



## **SURFACE TRANSPORTATION BOARD: UP-NS Merger Review Process & Public Input Integration**

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### **Union Pacific Corporation/Norfolk Southern Corporation Merger Considerations**

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### **Executive Summary**

The Surface Transportation Board (STB) is the federal agency responsible for reviewing and approving major railroad mergers in the United States. Its review of the proposed acquisition by Union Pacific Corporation (UP) of Norfolk Southern Corporation (NS) under Docket No. FD 36873 is the most consequential rail consolidation proceeding since the STB adopted its current “new rules” framework in 2001, which sets a deliberately demanding standard for major mergers, as discussed in Section I.

This paper synthesizes the analytical, procedural, and institutional framework through which the STB receives, sorts, and integrates public input (both informal Letters of Comment and formal Notices of Intent to Participate, or NOIs) into the evidentiary record

that ultimately produces binding decisions. It describes the roles of internal STB offices (the Office of Proceedings, Office of Economics, Office of Environmental Analysis, and Office of the General Counsel), the function of the Administrative Law Judge, and the STB's external relationships with federal agencies, including the Department of Justice, the Department of Transportation, and the Federal Railroad Administration. It also traces the procedural calendar by which input is received, stress-tested, and converted into legally defensible findings.

The analysis draws directly on the regulatory framework of 49 C.F.R. Part 1180, prior merger precedent (particularly the CP-KCS proceeding, Docket No. FD 36500), and the developing procedural record in the UP-NS proceeding.

## **I. The Regulatory Framework Governing Major Merger Review**

The STB exercises jurisdiction over railroad mergers under 49 U.S.C. §§ 11321–11327, which were substantially amended when the STB replaced the Interstate Commerce Commission in 1996. The Board may approve mergers, acquisitions, and consolidations of rail carriers only if it finds the transaction consistent with the public interest. Under the current “new rules” framework adopted in 2001 (49 C.F.R. Part 1180), the standard for major mergers, defined as any control transaction involving two or more Class I railroads, is deliberately more demanding than in prior decades: the proposed combination must affirmatively enhance competition.

### **A. The Statutory Decision Criteria**

When evaluating any application under these rules, the Board must weigh at least five statutory factors:

1. The effect on the adequacy of transportation to the public
2. The effect on the public interest of including or failing to include other railroads in the area of service of the affected railroads
3. The total fixed charges resulting from the transaction
4. The interest of railroad employees affected by the transaction
5. Whether the transaction would adversely affect competition among carriers in the affected region or nationally beyond these statutory factors, the Board's regulations require it to consider the goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees, and to ensure that any approved transaction promotes a competitive, efficient, and reliable national rail system. The Board's longstanding position is that mergers serve the public interest only when substantial and demonstrable public benefits, including improved service, enhanced competition, and greater economic efficiency,

outweigh anticompetitive effects, potential service disruptions, or other merger-related harms.

## **B. Classification of the UP-NS Transaction**

On August 28, 2025, the STB formally found that the proposed UP-NS transaction was a “major” transaction under 49 C.F.R. § 1180.2(a). This classification triggered the full panoply of procedural requirements under Part 1180, including mandatory environmental review, a Safety Integration Plan developed with the Federal Railroad Administration, a Service Assurance Plan, a comprehensive competitive impact analysis, and a structured multi-round comment and rebuttal schedule. The UP-NS proceeding is the first major merger application filed under the new rules framework to reach the substantive review stage.

## **II. The Two Categories of Public Input and Their Distinct Standing**

A central structural feature of the STB’s merger review process is that not all public input carries equal weight or triggers the same procedural consequences. The Board formally distinguishes between two categories of participation: Letters of Comment (sometimes called informal comments) and Notices of Intent to Participate (NOI), which confer Party of Record status. Understanding this distinction is essential to understanding how input flows through the analytical pipeline.

### **A. Letters of Comment**

A Letter of Comment may be submitted through the STB’s e-Filing portal or by mail to 395 E Street SW, Washington, DC 20423-0001, with the docket number FD 36873 noted on the submission. Comment letters are placed in the public docket, and the Board is expected to consider them. However, the filer obtains no formal party status and no procedural rights beyond having the letter read and cataloged.

The limitations of comment letter status are significant. Filers cannot compel applicants to respond to their specific concerns. They have no right to demand documents through discovery. They cannot submit sworn evidentiary statements from expert witnesses. They have no guaranteed right to speak at any public hearing. Perhaps most critically, the Board is not required to address the arguments in a comment letter in its written decision as it must address arguments raised by formal parties of record.

Comment letters, however, serve an important function: they help the Board understand the breadth of public concern, surface issues that Office of Proceedings attorneys then probe more rigorously through formal channels, and contribute to the qualitative picture of how various communities and industries would be affected. Notably, a coalition of

public interest groups formally petitioned the Board in this proceeding to clarify whether substantive filings from non-party stakeholders were contemplated in the procedural schedule and, if not, to create a formal mechanism for considering them, underscoring the perceived gap between comment letters and full party participation.

## **B. Notice of Intent to Participate (NOI): Party of Record Status**

The Notice of Intent to Participate is the gateway to full participation in the STB proceeding. Any customer, shipper, trade association, railroad, labor union, environmental group, government entity, or other stakeholder who may wish to formally comment on the merger's competitive impacts or to ask the STB to impose conditions if it approves the transaction must first file an NOI. The STB's publication of the NOI establishes the filer as a formal Participant of Record (POR).

Filing an NOI does not obligate the party to take any further action. It simply preserves rights and places the filer on the service list for all filings and decisions in the proceeding. The practical consequence is substantial: every submission by UP, NS, and any other party of record is automatically served on all NOI filers, providing them with real-time access to the entire evidentiary record as it develops.

Beyond service, Party of Record (POR) status unlocks a fundamentally different set of rights and enables analytical integration:

- 1. Discovery rights:** PORs may serve formal discovery requests on UP, NS, and other parties, compelling the production of documents, data, and information beyond those disclosed in the merger application.
- 2. Verified statements:** PORs may submit sworn evidentiary statements from expert economists, operations specialists, safety experts, and other witnesses. These statements become part of the official evidentiary record that the Board must address in its written decision.
- 3. Requests for conditions:** Only parties of record may formally request that specific, enforceable conditions be attached to any merger approval, such as trackage rights for competing carriers, rate protections for captive shippers, or infrastructure investment commitments.
- 4. Responsive applications:** NOI parties can go further and file Responsive Applications, which are formal requests for affirmative relief, either as a condition of or in lieu of approval of the primary merger. Responsive applications are consolidated into the primary proceeding and analyzed on the same evidentiary record.
- 5. Public hearing participation:** When the Board determines that a public hearing is warranted, only formal participants are guaranteed a seat. At the CP-KCS precedent

proceeding, seven days of public hearings featured testimony from Class I railroads, labor unions, community coalitions, ports, Amtrak, and Metra, all of whom were formal parties.

