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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36873[1]

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

Digest:[2] In this decision, the Board finds that the application seeking approval for Union Pacific Corporation to acquire control of Norfolk Southern Corporation, and through that entity Norfolk Southern Railway Company and its rail subsidiaries, is incomplete. In accordance with the statute, the Board therefore must reject the application (and two related applications) and does so without prejudice to refiling. Applicants may submit revised applications in this docket, which would commence a new review by the Board for completeness. Applicants shall submit a letter in the docket by February 17, 2026, indicating if and when they anticipate refiling.

Decision No. 9

Decided: January 16, 2026

On December 19, 2025, Union Pacific Corporation (UPC), Union Pacific Railroad Company (UP), Norfolk Southern Corporation (NSC), and Norfolk Southern Railway Company (NS) (collectively, Applicants) filed an application (the Application) seeking Board approval for (1) the acquisition of control by UPC of NSC, and through NSC of NS and NS's rail carrier subsidiaries, and (2) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. This proposal is referred to as the Transaction.

As discussed below, the Application is incomplete because it does not contain certain information required by the Board's regulations. Specifically, the Application is incomplete because its impact analyses required by 49 C.F.R. § 1180.7(b) do not contain market share projections for the entity to be created by the Transaction that are consistent with the claims elsewhere in the Application that the new entity would experience growth by diverting traffic

[1] This decision embraces the following dockets: Union Pacific Corp.—Control—Peoria & Pekin Union Railway, Docket No. FD 36873 (Sub-No. 1); and Union Pacific Corp.—Control—Terminal Railroad Ass'n of St. Louis, Docket No. FD 36873 (Sub-No. 2).

[2] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

from trucks and other rail carriers. The Application is also incomplete because it does not contain the entire merger agreement required by 49 C.F.R. § 1180.6(a)(7)(ii), including certain documents that are expressly defined to be part of the merger agreement and that define Applicants' obligations under it. Given the Board's finding that these deficiencies render the Application incomplete, the Board must reject the Application. 49 U.S.C. § 11325(a) ("if the application is incomplete, the Board shall reject it"); see also 49 C.F.R. § 1180.4(c)(7)(ii) ("The Board shall reject an incomplete application by serving a decision no later than 30 days after the application is filed with the Board.").

Included with the Application are two related applications for Applicants' acquisitions of control of the Peoria and Pekin Union Railway Company (PPU) in Docket No. FD 36873 (Sub-No. 1) and the Terminal Railroad Association of St. Louis (TRRA) in Docket No. FD 36873 (Sub-No. 2). As described in more detail below, the TRRA control application describes that transaction as a "minor" transaction under the Board's regulations, but the Board concludes that that proposed transaction should be classified as a "significant" transaction. For that reason, that application is incomplete and will be rejected. Moreover, because the primary Application is being rejected and the related PPU acquisition of control is "purely incidental" to the primary Transaction, (Appl. 2-1046), that related application will be rejected as well.

Applicants are permitted to file a revised application remedying the deficiencies identified in this decision. 49 C.F.R. § 1180.4(c)(7)(ii). Nothing in this decision prevents Applicants from revising other parts of their Application on their own accord or in light of the comments filed by other stakeholders.[3] Any revised application must contain Applicants' entire application. That is, Applicants may not incorporate any portion of the December 19 Application by reference, as would otherwise be permitted by 49 C.F.R. § 1180.4(c)(7)(ii). Given the size of the original Application, the Board seeks to ensure that it has a single version of any revised application on which to base future action.

BACKGROUND

On July 30, 2025, Applicants filed a notice of intent to file the Application. By decision served August 28, 2025, the Board found the Transaction to be a "major" transaction under 49 C.F.R. § 1180.2(a), as it is a control transaction involving two or more Class I railroads. UPC presently controls UP, a Class I railroad, and proposes to acquire common control of NS, also a Class I railroad. See Union Pac. Corp.—Control—Norfolk S. Corp. (Decision No. 3), FD 36873, slip op. at 2 (STB served Aug. 28, 2025).

