-line service does not. A shipper who today plays UP and NS against each other on a routing decision would lose that lever in a combined entity.

*How should regulators and customers weigh the operational simplicity gains for shippers who benefit from single-line service against the commercial leverage losses for shippers whose negotiating position has historically depended on independent UP and NS commercial behavior? Within the Bailey verified statement's BEA-level analysis (Verified Statement of Dr. Elizabeth Bailey, Volume 2, Section 1.4 and Section 4), where 2-to-1 reductions are reportedly absent, how is shipper-level leverage at facilities currently served by both UP and NS through different routings characterized, and what protections (beyond the 2-to-1 facility carveouts in Schedule 5.8) preserve that leverage?*

## **10. On Defining "Enhanced Competition"**

The 2001 Major Rail Consolidation Procedures require that a merger of two Class I railroads enhance competition, not merely preserve it. UP-NS is the first major Class I merger to be reviewed in full under that standard. The Board has said as much in its March 18, 2026 ordinary-course documents production order (STB Decision in Finance Docket No. 36873, served March 18, 2026). The application's response is that the combination itself enhances competition, with the Committed Gateway Pricing framework and the structural and behavioral commitments in the application providing additional support.

*How does Union Pacific define "enhanced competition" under the 2001 standard, and what specific, measurable indicators would the post-merger railroad commit to as evidence that competition has been enhanced (not merely preserved or operationally consolidated) over the oversight period? Where the application argues that operational improvements (faster transit, better service, lower cost) constitute competitive enhancement, what distinguishes that argument from the operational case supporting any major efficiency-driven consolidation?*

## **11. On Capital Commitments, Specificity, Timing, and Enforceability**

The Service Assurance Plan outlines a merger-related capital plan totaling approximately \$2 billion over the first three years post-consummation, including approximately \$959.9 million for capacity expansion and approximately \$798 million for IT integration (Verified Statement of Grant Janke, Volume 1). Specific projects are itemized with dollar figures and target completion dates, including the New Orleans to Atlanta corridor projects (Pearl River, Lumberton, North End Meridian double track, Toomsuba siding, and others), the Kansas City to Butler corridor projects, and the St. Louis to Louisville CTC project.

*If the STB approves the merger, which of these capital commitments are binding and enforceable as conditions of the order, and which are projections subject to revision under the safe harbor? If a published project is delayed, deferred, or descoped after approval, what reporting obligation does UP-NS have to the Board, and what remedy is available to a shipper or short line whose service depends on that project?*

*Will the post-merger railroad commit to publishing annual capital plan execution reports against the application's published baseline for the duration of the STB oversight period? More broadly, in the corridor-development narrative, where infrastructure commitments are foundational to the public-interest case, are those commitments structured to remain discretionary business decisions after approval, or to become enforceable obligations tied to measurable timelines and lane-level accountability?*

## **12. On the Meridian Speedway and CPKC Operating Relationships**

The Meridian Speedway is the joint operating arrangement on the line between Meridian, Mississippi, and Shreveport, Louisiana. It is owned 70 percent by Canadian Pacific Kansas City and 30 percent by Norfolk Southern through its Alabama Great Southern subsidiary (CPKC investor disclosures; Norfolk Southern annual report references; the 2006 joint venture was capitalized in part by NS's \$308 million contribution at formation). The line is the principal east-west intermodal and merchandise corridor across the deep South. The amended application identifies the Meridian Speedway as the route for the new ZLBAT transcontinental intermodal train, which will move traffic from Southern California to

Atlanta. The application references the Meridian Speedway by name once, in the Service Assurance Plan.

*What conversations have UP and NS had with CPKC about the operational and commercial implications of a significant increase in UP-originated intermodal volume on the Meridian Speedway, given that CPKC controls 70 percent of the joint venture and is part of the Stop the Rail Merger Coalition opposing this transaction? What contingency exists if CPKC declines to expand its share of Meridian Speedway capacity to accommodate the ZLBAT and follow-on growth, or if service on the Speedway degrades during the post-merger growth ramp? Does the Operating Plan's projection of transcontinental intermodal growth via Meridian assume the Speedway joint operating arrangement continues to function as it does today, and what happens to the projection if it does not?*

### **13. On Service Resiliency During Integration**

Section IX of the Service Assurance Plan outlines a contingency planning framework for merger-related service disruptions: buffer capacity for main lines, terminals, crews, and locomotives; a Special Problem Resolution Team; and coordination protocols. The plan cites recent contingency responses, including Hurricane Helene (September 2024) and the Baltimore Key Bridge collapse (March 2024), as evidence of capability (Service Assurance Plan, Volume 2, Section IX.D). The Alternative Dispute Resolution program in Appendix B runs for three years after approval, caps monetary recovery at \$2 million per claim, limits damages to direct damages within a one-year window, requires substantial deterioration resulting from merger implementation as the proximate cause, gives the Carrier a 30-day right to cure, and excludes contract service and exempt commodities from its scope.