***NOI Deadline: Under the procedural schedule for Docket FD 36873, the NOI deadline is 45 days after the merger application is accepted as complete. With the revised application filed on April 30, 2026, the expected deadline is approximately June 12, 2026, pending the STB's official confirmation.***

### **III. The Internal STB Staff Structure and Analytical Roles**

The STB is not a single analytical body. When input arrives, whether in the form of a comment letter or a party's verified statement, it flows through a multi-office internal structure in which legal, economic, environmental, and defensibility analyses proceed in parallel before converging into the Board's final decision. The agency employs approximately 117 staff members with expertise in law, economics, accounting, transportation analysis, finance, and administration.

#### **A. The Office of Proceedings (OP): Central Analytical Hub**

The Office of Proceedings is the heart of the STB's analytical operation. It is primarily responsible for developing the public record in formal cases, making recommendations on resolving issues presented in those cases, and preparing the decisions issued by the Board. OP is a legal office composed almost entirely of attorneys and paralegal specialists who handle most of the Board's cases.

In the context of merger review, OP attorneys perform several distinct analytical functions:

- 1. Recordation and docketing:** All filings are entered into the STB Recordation's database by OP's recordation unit, creating a timestamped, searchable evidentiary record.
- 2. Issue identification and clustering:** OP attorneys review all submissions and organize them thematically into the legal and factual issues the Board must resolve: market concentration, captive shipper harms, labor protections, passenger rail impacts, grade crossing safety, and competitive enhancement claims. Comments from multiple parties raising the same underlying issue are clustered together. This clustering determines which issues are elevated to the Board's attention.
- 3. Cross-referencing rounds of input:** OP does not analyze comments in isolation. The staged procedural schedule creates distinct analytical rounds. OP reads opposition comments against the application, then applicants' responses to those comments, then final briefs that synthesize everything. Each round sharpens and narrows the contested issues.
- 4. Draft decision preparation:** OP ultimately synthesizes the full record into a draft decision for the Board members to review and vote on. In fulfilling its responsibilities, OP

obtains and applies necessary input from economic, financial, operational, environmental, and other legal staff experts across the agency.

### **B. The Office of Economics: Quantitative Stress-Testing**

The Office of Economics analyzes rate cases and conducts economic and financial analyses of the railroad industry. In a merger proceeding, economists in this office scrutinize the applicants' traffic projections, market share analyses, and competitive impact models, and weigh them against the economic arguments raised by opposing parties in their verified statements.

The importance of this office to the analytical pipeline was starkly illustrated in the CPKC's proceedings. When the STB's Office of Environmental Analysis identified a discrepancy between the traffic density data CPKC submitted for the merger application and a different dataset submitted to OEA, staff economists determined it was not a clerical error but a genuine analytical problem stemming from different methodologies for calculating gross ton-miles. Canadian National had flagged the inconsistency in its responsive application. The result: the Board halted review of the entire proceeding, ordered CPKC to resubmit corrected baseline data, and opened a fresh 20-day comment period. This episode demonstrates that verified statements from formal parties directly trigger staff economic re-examination that can reshape the entire proceeding.

For the UP-NS proceeding, the applicants' own application projected market share increases of approximately 15 to 26 percent, depending on service type, and anticipated diversion of 1.8 million annual carloads of rail and truck traffic to the combined system upon full integration. The Office of Economics will scrutinize these projections against competing analyses filed by BNSF, CSX, CN, shipper associations, and other parties of record.

### **C. The Office of Environmental Analysis (OEA): Independent Environmental Track**

Environmental analysis operates on a parallel track from the competitive and legal analyses and is governed by the National Environmental Policy Act (NEPA). The Office of Environmental Analysis is responsible for conducting environmental reviews of proposed STB actions in accordance with NEPA and other environmental laws and for making environmental recommendations to the Board.

For a major merger, OEA's process follows a distinct multi-stage sequence:

- 1. Scoping:** OEA issues a Notice of Intent to prepare an Environmental Impact Statement (EIS) and invites public scoping comments on the range of issues and alternatives to be studied.

**2. Draft EIS:** OEA prepares and publishes a Draft EIS analyzing potential environmental impacts of merger-related changes in activity levels on existing rail lines and facilities. The Draft EIS sets forth preliminary mitigation recommendations.

**3. Public comment on the Draft EIS:** OEA accepts public comments on the Draft EIS and holds public meetings. In the CP-KCS proceeding, seven such meetings were held, each attended by at least one Board member.

**4. Final EIS:** The Final EIS specifically addresses comments received on the Draft EIS and sets forth OEA's final mitigation recommendations. In the CP-KCS proceeding, the Final EIS ran to more than 5,000 pages, including appendices.

The Board must consider the entire environmental record, including the Draft EIS, the Final EIS, and all comments received, when making its final decision. All of OEA's mitigation recommendations in the CP-KCS proceeding were imposed as binding conditions of approval, with modifications to align with the Board's seven-year oversight framework.

#### **D. The Office of the General Counsel (OGC): Defensibility Review**

The Office of the General Counsel performs a distinct and critical function that becomes active after the other offices complete their analytical work. Unlike most federal agencies, the STB has independent litigating authority under 49 U.S.C. § 703(d). When an STB order or decision is challenged in the U.S. Court of Appeals under the Hobbs Act, both the STB and the Department of Justice must be named as respondents, and both have authority to appear in court.

When conducting defensibility assessments, OGC attorneys meet with other STB staff to discuss cases before draft decisions are prepared. This step is not duplicative of OP's work; it is a distinct review to ensure that the draft decision's reasoning will withstand judicial scrutiny. Specifically, if a POR raises a substantive argument in its verified statements or briefs and the Board's decision does not address it, that omission can be a basis for reversal by the Court of Appeals. OGC's defensibility review serves as a final check for analytical omissions before the document goes to the Board members for a vote.

#### **E. The Administrative Law Judge (ALJ): Gatekeeper of the Evidentiary Record**

The ALJ assigned to Docket FD 36873, the Hon. Jenifer Soulikias, plays a critical procedural role without voting on the merits of the merger. The ALJ is authorized to entertain and rule on discovery matters and to initially resolve all disputes concerning discovery in the proceeding.