[3] In any revised application, Applicants must also provide clarifications as to certain minor technical issues, none of which were raised by commenters, described in the Technical Appendix to this decision. The Technical Appendix also provides guidance on workpapers.

As Applicants explain in the Application, they are seeking approval under 49 U.S.C. §§ 11323-25[4] for (1) the acquisition of control by UPC of NSC, and through NSC of NS and NS's rail carrier subsidiaries, and (2) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. (Appl. 1-12.)[5] Applicants specify that UPC would acquire NSC through the merger of Ruby Merger Sub 1 Corporation (a direct, wholly owned subsidiary of UPC) with and into NSC. (Id. at 1-17 to 1-18.) NSC would then merge with and into Ruby Merger Sub 2 LLC (a direct, wholly owned subsidiary of UPC). (Id.; see id., Vol. 4, Ex. 2 (Agreement and Plan of Merger).) Upon consummation of the Transaction, UP and NS rail operations would be consolidated as set forth in the Operating Plan and Service Assurance Plan, both included with the Application. (Id. at 1-18; id., Vol. 2, Ex. 13 (Operating Plan); id., Vol. 2, Service Assurance Plan.)

By decision served December 19, 2025, the Board established deadlines for comments on whether the Application contains the information required in 49 C.F.R. part 1180, and for a reply from Applicants. See Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 (STB served Dec. 19, 2025). On December 29, 2025, the Board received comments from BNSF Railway Company (BNSF), Canadian Pacific Kansas City Limited (CPKC), CSX Transportation, Inc. (CSXT), Grand Trunk Corporation (CN), the National Grain and Feed Association, and Super Neighborhood 64 & 88. Applicants filed their reply on January 2, 2026.

DISCUSSION AND CONCLUSIONS

The deficiencies that render the Application incomplete under the Board's regulations relate to the impact analyses required by 49 C.F.R. § 1180.7(b) and the submission of contracts or other written instruments entered into, or proposed to be entered into, pertaining to the Transaction required by 49 C.F.R. § 1180.6(a)(7). In addition, because a related transaction was filed by Applicants as a minor transaction but is found to be a significant transaction, the Application does not include complete versions of all related applications as required by 49 C.F.R. § 1180.4(c)(2).

Impact Analyses. Under 49 C.F.R. § 1180.7(b), Applicants are required to submit "full system" impact analyses that include any operations in Mexico and Canada. For major mergers, these analyses must meet certain "minimum requirements" to ensure that such applicants "supply the types of information we have found most helpful in assessing harm to competition or to essential services . . . ." Major Merger Rules, 5 S.T.B. at 599. Among other things, the analyses must "demonstrate the impacts of the transaction—both adverse and beneficial—on competition within regions of the United States and this nation as a whole . . . ." 49 C.F.R. § 1180.7(b).

[4] This proceeding is governed by those provisions as well as the Board's regulations, including 49 C.F.R. part 1180. See Major Rail Consol. Procs. (Major Merger Rules), 5 S.T.B. 539 (2001).

[5] Citations to the Application refer to the volume number and page number that appear on the bottom right-hand corner of each page. For example, "Appl. 1-12" refers to Application, Volume 1, page 12. Citations to an entire component of the Application refer to the Application volume number and exhibit number, if applicable. For example, "Appl., Vol. 4, Ex. 7 (Form S-4)" refers to the entirety of exhibit 7.

They must account for "inter- and intramodal competition, product competition, and geographic competition." Id. They "should reflect the consolidated company's marketing plan." Id. § 1180.7(a). And they "must" provide the following types of information:

- "Actual and projected market shares of originated and terminated traffic by railroad for each major point on the combined system." Id. § 1180.7(b)(2).
- "Actual and projected market shares of revenues and traffic volumes for major interregional or corridor flows by major commodity group." Id. § 1180.7(b)(3).
- "For each major commodity group, an analysis of traffic flows indicating patterns of geographic competition or product competition across different railroad systems, showing actual and projected revenues and traffic volumes." Id. § 1180.7(b)(4).