*What is the precise definition of a merger-related service disruption that triggers the Special Problem Resolution Team, and how is it distinguished from ordinary network volatility? During the first 180 days after consummation, when crew qualification, IT integration, and service design changes overlap, what specific operational metrics will UP-NS publish to enable the Board, shippers, and connecting carriers to monitor the service trajectory in real time?*

*For the substantial share of rail traffic moving under contract service or in exempt commodity classes (including intermodal containers, motor vehicles, most agricultural products, lumber, paper, and primary metals), what remedy is available to a shipper whose service degrades during integration if those movements fall outside the ADR program's scope?*

### **14. On Labor, Crews, Locomotives, and Terminal Capacity**

The application addresses craft employee impact in the Maqui Parkerson verified statement and the Employee Impact Exhibit. Management workforce changes are addressed in the Joshua Perkes verified statement. Crew, locomotive, and terminal buffer capacity are addressed in the Service Assurance Plan. The application reports approximately 200 UP "at the ready" locomotives, approximately 60 Rapid Response locomotives, and approximately 25 stored bulk service locomotives (Service Assurance Plan, Volume 2, Section IX.C.2.d). SMART-TD has signed a jobs-for-life agreement; BLET and BMWED have not signed equivalent agreements.

*Where the Operating Plan reroutes traffic between corridors and consolidates classification work at fewer terminals, what are the specific impacts on seniority districts and crafts, and how does the Implementing Agreement timing interact with crew qualification requirements for territory new to those crews? Where the Growth Plan adds train starts on a corridor, what is the specific analysis of crew base size, away-from-home terminal capacity, and dorm and hotel availability that supports the projected operation?*

*On the locomotive side, the buffer numbers cited are UP's; what are the equivalent numbers for legacy NS, and what is the integration plan for combining the two fleets, including cab signal compatibility on Pennsylvania and New Jersey shared corridors with Amtrak and SEPTA? In classification yards, which legacy NS hump yards remain in hump operation under the post-merger plan, and which are converted, downgraded, or closed?*

*If BLET or BMWED does not reach a job-protection agreement before consummation, what is the operational contingency plan for crew availability during the integration window?*

## **15. On the Non-Class I Railroad Ecosystem**

The national freight network does not operate solely through the Class I system. The national network relies heavily on the roughly 600 Class II and Class III railroads operating below the Class I tier to connect local markets, provide first- and last-mile service, and preserve access for industrial, agricultural, and rural customers (American Short Line and Regional Railroad Association data; AAR Rail Industry Overview).

In many cases, these smaller carriers rely on competing Class I routing alternatives to preserve negotiating leverage, interchange optionality, sustainable rate divisions, car-hire economics, and reasonable operating relationships with larger connecting carriers.

A consolidation of this scale has implications far beyond the merged carrier. By removing or reducing competing Class I routing alternatives in parts of the network, the transaction could structurally alter leverage dynamics for short lines and regionals. Smaller carriers may face increased bargaining asymmetry, infrastructure maintenance burdens, car-hire

exposure, interchange dependency, and terminal bottleneck risk that their balance sheets are poorly positioned to absorb.

*Given that the national short line system relies on competing Class I routing alternatives for economic leverage and rate-division negotiations, what specific, binding behavioral or structural safeguards are included in the operating plan to ensure that consolidating the UP-NS footprint does not strip Class II and Class III carriers of their economic viability, reduce their commercial leverage, or shift uncompensated infrastructure and service burdens onto local networks?*

## **16. On Norfolk Southern's Voice in Regulatory Strategy**

Section 5.8(e) of the merger agreement grants Union Pacific sole discretion over regulatory strategy, including all decisions regarding negotiations and communications about restrictions. Norfolk Southern shall not initiate any such discussions or proceedings with any Governmental Entity without UP's prior written consent. Section 5.8 reserves final authority over all matters to UP in its sole discretion (Agreement and Plan of Merger, July 28, 2025, Section 5.8, as filed in Application Volume 4, Exhibit 2.1).