In practice, the ALJ serves as referee and gatekeeper for the evidentiary record: determining which documents parties must produce in response to discovery requests, resolving disputes over the scope or privilege of requested materials, managing scheduling conflicts among parties, and issuing orders that keep the proceeding on

schedule. In a proceeding of this scale, with hundreds of parties of record, thousands of pages of expert testimony, and potentially millions of pages of discovery, the ALJ's management of pre-hearing disputes is indispensable.

## **IV. External Institutional Relationships and Their Role in the Analytical Pipeline**

### **A. Department of Justice, Antitrust Division**

The Attorney General of the United States has a statutory right to intervene as a party in a major merger proceeding and must be served with all written comments. The DOJ's Antitrust Division's role is to promote competition in the American economy. Its comments carry special weight in the analytical pipeline because the Division has independent legal authority, deep economic expertise, and a statutory mandate that overlaps with the STB's competition-enhancement requirement.

In the UP-NS proceeding, DOJ's preliminary comments formally noted that filings from various stakeholder groups address many of the issues the Antitrust Division typically considers important in determining whether a merger is anticompetitive, effectively validating the substantive concerns raised by shipper and competing carrier groups. DOJ's comments are included in the formal evidentiary record, and the Board addresses them in its decision.

### **B. Department of Transportation and Federal Railroad Administration**

The Secretary of Transportation may intervene as a party in the proceeding and propose modifications to any transaction. The DOT and its constituent agency, the Federal Railroad Administration (FRA), file formal comments at multiple stages of the proceeding on transportation policy, passenger rail implications, and safety integration.

The FRA plays a concrete role in the analytical pipeline through the Safety Integration Plan (SIP) process. Applicants must work with the FRA to develop a SIP to ensure that safe operations are maintained throughout the merger implementation process. The FRA Administrator must formally certify satisfaction with the SIP before the Board can close the evidentiary record on safety matters. In the CP-KCS proceeding, the FRA submitted multiple successive filings that tracked its evolving assessment of the SIP, ultimately providing written satisfaction to the Board. The STB then incorporated the FRA's SIP conditions as binding merger conditions.

### **C. Competing Class I Railroads and Responsive Applicants**

From a procedural standpoint, the most powerful external participants in the analytical pipeline are the other Class I railroads that file Responsive Applications. In the UP-NS

proceeding, BNSF and CSX are the most directly affected competitors; CN, CPKC, and other carriers may also participate. A Responsive Application is not merely a comment; it is a formal application that is automatically consolidated with the primary application for the Board's consideration.

Responsive applicants have full rights of parties of record: discovery, verified statements, right to participate in public hearings, and the right to request conditions or alternative relief. In the CP-KCS proceeding, CN filed a Responsive Application requesting that the STB condition approval on the divestiture of the KCS Springfield Line to CN. The STB ultimately denied the divestiture request but did so in a written analysis that engaged fully with CN's evidentiary record, a process analyzed in detail under the Appendix L framework in Section IX-B.

#### **D. Labor Organizations, Shipper Associations, and Community Coalitions**

Rail labor unions, shipper associations (such as the National Grain and Feed Association and various agricultural commodity groups), port authorities, short line railroad associations (including ASLRRRA), passenger rail advocates, and community coalitions may all serve as Participants of Record, filing verified statements from affected members, and requesting specific protective conditions.

In the CP-KCS proceeding, the Coalition to Stop CPKC, representing suburban communities and Metra (the Chicago-area commuter rail agency), presented testimony on grade-crossing impacts, train-length effects, and capacity constraints on Chicago-area infrastructure. The STB ultimately addressed each of these concerns in its final decision and imposed specific conditions requiring CPKC to fund Positive Train Control installations and report monthly on Metra train delays attributable to CPKC freight operations. This illustrates the complete analytical chain, running from a party's verified statement through the Board's written finding to an enforceable condition and ongoing compliance monitoring, described more fully in Section XI.

### **V. Captive Shipper Rate Economics and the Competitive Access Question**

The merger's most commercially consequential dimension for existing shippers is the restructuring of competitive access. The UP-NS combination's central operational claim, that single-line transcontinental service benefits everyone, is directly challenged by empirical evidence on what happens to shipper rates when competitive rail alternatives are eliminated.

#### **A. The Rate Disparity Evidence**

The American Chemistry Council (ACC), representing the third-largest rail customer segment and approximately 2.2 million carloads annually, has provided the most specific empirical evidence in the proceeding. According to ACC data, rail rates have increased 240 percent over the past fifteen years at facilities served by a single railroad, compared to just 24 percent at locations with competitive rail options. This tenfold disparity is the empirical foundation of the shipper opposition: efficiency gains from single-line service are captured as monopoly rents rather than passed to customers once competitive alternatives are eliminated.

The ACC's argument is that once railroads hold monopoly power over a route, they price to the truck-competitive ceiling regardless of their actual costs. Under the current four-carrier Class I structure, a shipper can often leverage a western carrier against an eastern partner to negotiate better interline rates for transcontinental moves. The merger permanently eliminates that structural negotiating position for Inland Point Intermodal movements. If the merged entity captures efficiency gains as margin rather than passing them to customers, shippers would trade negotiating leverage for faster transit time at a premium price, with no competitive alternative.

## **B. The Committed Gateway Pricing Framework and Its Limitations**

UP has proposed a Committed Gateway Pricing (CGP) mechanism to extend merger benefits to shippers who would not directly benefit from single-line service. The program allows BNSF and CSX to market transcontinental service at formulaic rates through major interchanges in Chicago, St. Louis, Memphis, and New Orleans. UP describes the program as "purely additive," offering an additional option without removing existing choices.

Two structural vulnerabilities in this response have been identified in the evidentiary record. First, actual eligibility estimates range from about 1 percent to 20 percent of customers, depending on the methodology. The program excludes intermodal traffic, automobiles, unit trains, and hazardous materials, significant carve-outs given the composition of the combined network's traffic base. Industry analysts who have reviewed comparable schemes on the I-5 corridor report that shippers found the benefits unclear, particularly for carload and manifest freight.

Second, and more fundamentally, CGP commitments are time-limited, expiring at the end of the merger oversight period. Shippers are being asked to accept permanent structural consolidation in exchange for temporary pricing protections. The application acknowledges the temporal asymmetry between permanent consolidation and time-limited rate protection but does not resolve it. Once protections lapse, captive shippers would have no mechanism to access competitive pricing without additional regulatory intervention.