These detailed market-share projections are necessary under the current major merger regulations because "[a]ny railroad combination," including an end-to-end combination, "entails a risk that the merged carrier would acquire and exploit increased market power." Id. § 1180.1(c)(2)(i).

Applicants represent that the required market impact analyses, including projections, are detailed in the verified statement of Dr. Elizabeth Bailey, (Appl. 1-53), which Bailey affirms, (see id. at 2-12 to 2-13, V.S. Bailey 6-7). With her verified statement, Bailey provides an estimate of the 2023 actual market shares of originated and terminated traffic by railroad for each major point on the combined system, (see id. at 2-124, V.S. Bailey D2, referring to "Appendix D Tables D1, D2.xlsx"), an estimate of the 2023 actual market shares of revenues and traffic volumes for major interregional or corridor flows by major commodity group, (see id. at 2-127 to 2-128, V.S. Bailey E2 to E3, referring to "Appendix E1, E2, E3, E4.xlsx"), and an analysis of traffic flows indicating patterns of geographic competition or product competition across different railroad systems, showing an estimate of 2023 actual revenues and traffic volumes, (see id. at 2-130 to 2-131, V.S. Bailey F2 to F3, referring to "Appendix F Tables F1, F2, F3, F4.xlsx"). In response to the requirement that Applicants provide the Board with projected market shares for each major point on the combined system, projected market share of revenues and traffic volumes for major interregional or corridor flows by major commodity group, and projected revenues and traffic volumes for each major commodity group, Bailey respectively adds UP's and NS's actual market shares, actual revenues, and actual traffic volumes from 2023 and labels the summation of these 2023 numbers as the projected market share, revenue, and traffic volumes post-merger. (Id. at 2-127 to 2-128, V.S. Bailey E2 to E3, referring to "Appendix E1, E2, E3, E4.xlsx"; id. at 2-130 to 2-131, V.S. Bailey F2 to F3, referring to "Appendix F Tables F1, F2, F3, F4.xlsx".) Bailey offers no specific rationale for her approach to projecting market shares that must, under the Board's regulations, demonstrate the impacts of the transaction. (See id.)

CN and BNSF argue that the Application is incomplete because Applicants fail to include future market-share projections in their market analyses. According to them, Bailey's "numbers cannot possibly reflect the Applicants' 'projections,' because the Application elsewhere projects

that the proposed transaction will divert 442,000 carloads from other railroads to the Applicants and that Applicants' 'post-merger market share . . . will increase by 15-26%, depending on service type.'" (CN Comments 18, Dec. 29, 2025 (quoting Appl. 2-405, V.S. Hunt/Schabas 97); accord BNSF Comments 4, Dec. 29, 2025 (similar).) CPKC additionally argues that Bailey ignores any analysis of the effect of Applicants' proposed merger on "the number of independent routes in corridors where UP and NS may serve different legs of the movement" because Bailey focuses only on situations in which UP and NS both serve either the origin or the destination. (CPKC Comments 19-20, Dec. 29, 2025.)

Applicants respond that Bailey's simple-summation approach "is consistent with standard antitrust analysis" (a proposition for which Applicants provide no citation or support), and "consistent with" the requirement that Applicants' pre-filing notification specify a year to be used for the impact analysis (in this case the year 2023). (Applicants Reply 11, Jan. 2, 2026; see 49 C.F.R. § 1180.4(b)(2).) Applicants also observe that accounting for growth and market shifts could lead to disputes about those issues, which could be further complicated because 49 C.F.R. § 1180.7(b)(3) requires the data to be broken down by mode. (Applicants Reply 11, Jan. 2, 2026.) To CPKC, Applicants respond that Bailey focuses on horizontal competition and that vertical competition is addressed by Dr. Mark Israel in his verified statement. (Applicants Reply 13, Jan. 2, 2026.)