*When NS witnesses' verified statements address operating service, customer relationships, or competitive effects on the legacy NS network, who has decision authority to negotiate conditions specific to those areas, and how is NS's operating expertise reflected in regulatory negotiations conducted under UP's sole discretion? When the Board considers a condition that specifically affects the legacy NS network, does NS retain any independent voice in the response, or is the response in all cases UP's response?*

## **17. On Internal Documents Versus Public Advocacy**

In a March 18, 2026, decision (STB Decision in Finance Docket No. 36873, served March 18, 2026), the Board ordered the production of "ordinary course" internal documents covering UP and NS's competitive analyses, market studies, and confidential merger rationale memos. The Board's language in that decision recognized that ordinary course documents are "critical" to evaluating a merger and may be more probative than party advocacy, expert analysis, and self-serving statements submitted in support of a merger application. The Board added that production was appropriate "given the proposed transaction's size and significance for the rail transportation system, and because the transaction is the first to be assessed under the 2001 merger rules."

*Where do the operating plan, growth plan, and synergy estimates in the verified statements align with the internal documents UP and NS prepared in the ordinary course before this filing, and where do they diverge? For corridors and commodities where the public*

*application projects strong growth, what do internal market studies project for those corridors and commodities? For capital plan items the application identifies as merger-related, what was the prior internal capital plan posture for those projects? Where do UP's and NS's internal characterizations of competitive effects on shippers align with the Bailey verified statement's BEA-level findings, and where do they differ?*

## **The Strategic Irony**

There is a broader sequence in the modern rail industry that the questions above touch on in different ways. Railroads spent decades simplifying networks, reducing redundancy, rationalizing assets, and prioritizing efficiency over excess capacity. Short-line and regional operators later helped restore service responsiveness in markets where flexibility had eroded. Now, another major consolidation is presented as the path to growth, density, and resiliency.

The question worth asking openly is whether this transaction is solving a future freight transportation challenge or merely attempting to recover the operational characteristics that prior rounds of consolidation and rationalization removed. Once structural optionality and independent commercial behavior have been removed through consolidation, they are difficult to recreate later through policy, oversight, or behavioral commitments. That is true regardless of how the Board ultimately rules on this transaction. It is the framing question underlying every more specific question above.

## **A Direct Question to Union Pacific**

*For any of the seventeen categories above, a response that cites the specific verified statement, page, workpaper, or analysis that resolves the question would shorten the comment record and sharpen the public's understanding of the transaction. Will Union Pacific commit to a structured public response to these categories, beyond the formal reply round, between now and the close of public hearings?*

## **A Question to the Industry**

If you advise shippers, run short lines, work in interline marketing or capacity planning at a competing carrier, or have spent a career in rail operations, we would like to hear from you. Of the categories above, which do you consider most consequential from your vantage point, and what additional questions would you pose to Union Pacific that are not on this list? The objective here is not advocacy. The objective is a complete record. The comment process and the public hearings ahead are the place to build it.

## About the Authors

Dan Bostek is an independent consultant to the rail and rail-adjacent industries, operating through Solution Services Consulting LLC. He has 33 years of railroad industry experience, including senior operating and safety leadership roles at a Class I railroad. Dan now specializes in advising shippers, investors, and industrial operators on rail operations, infrastructure, and regulatory risk.

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#FreightRail #RailroadMerger #UnionPacific #NorfolkSouthern #STB #SupplyChain #Transportation #Logistics #IntermodalRail #MeridianSpeedway #CompetitiveAccess #RailRegulation

### RELEVANT COMMENTS:

Robert E. Primus • 1st  
Board Member, Surface Transportation Board

“...what evidence supports the conclusion that consolidation will restore the network elasticity removed by PSR-era decisions, rather than embedding the same efficiency-driven incentives at greater scale? What organizational and operating-philosophy commitments distinguish the post-merger operating plan from the pre-merger UP operating model that produced the current network?”

Truly, the crux of the matter, yet to be fully rationalized in the previous or current application. You can't solve the problem of lack of growth with the same formula that continues to hinder it.

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**Robert E. Primus** you have hit on the point precisely. How does status quo operations ... even post-merger solve the growth problem... aren't we just shifting modes?