## **C. Short Line Access and Interchange Commitment Structures**

The merger's competitive access implications extend beyond direct shippers to the short-line railroad ecosystem. Decision No. 13's pre-filing data requirements specifically required disclosure of contractual and interline commitments, including operating interests in the Peoria & Pekin Union Railway and the Terminal Railroad Association of St. Louis. The Board was concerned that contractual restrictions on short-line railroads' ability to hand off freight to competing Class I carriers could constrain access to neutral gateways, independent of the merger's direct competitive effects.

Short line railroads that connect to the UP-NS combined network at a single interchange point would lose the ability to route traffic competitively to BNSF or CSX via that connection if the merged carrier conditions access terms in ways that effectively foreclose alternatives. The STB's classification of the Terminal Railroad Association of St. Louis acquisition as "significant" rather than "minor" reflects precisely this concern: control of a pivotal neutral gateway creates a strategic chokepoint that can be used to constrain short line access to competitive interchange, even in the absence of formal rate discrimination.

Formal parties representing short line associations, including the American Short Line and Regional Railroad Association (ASLRRRA), have standing to file verified statements and to request conditions that specifically address interchange access terms, gateway neutrality, and rate protections for traffic originating or terminating on connecting short line carriers. The Board has conditioned prior mergers on specific interchange access commitments, and this proceeding is likely to generate similar requests given the merger's gateway rationalization objectives.

## **VI. Labor Protective Conditions: The New York Dock Framework and Its Limits**

The STB's approach to protecting railroad employees in merger proceedings is governed by a mandatory legal framework that predates the 2001 new rules and applies regardless of the applicants' negotiated labor agreements. Understanding this framework is essential to evaluating both the applicants' labor claims and the organized opposition from unions representing the majority of the combined workforce.

### **A. The New York Dock Conditions: A Mandatory Floor**

The New York Dock Conditions, named for the Board's landmark 1979 decision in *New York Dock Railway*, are the standard labor protective conditions the STB has historically imposed as a matter of course when approving major railroad mergers and consolidations. They are recognized as a "fair and equitable arrangement" to protect employees who may be adversely affected by a transaction, and their imposition is effectively mandatory: the Board lacks discretion to approve a major merger without them.

The core elements of the New York Dock Conditions address four areas of protection:

- 1. Advance Notice:** The railroad must provide advance notice to affected unions before implementing any change that could adversely affect employees, ensuring that labor organizations have an opportunity to negotiate or invoke arbitration before the operational changes take effect.
- 2. Negotiation and Arbitration:** Changes affecting employees are subject to negotiation between the merged carrier and the relevant union. If an agreement cannot be reached, the dispute is subject to binding arbitration, which provides a structured resolution mechanism that does not require litigation.
- 3. Income Protection:** Employees who are dismissed or displaced due to the merger are entitled to a "displacement allowance" that protects their income for up to six years. This protection applies to employees whose positions are eliminated or whose compensation is reduced as a direct result of merger-related operational changes.
- 4. Relocation and Severance:** Affected employees are entitled to reimbursement for reasonable moving expenses when relocation is required and, in certain circumstances, may receive severance, providing a baseline of economic security for workers whose positions are restructured geographically or operationally.

The New York Dock Conditions function as a reactive safety net: they are designed to mitigate the negative consequences of a merger for workers adversely affected after the fact, providing compensation and transition support once a job has been lost or changed. They do not prevent displacement; they compensate for it.

## **B. The Divide in Organized Labor**

The UP-NS application's labor narrative centers on the unions that have reached protective agreements with the applicants. SMART-TD (the largest rail union by membership), the Brotherhood of Railway Carmen, the International Brotherhood of Boilermakers, the National Conference of Firemen and Oilers, and the United Supervisors Council of America have signed what the application describes as "jobs-for-life" agreements.

What the application does not adequately address is that the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the Brotherhood of Maintenance of Way Employees Division (BMWED), representing 53 percent of the combined UP-NS workforce, have announced active opposition following a five-month independent investigation that included direct negotiations with UP CEO Jim Vena. They were subsequently joined by the Brotherhood of Railroad Signalmen and the Transport Workers Union.

The analytical significance of this opposition is specific: these unions represent workers at both railroads and have no competitive stake in the outcome. They cannot be

characterized as protecting market position or institutional self-interest. Their conclusions are based on independent analysis and center on three substantive grievances:

**1. Hollow job protection agreements:** The agreements offered to supporting unions contain provisions that do not protect seniority, allow unlimited geographic transfers, and fail to address route spin-offs to short-line operators. BMWED President Tony Cardwell has stated that these provisions undermine the economic security the agreements nominally provide.

**2. Market monopoly and network rationalization:** BLET National President Mark Wallace has concluded that the merged carrier would transfer branch lines serving small towns, factories, and farms to short-line operators while consolidating traffic onto increasingly long mainline trains, a well-documented pattern in post-merger network rationalization that the income protection provisions of New York Dock address only after displacement occurs.

**3. Safety culture incompatibility:** Norfolk Southern has implemented measurable reforms following the February 2023 East Palestine derailment, including participation in the FRA's Confidential Close Call Reporting System, while UP has continued to resist comparable reforms. A merger that forces the convergence of two distinct operating cultures must determine which culture prevails in the combined entity.

### **C. The Proactive Labor Strategy Argument**

The New York Dock Conditions set a legal floor, not a ceiling. A merged railroad that treats New York Dock as its sole labor strategy will satisfy its statutory obligations but may not achieve the operational outcomes projected in the application. The historical pattern of post-merger labor relations in the Class I industry suggests that worker resistance, reduced retention of experienced personnel, and erosion of institutional knowledge consistently contribute to the degradation of service quality that regulators have repeatedly documented following major consolidations.

A genuinely proactive labor strategy, designed to render the displacement provisions of New York Dock largely unnecessary by minimizing the number of adversely affected employees in the first place, would include early union engagement in integration planning, attrition-based rather than displacement-based workforce adjustment, retraining pathways that anticipate rather than react to operational changes, and governance structures that give labor representatives a meaningful voice in post-merger operational decisions. The STB's oversight conditions can require reporting on workforce metrics and displacement rates; formal parties of record can request that these conditions be incorporated into the approval order.

The Board received and will continue to receive, submitted through formal intervention filings, verified statements from BLET and BMWED documenting specific, substantive objections that the application neither anticipates nor rebuts. The majority-workforce opposition, based on documented grievances about loopholes in protective agreements and incompatibility with safety culture, must be addressed in the Board's written decision. OGC's defensibility review will flag any gap between the labor arguments raised by formal parties and the decision's written treatment of those arguments.

## **VII. Passenger Rail Implications and the Capacity Contradiction**

The merger's implications for intercity passenger rail constitute a distinct evidentiary track that intersects with, but is analytically separate from, the freight competitive analysis. The combined UP-NS network would become the host railroad for a substantial majority of Amtrak's national route system, creating a regulatory obligation that formal parties have identified as inadequately addressed in the application.