The Board concludes that the Application is incomplete because the full-system impact analyses do not contain Applicants' "projected market shares" as required by 49 C.F.R. § 1180.7(b). The Application is replete with claims that the merger will grow Applicants' traffic, in one estimate by between 15 and 26% of current rail traffic levels. (See Appl. 2-405, V.S. Hunt/Schabas 97; see also, e.g., Appl. 1-12 ("This merger is fundamentally about growth."), 1-24 ("Applicants expect substantial growth of rail traffic in 'watershed' regions . . . ."), 2-10, V.S. Bailey 4 (noting that Applicants expect 1.864 million carloads to be diverted to their post-merger single-line service yearly).) Indeed, Applicants project traffic growth, including diversions, to address other requirements regarding projected Transaction-related impacts in the Board's regulations, such as anticipated traffic patterns (§ 1180.7(b)(1)), the Operating Plan (§ 1180.8(b)), and public benefits (§ 1180.6(b)(11)). In those instances, Applicants' multi-year projections and anticipated Transaction-related impacts reflect a net benefit of $1.102 billion in year one, $2.042 billion in year two, $3.079 billion in year three, and $3.080 billion in subsequent years. (Appl. 1-73, App. B.) Applicants also project that the Transaction will result in their traffic growing by 1.86 million carloads and intermodal units annually from rail and truck diversions, (id. at 2-315, V.S. Hunt/Schabas 7), and in their Operating Plan they assume that 40% of the expected growth would be realized in year one post-Transaction, 70% in year two, and 100% in year three, (id. at 2-508, V.S. Gehringer/Orr 9). Yet, when providing Applicants' projected market shares of revenue and traffic volumes for their competitive-impact analyses, Applicants, via Bailey's verified statement, stop, at best, at the moment of consummation and make no attempt to account for any merger-related growth, diversions, or, indeed, any other future changes to market conditions at all. (Id. at 2-55 to 2-57, 2-123 to 2-125, V.S. Bailey 49-51 & App. D (describing analyses of the "projected share of the combined railroad, which is estimated as the combined share of UP and NS before the proposed merger"); id. at 2-58 to 2-64, 2-126 to 2-128, V.S. Bailey 52-58 & App. E (stating that the "[p]rojected shares reflect that interlined NS-UP or UP-NS will become single line in the combined

railroad"); id. at 2-64 to 2-69, 2-129 to 2-131, V.S. Bailey 58-63 & App. F (describing analyses of the "projected" volume and revenue of the combined railroad, "which is estimated as the combined [volume/revenue] of UP and NS before the proposed merger").) Thus, Bailey's analyses do not "reflect the consolidated company's marketing plan" and other projected business operations as reflected in the Application, 49 C.F.R. § 1180.7(a), and fail to look forward in time to account for the effects of the merger once it is completed, which Applicants project in this case to be three years after consummation, (see Appl. 1-20, 1-55). Bailey's approach of simply adding historical market shares together is therefore not the requisite "project[ion]" of the Transaction's competitive impact under § 1180.7(b)(2), (3), and (4), given Applicants' claims elsewhere in the Application that the merger will result in significant traffic and revenue growth.