### **A. The Scale of Amtrak Exposure**

The Rail Passengers Association has documented that the combined UP-NS network would host 25 of 44 Amtrak state-supported and long-distance routes (57 percent of the national route network), carrying more than 11.3 million passengers annually, representing 63 percent of total Amtrak state-supported and long-distance ridership. Under 49 U.S.C. § 24308, Amtrak trains operating over freight railroad tracks are entitled to preference over freight movements, a statutory right that, in practice, is only as strong as the enforcement mechanisms the regulatory framework provides.

UP and NS commit in their application only to maintaining existing passenger service levels. This is a preservation standard, a commitment to the status quo, and it falls short of an enhancement standard. The 2001 new rules require the merger to affirmatively enhance competition. The applicants' passenger rail commitment does not meet this standard; it merely promises not to make an already constrained passenger rail environment any worse.

### **B. The Capacity Contradiction**

A more specific analytical problem arises from the internal inconsistency in UP's capacity claims. Citing capacity constraints on the Sunset Route corridor, UP previously told regulators that adding sufficient capacity to make the existing Sunset Limited, which currently operates three days per week, a daily train would cost approximately \$1 billion. The merger application, however, also claims that the combined network can absorb more than 100,000 additional freight carloads, 14 new intermodal trains, and significant volume growth with modest infrastructure investment.

These two positions cannot both be correct. If the Sunset Route lacks the capacity for a daily passenger train without \$1 billion in infrastructure investment, it cannot also have spare capacity for tens of thousands of additional freight movements. If it has the freight capacity the merger application claims, the asserted cost of passenger service expansion has been materially overstated in prior regulatory proceedings.

This contradiction is analytically significant for two reasons. First, it raises questions about the reliability of the applicants' capacity modeling throughout the application. If capacity claims are made instrumentally, asserting capacity constraints when opposing passenger service expansion and asserting available capacity when seeking merger approval, the Board's economists and formal parties will have grounds to scrutinize all of the application's capacity projections more closely. Second, it provides a specific evidentiary basis for Amtrak and the Rail Passengers Association, both of which have NOI standing, to request conditions requiring the merged carrier to commit to specific passenger rail service improvement benchmarks as a condition of approval.

### **C. The FRA and DOT Interface**

The Department of Transportation and the Federal Railroad Administration will file formal comments on the merger's passenger rail implications at multiple stages of the proceeding. The FRA's Safety Integration Plan certification process, which must be completed before the Board can close the evidentiary record on safety matters, will examine how the merged carrier's operating culture and safety systems interact with the passenger rail preference rights established under federal statute. Amtrak's formal participation as a party of record, along with the verified statements its operations experts submit regarding on-time performance obligations, dispatching priority, and corridor investment commitments, will constitute an independent evidentiary track that the Board must address in its decision.

## **VIII. Reciprocal Switching: The Parallel Rulemaking and Its Intersection with FD 36873**

The STB's merger review of the UP-NS transaction does not occur in a regulatory vacuum. A parallel rulemaking proceeding, Docket EP 711, the Board's expanded reciprocal switching rulemaking, is actively developing rules that would restructure competitive access to rail infrastructure nationwide. The intersection of these two proceedings is analytically significant and strategically consequential for all parties.

### **A. The Reciprocal Switching Framework**

Reciprocal switching, in its regulatory sense, refers to the right of a shipper served by only one railroad to require that carrier to switch its cars to a competing railroad at a nearby

interchange point, at a regulated fee, as if the shipper had a direct physical connection to the second carrier. The practical effect is to give captive shippers, those with no competitive rail alternative at their facility, access to rate competition and service options they would otherwise lack.

The Board's existing reciprocal switching authority is set forth in 49 U.S.C. § 11102, which authorizes the Board to require switching when practicable and in the public interest, or when necessary to provide competitive rail service. The EP 711 rulemaking is examining whether to expand the circumstances under which reciprocal switching can be required and to establish clearer standards for when the public interest criterion is met. This could make switching rights available to a broader class of captive shippers as a matter of routine, rather than requiring case-by-case regulatory proceedings.

### **B. The Walk-Away Right Connection**

The intersection between EP 711 and the UP-NS merger proceeding is not theoretical. Schedule 5.8 of the merger agreement, which defines the regulatory conditions that would allow UP to walk away from the transaction, is understood to identify the broad application of forced reciprocal switching to newly captive shippers as one of three categories of deal-terminating regulatory conditions. UP has characterized such a mandate as potentially "materially burdensome," using the same threshold language found in the walk-away right provisions.

The analytical implication is clear: if the merger's financial projections depend on maintaining market dominance over shippers who would gain competitive access under an expanded EP 711 framework, the two proceedings are structurally linked. A Board decision in EP 711 that expands reciprocal switching rights could simultaneously alter the competitive dynamics the merger is designed to create and trigger Schedule 5.8's walk-away provisions. This linkage has been identified by the Rail Customer Coalition and others as evidence that the merger's profitability is contingent on avoiding competitive guardrails rather than on delivering claimed efficiency gains.

### **C. The Pricing Power Dimension**

The reciprocal switching question ultimately concerns where efficiency gains flow. Under the current interline system, a shipper often holds negotiating leverage by playing carriers against each other for transcontinental moves. The merger eliminates that leverage for the traffic it captures as single-line. If expanded reciprocal switching rights under EP 711 are available, that leverage is partially restored through a regulatory mechanism rather than the market structure. If they are not available, or if the walk-away provisions in Schedule 5.8 are triggered before expanded switching rights take effect, captive shippers face the rate disparity documented by the ACC with no structural remedy.

Formal parties of record in the UP-NS proceeding can and should submit verified statements that directly address the EP 711 intersection. The Board's decision in the merger proceeding does not bind or preempt the EP 711 rulemaking, but the Board's analysis of the merger's competitive effects and any merger-specific reciprocal switching conditions it imposes will inevitably inform how the EP 711 standards are applied to the merged entity. Requesting merger-specific reciprocal switching conditions as part of any approval order is a distinct and important strategic option available to captive shipper groups as formal parties of record.

## **IX. Appendix L: The Competitive Access Remedy Framework**

The most technically specialized component of the STB's merger review process for parties seeking to remedy competitive harm is the "Appendix L" framework, the regulatory mechanism through which the Board evaluates proposed trackage rights, haulage rights, and other competitive access conditions as structural remedies attached to merger approval. Understanding this framework is essential for any party seeking to request competitive access conditions as a condition of approval, because the analytical standards it establishes govern how such requests are evaluated and what evidence is required to support them.