Applicants' responses that its projected market share analyses comply with the Board's regulations are unpersuasive. First, Applicants provide no support for their claim that Bailey's approach "is consistent with standard antitrust analysis." Under federal antitrust statutes, analyzing the impacts of a proposed merger necessarily "focus[es] on the future." United States v. Aetna, 240 F. Supp. 3d 1, 79 (D.D.C. 2017) (quoting United States v. Baker Hughes, 908 F.2d 981, 991 (D.C. Cir. 1990)). How far ahead to look may be context specific, but Bailey's analysis did not meaningfully consider the future because it simply added together Applicants' actual 2023 traffic and revenue shares, despite claims and projections of traffic growth throughout the Application. See id. (one-year projection insufficient where firms in the relevant industry "routinely plan more than one year out"); FTC v. Sysco Corp., 113 F. Supp. 3d 1, 73-74 (D.D.C. 2015) (relying on a five-year post-merger market share analysis).[6] Second, the Board's regulations in no way limit Applicants to considering just the base year specified in the pre-merger notification. Applicants' Operating Plan makes projections that extend three years into the future following the consummation of the merger because that is how long Applicants anticipate it will take to realize 100% of their anticipated traffic growth. (See Appl. 2-508, V.S. Gehringer/Orr 9.) Because Applicants acknowledge that the full impacts of the Transaction will not be realized until three years post-consummation, projections in market impact analyses that, by regulation, "demonstrate the impacts of the [T]ransaction," 49 C.F.R. § 1180.7(b), necessarily must project market shares beyond the Transaction's consummation date. Bailey's projections do not, and the Application provides no rationale for why they do not.

Applicants' observation that a more complex analysis could lead to additional "disputes," (Applicants Reply 11, Jan. 2, 2026), is irrelevant to a completeness analysis. The point of requiring robust and detailed market-impact analyses by applicants in major merger proceedings is to ensure that any debate over those analyses, and indeed the competitive impact of the transaction, is fully informed and supported by applicants at the beginning of the proceeding. Because Bailey's analyses do not even attempt to project the market-share increases that Applicants are plainly expecting, they are not the "projected market shares" that the impact-analysis regulation requires.

[6] While the Board's statutory public interest analysis is even broader than inquiries under the antitrust laws, and the Board is not bound by the antitrust laws, see 49 U.S.C. § 11321, it must consider the policies embodied in such laws when analyzing whether a merger has the potential to reduce competition either directly or indirectly. 49 C.F.R. § 1180.1(c)(2).

Moreover, the Board agrees that Bailey does not include any analysis of the effect of Applicants' proposed merger on "the number of independent routes in corridors where UP and NS may serve different legs of the movement" because Bailey focuses only on situations in which UP and NS both serve either the origin or the destination. (See CPKC Comments 19-20, Dec. 29, 2025; see also Appl. 2-58 n.95, V.S. Bailey 52.) To the extent that the Transaction is likely to affect "projected market shares of revenues and traffic volumes" on such routes, § 1180.7(b)(2) and (b)(3) require that those effects be reflected in the market impact analyses. Although Applicants' response points the Board to the Israel verified statement, that statement does not appear to contain any analysis that could be characterized as providing "projected market shares of revenues and traffic volumes for major interregional or corridor flows by major commodity group." 49 C.F.R. § 1180.7(b)(3). The Application is therefore incomplete in this respect as well.

Merger Agreement. Under 49 C.F.R. § 1180.6(a)(7)(ii), Applicants must provide copies of "any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction." Applicants assert that "[a] copy of the Merger Agreement is contained in Exhibit 2 in Volume 4 of this Application." (Appl. 1-38.) The "Agreement and Plan of Merger," included at pages 5 to 113 of Volume 4, does not contain any exhibits, schedules, or any other contracts or other written instruments. (See id. at 4-5 to 4-113.) Nor do Applicants attempt to justify, in either the Application or as a cover letter to the merger agreement in exhibit 2, why they withheld these materials from the Board.