### **A. The Regulatory Basis and Historical Development**

Appendix L derives its name from Appendix L of the Board's 2001 major merger regulations, which is the section of 49 C.F.R. Part 1180 that establishes the analytical framework for evaluating competitive access remedy proposals in the context of major merger review. It was developed as part of the 2001 rulemaking that created the enhancement standard, specifically because prior merger reviews under the preservation standard had approved transactions without adequate structural tools to mitigate competitive harm. The UP-SP service failure of 1996-1997 and the regulatory response it generated demonstrated that preserving nominal access was insufficient when the practical effect of a merger was to concentrate market power in ways that enabled pricing without accountability.

The framework holds that competitive access remedies, primarily trackage rights (which allow a competing carrier to operate its own trains over the merged entity's tracks) and haulage rights (which require the merged entity to carry a competing carrier's traffic over specified segments at regulated rates), are treated as affirmative conditions of approval, not as constraints or penalties. The analytical question is whether a proposed access remedy, together with the merger's other conditions, results in a transaction that meets the enhancement standard required by the 2001 rules.

### **B. How the Framework Operates in Practice**

In practice, the Appendix L framework operates through the Responsive Application process. A competing carrier, or in some circumstances a shipper group or a state transportation agency, files a Responsive Application requesting specific trackage or haulage rights as a condition of the Board's approval. The Responsive Application must specify the precise route segments for which access is requested, the competitive purpose the access remedy is intended to serve, and the evidentiary basis for concluding that the merger would otherwise harm competition on those segments.

The Board evaluates Responsive Applications using the same evidentiary record as the primary merger application. Applicants must specifically rebut the competitive analysis underlying each Responsive Application, and the Board must address each Responsive Application in its written decision. This is the mechanism through which the OGC's defensibility review function, described in Section III-D, is most directly engaged: a Responsive Application that raises a substantive competitive harm argument, supported by verified statements and discovery-based evidence, creates an explicit analytical obligation for the decision to discharge.

In the CP-KCS proceeding, CN's Responsive Application requesting divestiture of the KCS Springfield Line illustrates the full Appendix L analytical chain. CN identified a specific corridor where the merger would eliminate competitive options, quantified the competitive harm using economic analysis based on discovery data, and proposed a specific structural remedy. The applicants were required to rebut CN's analysis. The Board addressed it in a written finding, ultimately denying the divestiture request but engaging fully with CN's evidentiary record rather than summarily dismissing it.

### **C. The UP-NS Application of the Framework**

For the UP-NS proceeding, the Appendix L framework will be most directly engaged by BNSF and CSX through their Responsive Applications. The proposed merger's network geography creates specific corridors where competitive harm is quantifiable: the Meridian Speedway spine, where UP would control the primary east-west connector between Meridian, Mississippi, and Shreveport, Louisiana, which currently provides an alternative routing for traffic moving between the Gulf Coast and the Southeast; the Chicago and St. Louis gateways, where the merger's rationalization of interchange activity would restructure how competing carriers access these neutral hubs; and specific two-to-one shipping points identified in the 100 percent traffic tapes required by Decision No. 13, where a shipper currently served by both UP and NS would be reduced to a single-carrier captive.

Shipper groups and state transportation agencies that file Responsive Applications can also invoke the Appendix L framework to request access-based remedies. For example, a shipper association representing captive industrial facilities could request a regulatory commitment specifying that certain categories of traffic be subject to reciprocal switching

at regulated terms, effectively incorporating an EP 711-style remedy as a merger condition rather than waiting for the separate rulemaking to conclude. This would create a specific evidentiary obligation that the Board must discharge in its written decision.

#### **D. The Enhancement Standard and the Sufficiency of Proposed Conditions**

The ultimate analytical question the Appendix L framework must answer is whether the competitive access conditions attached to a merger approval, taken together with the merger's other terms, produce a transaction that affirmatively enhances competition rather than merely preserving or reducing it. This is a holistic judgment, not a checklist. The Board evaluates whether the sum of the proposed conditions, including trackage rights on specific corridors, gateway access commitments, reciprocal switching mandates, rate caps on captive traffic, and oversight mechanisms, is sufficient to offset the competitive harm of the underlying consolidation.

This is precisely why the walk-away rights in Schedule 5.8 are analytically significant. A merged entity that would walk away from the transaction rather than accept the competitive conditions necessary to meet the enhancement standard is one whose projected public benefits are contingent on avoiding the conditions the statute requires. The Appendix L framework's function is to identify, in the proceeding's evidentiary record, whether a set of conditions exists that would produce a transaction both parties are willing to accept and that meets the Board's legal standard. If no such set of conditions exists because the conditions necessary to meet the standard trigger the walk-away rights and the applicants exercise them, the Board must deny the application.

### **X. The Procedural Pipeline: How Input Becomes Decisions**

The procedural schedule governing the UP-NS merger review is not merely an administrative calendar; it is the analytical framework that sequences, cross-references, and progressively narrows all input into a contested set of issues the Board must resolve. Each phase produces a different kind of input, which staff analyze differently.

#### **Phase 1: Completeness Review**

Before substantive analysis begins, the Board conducts a threshold determination to assess whether the application contains all information required by 49 C.F.R. Part 1180. Comments at this stage are narrowly scoped: they address only whether the application is complete, not whether the merger is a good idea.

This phase proved consequential in the UP-NS proceeding. The Board found the original December 2025 application incomplete because it lacked full system market share projections and a complete copy of the merger agreement (specifically, Schedule 5.8, which defines the "materially burdensome" regulatory conditions that would trigger UP's

contractual right to walk away from the transaction). The Board rejected the application without prejudice and required a revised submission. This rejection, itself influenced by comments from competing Class I railroads and shipper associations, gave all stakeholders additional time to assess the merger's impacts and prepare more comprehensive participation strategies.

The revised application was filed on April 30, 2026. Comments on its completeness were due by May 8, 2026, and the applicants' reply was due by May 12, 2026.

## **Phase 2: Acceptance and Procedural Schedule**

If the Board accepts the revised application as complete, it issues a decision formally accepting the application and setting the procedural schedule. The procedural schedule is itself the subject of a prior comment round; stakeholders can propose changes to deadlines, argue for longer comment periods, or request additional procedural protections.

The procedural schedule establishes the sequence of analytical rounds through which all subsequent input flows:

1. NOI deadline (typically 45 days post-acceptance)
2. Descriptions of anticipated responsive applications due
3. Responsive environmental information and environmental verified statements due
4. Comments, protests, requests for conditions, and all evidence in opposition due (including DOJ and DOT comments)
5. Responsive applications due
6. Applicants' responses to all opposition and rebuttal in support of the application due
7. Rebuttals in support of responsive applications due
8. Final briefs due
9. Public hearing (if ordered)
10. Close of evidentiary record
11. Final decision (within 90 days of close of record under 49 U.S.C. § 11325(b)(3))

The applicants proposed a 390-day period from application filing to final decision. In prior proceedings, the Board has extended comment deadlines beyond the applicants' proposals to allow adequate time for complex issues to be fully developed.

## **Phase 3: Discovery and Verified Statement Development**

Once parties of record are established, the discovery phase begins. PORs serve information requests on the applicants, and the applicants may serve cross-discovery on

opposing parties. The ALJ manages disputes about scope, privilege, and timing. This is where the specific factual claims in the merger application are stress-tested: parties obtain the underlying data supporting the applicants' traffic projections, competitive analyses, and operating plan assumptions, and use that data to develop their own expert analyses.

The discovery process is the primary mechanism for elevating the analytical sophistication of POR input to a level that enables meaningful engagement with the applicants' 7,000-page application and its supporting workpapers. A community group's letter of comment may raise a concern; a verified statement from an economist with access to the applicants' underlying data models can quantify it and demonstrate where the applicants' projections are methodologically flawed.

#### **Phase 4: Comments, Opposition, and Responsive Applications**

This is the primary substantive input phase. All verified statements from opposing parties, requests for conditions, protests, and responsive applications are filed simultaneously. OP attorneys review all submissions across four dimensions: 1. legal arguments under 49 U.S.C. §§ 11321-11327 and 49 C.F.R. Part 1180; 2. economic arguments on competitive effects and market concentration; 3. operational arguments on service impacts, capacity, and safety; and 4. environmental concerns, which will be cross-referenced with OEA's parallel EIS work.

The Office of Economics flags any verified statements that present quantitative analyses inconsistent with the applicants' projections, identifying them for targeted rebuttal and for staff's independent assessment. If data discrepancies are identified, the Board can halt the proceeding and order corrected submissions, as occurred in the CP-KCS proceeding when CN's responsive application flagged the traffic density inconsistency described in Section III-B.

#### **Phase 5: Applicant Rebuttal**

After opposition submissions close, UP and NS file their responses to all comments, protests, and requests for conditions, along with a comprehensive rebuttal supporting their application. This filing is the applicants' opportunity to directly address every argument raised by every party of record. OP attorneys review the rebuttal against the opposition submissions, identifying which arguments were engaged and which were not; unaddressed arguments represent potential legal vulnerabilities if the case goes to court.

#### **Phase 6: Environmental Analysis Track**

While the legal and economic review proceeds, OEA prepares the EIS through its multi-stage process. OEA's Scope of Study defines the resource areas to be studied: grade crossing delay and safety, noise and vibration, community impacts, hazardous materials routing, and others. The Draft EIS is published, and public comments are solicited. OEA

holds public meetings to gather additional input, particularly from communities along affected corridors. The Final EIS responds to all comments on the Draft EIS and sets forth OEA's final mitigation recommendations.

The environmental record, including the Draft EIS, Final EIS, and all associated comments, is integrated into the Board's overall analysis. OEA's final recommendations carry substantial weight: in the CP-KCS proceeding, all of OEA's recommendations were adopted as binding conditions.

### **Phase 7: Final Briefs and Public Hearing**

After responsive application rebuttals close, parties file final briefs: closing arguments synthesizing the full evidentiary record. The Board's decision on whether to hold a public hearing is made based on the needs indicated by the written comments. Federal law requires a public hearing unless the Board specifically determines one is not necessary in the public interest.

The public hearing serves multiple analytical functions. It allows Board members to directly question applicants and other interested persons about issues raised in the written record. It allows applicants to respond in real time to concerns raised by opposing parties, generating a hearing record that supplements the written submissions. And it gives the Board a qualitative sense of the intensity of concern on specific issues that may not be fully captured in the paper record.

At the CP-KCS public hearing, which ultimately ran seven days (an extension from the originally announced three), Board members questioned applicant executives, community representatives, competing railroad officials, labor leaders, and passenger rail officials. The final two days featured CP and KCS executives responding directly to arguments raised throughout the hearing. This oral hearing record then became an additional layer of input that OP synthesized before drafting the final decision.

### **Phase 8: OGC Defensibility Review and Board Vote**

Before the draft decision reaches the Board members, OGC attorneys conduct a defensibility assessment, meeting with OP and other staff to identify any arguments raised by formal parties that the draft has not adequately addressed. This review is the final quality-control mechanism that protects the Board's decision from reversal on procedural or substantive grounds.

The five Surface Transportation Board members (nominated by the President and confirmed by the Senate) review the draft decision and then vote. The Board's final decision must be issued within 90 days of the close of the evidentiary record under 49 U.S.C. § 11325(b)(3), though this deadline is extended if NEPA requires the environmental review to be completed first.

## **XI. Post-Decision Oversight: Conditions, Compliance, and Continuing Review**

The STB's analytical engagement does not end with the final merger decision. Conditions imposed as part of approval create an ongoing oversight relationship that lasts for at least five years (seven years under the CP-KCS precedent) after the effective date of approval.

Within 60 days of the final decision, the merged carrier must participate in a technical conference with Board staff to discuss compliance with all reporting requirements imposed as conditions. Throughout the oversight period, the merged carrier files regular service metrics, train count and length reports, and other data demonstrating compliance with specific commitments. The Board retains authority to enforce conditions and to order additional relief if the merged carrier fails to meet its commitments.

This post-decision framework is essential for understanding how input from parties of record is integrated into the overall process: conditions requested by formal parties in their verified statements and requests for conditions, and incorporated into the Board's final decision, become the governing framework for years of post-merger regulatory oversight. The analytical chain runs from a party's verified statement, through the Board's written finding addressing it, to an enforceable condition, and finally to ongoing compliance monitoring.

## **XII. The UP-NS Proceeding: Current Status and Analytical Significance**

As of May 2026, the UP-NS proceeding is at the threshold of the substantive review phase. The revised application filed April 30, 2026, addressed the deficiencies identified in the January 2026 rejection, specifically the full system market share projections and the complete merger agreement, including Schedule 5.8. Public comments on completeness were due May 8, 2026, with applicants' replies due May 12, 2026.

If the Board accepts the revised application as complete, the NOI deadline will be set approximately June 12, 2026, as noted in Section II-B. From that point, the substantive review process described in this paper will proceed, with the review expected to extend into 2027.

Several features of the UP-NS proceeding make it analytically distinct from the CP-KCS precedent that most closely informs its procedures. First, the UP-NS combination is an end-to-end merger of the two largest western and eastern Class I systems, the first such transcontinental combination attempted under the new rules framework. Second, the merger would give the combined entity control over approximately 45 percent of existing freight, with market concentration well above 50 percent in many individual commodity

markets. Third, UP's post-merger operating history from prior consolidations has produced significant evidence of service failures and unmet commitments, which formal parties will use to challenge the applicants' claims about post-merger service quality.

The combination of these factors means that the formal party input in this proceeding, including verified statements from economists, shipper operations experts, community engineers, labor safety specialists, and competing railroad planners, will be more technically detailed and more commercially consequential than in any prior STB merger proceeding. The analytical pipeline described in this paper will be tested at a scale and level of complexity that exceed any prior proceeding under the new rules framework.

### **XIII. Conclusion**

The STB's process for integrating public input into merger decisions is not a single event but a structured, multi-office, multi-phase analytical pipeline in which the filer's standing, the nature of the input, and the stage of the proceeding determine how deeply any given submission penetrates the evidentiary record and how binding its influence on the final decision.

Letters of Comment contribute to the qualitative and political landscape of the proceeding. They inform the Board's understanding of who is affected and how, and they can surface issues for further probing. But they do not compel responses, do not create evidentiary obligations, and do not generate the specific factual findings that bind the Board in its written decision or withstand judicial review.

Notices of Intent to Participate, along with the full suite of procedural rights they unlock, including discovery, verified statements, responsive applications, requests for conditions, and participation in public hearings, are the mechanism through which public input is transformed into binding factual findings and enforceable conditions. The Office of Proceedings assembles and cross-references this input across analytical rounds; the Office of Economics stress-tests quantitative claims; the Office of Environmental Analysis runs the parallel NEPA track; the Office of the General Counsel ensures the reasoning withstands judicial scrutiny; and the Administrative Law Judge manages the evidentiary record throughout.

The captive shipper rate disparity, documented as a tenfold differential between competitive and single-carrier locations (see Section V-A); the mandatory New York Dock labor protections and their limits; the passenger rail capacity contradiction; the EP 711 reciprocal switching intersection; and the Appendix L competitive access framework together constitute the substantive evidentiary terrain on which this proceeding will be decided. Each of these dimensions is accessible only to formal parties of record, who have the discovery rights and verified statement privileges conferred by NOI filing.

External relationships with the DOJ, DOT, and FRA provide specialized federal expertise that supplements the STB's internal analytical capacity. Competing railroads, labor organizations, shipper associations, and community groups that file as formal parties of record ensure that the Board's decision reflects the full range of public interests at stake, not merely the applicants' case for approval.

For the UP-NS proceeding, which is the most consequential test of the 2001 new rules framework in the 25 years since those rules were adopted, the quality and specificity of formal party input will be the decisive factor in whether the Board's final decision, whatever it is, reflects the true public interest in the future of American freight rail competition.

## **Appendix: Key Regulatory References and Procedural Milestones**

### **Governing Statutes and Regulations**

49 U.S.C. §§ 11321–11327, Rail carrier consolidations, mergers, and acquisitions of control

49 U.S.C. § 11325, Procedures for major rail mergers; public hearing requirement; 90-day decision deadline

49 U.S.C. § 11102, Reciprocal switching authority

49 U.S.C. § 24308, Amtrak preference rights over freight railroad tracks

49 C.F.R. Part 1180, Railroad Acquisition, Control, Merger, Consolidation, and Lease Procedures

49 C.F.R. § 1180.1, General merger policies including competition-enhancement requirement

49 C.F.R. § 1180.1(c), Requirement that applicants affirmatively demonstrate benefits are real, quantifiable, and not overstated

49 C.F.R. § 1180.2(a), Definition of "major" transaction

49 C.F.R. § 1180.4, Procedural requirements for merger applications

49 C.F.R. Part 1180, Appendix L, Competitive access remedy framework for major mergers

National Environmental Policy Act (NEPA), Governing the OEA's EIS process

Hobbs Act, Governing judicial review of STB decisions in the U.S. Courts of Appeals

New York Dock Railway, Finance Docket No. 28250 (1979), Establishing mandatory labor protective conditions for railroad mergers

**Docket FD 36873: Key Procedural Milestones**

1. July 30, 2025, UP and NS file Notice of Intent to merge
2. August 28, 2025, STB classifies transaction as “major” under 49 C.F.R. § 1180.2(a)
3. September–October 2025, Public comment on proposed procedural schedule
4. December 19, 2025, Original merger application filed (approx. 7,000 pages)
5. January 16, 2026, STB rejects original application as incomplete (Decision No. 9)
6. March 18, 2026, STB issues Decision No. 13: BNSF discovery appeal denied; pre-filing data mandates imposed
7. April 30, 2026, Revised merger application filed
8. May 8, 2026, Public comments on completeness of revised application due
9. May 12, 2026, Applicants’ reply to completeness comments due
10. ~June 12, 2026, Expected NOI deadline (45 days post-acceptance, pending Board confirmation)
11. 2027, Final decision anticipated

**Key Precedent: CP-KCS Merger (Docket FD 36500)**

October 29, 2021, Application filed

November 26, 2021, Application accepted; procedural schedule established

March 2022, Proceedings halted pending correction of the traffic density data discrepancy identified by staff and flagged by CN’s responsive application

August 2022, Draft EIS published; public comment period opened

September 28–30, October 2022 (extended to 7 days), Public hearing at STB headquarters, Washington, DC

October 14, 2022, Final briefs due; close of evidentiary record

January 2023, Final EIS published

March 15, 2023, STB approves CP-KCS merger with conditions, including a 7-year oversight period; all OEA environmental recommendations adopted as binding conditions; New York Dock labor protections imposed

April 14, 2023, Decision effective; technical conference with Board staff within 60 days

### **Parallel Proceeding**

Docket EP 711, STB reciprocal switching rulemaking (active); outcome may intersect with merger-specific competitive access conditions

*This paper was prepared in May 2026 based on the public docket record of Docket No. FD 36873, the STB's published regulatory framework under 49 C.F.R. Part 1180, the CP-KCS merger record (Docket No. FD 36500), the STB's official guidance, including its Major Merger Frequently Asked Questions publication, and the author's formal Letter of Comment filed May 8, 2026, in Docket No. FD 36873. The Appendix L framework discussion draws on the Board's 2001 rulemaking record and subsequent application in major merger proceedings.*

### **Authors' Note:**

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