The commenting Class I carriers argue that the Application is incomplete because it fails to comply with this provision. (CN Comments 7, 25-31, Dec. 29, 2025; CPKC Comments 4, 9-14, Dec. 29, 2025; CSXT Comments 2, 9-10, Dec. 29, 2025; BNSF Comments 6, Dec. 29, 2025.) They observe that, while Applicants have provided the merger agreement's body, (see Appl., Vol. 4, Ex. 2.1), Applicants have withheld other portions of the agreement that define some of the agreement's key terms and that the agreement expressly incorporates.[7] The withheld portions include, among other things, the "Company Disclosure Schedules" and the "Parent Disclosure Schedules" (as defined in merger agreement Articles 3 and 4, respectively), at least some of which Applicants have produced to other parties during discovery. (CN Comments 27, Dec. 29, 2025; CSXT Comments 9, Dec. 29, 2025.) Commenters argue that without the full merger agreement, neither the Board nor participating parties can assess whether the Transaction is consistent with the public interest. (CN Comments 25-26, Dec. 29, 2025; CSXT Comments 9, Dec. 29, 2025.) CN further argues that having the full merger agreement "is especially important where Applicants have requested a fairness determination, which requires that the Board determine whether *all* of the terms of the proposed merger are fair to Applicants' shareholders." (CN Comments 26, Dec. 29, 2025 (footnote omitted).)

[7] Section 8.10 of the merger agreement states that "[t]his Agreement (including the exhibits and schedules hereto), the Confidentiality Agreement and the Clean Team Agreement constitute the entire agreement." (Appl. 4-96 (Ex. 2, Agreement and Plan of Merger).) Applicants have not provided copies of the referenced "exhibits and schedules," Confidentiality Agreement, or Clean Team Agreement.

The commenters argue that Applicants' withholding of Section 5.8 of the Company Disclosure Schedules (Schedule 5.8) to the merger agreement is particularly significant.[8] Schedule 5.8 gives content to the contractual term "Materially Burdensome Regulatory Condition," which, if imposed by the Board or a court, would give UPC the contractual right to walk away from the merger agreement. (See Appl. 4-74 to 4-75 (§ 5.8(c)), 4-87 (§ 6.3(e)-(f)); see also CPKC Comments 4, 10, Dec. 29, 2025.) According to commenters, the definitions in Schedule 5.8 are among the most material terms of the proposed merger agreement because they provide Applicants' own assessment of the Transaction's potential anticompetitive harms. (CPKC Comments 4, 10, Dec. 29, 2025; CSXT Comments 9-10, Dec. 29, 2025.) Applicants have refused to provide Schedule 5.8 in discovery except in totally redacted form, under a claim that the schedule is privileged. (CN Comments 27-28, Dec. 29, 2025; CSXT Comments 9, Dec. 29, 2025; CPKC Comments 10-11, Dec. 29, 2025.) Commenters further argue that there is no basis on which the terms to a merger agreement between two competitors could plausibly be deemed privileged. (CN Comments 28-31, Dec. 29, 2025; CPKC Comments 12-14, Dec. 29, 2025.)

Applicants respond that they have provided the "substance" of their agreement and that their approach is "consistent with common practice before the Board." (Applicants Reply 25-26, Jan. 2, 2026.) According to Applicants, although Schedule 5.8 allocates risk among Applicants and "identifies the outer limits and conditions to the merger that UPC is obligated to NSC to accept," it does not "alter the terms of the underlying transaction." (Id.) Applicants acknowledge that Schedule 5.8 would be useful to other parties because it reflects UPC's "bottom line," but Applicants assert without elaboration that Schedule 5.8 "should have no bearing on" what conditions parties might seek or that the Board might impose. (Id.) Applicants add without citation or any explanation that Schedule 5.8 "is shielded from discovery by recognized privileges" and that Applicants "would have no objection" to providing the Board with what they produced in discovery, i.e., an entirely redacted copy. (Id. at 26 & n.36.)

The Board concludes that the Application is incomplete because it does not contain all "contract[s] or other written instrument[s] entered into . . . pertaining to the proposed transaction" as required by the Board's regulation. 49 C.F.R. § 1180.6(a)(7)(ii). The omitted disclosure schedules, exhibits, and other documents supply terms of the contract and are expressly deemed to be part of it by Sections 5.8(e) and 8.10, (see supra notes 7 & 8), and they at minimum constitute "other written instrument[s] entered into . . . pertaining to the proposed transaction." Although the Application was silent on the omission of these materials, Applicants do not dispute in their January 2 reply that the plain text of the Board's regulation includes these documents. Cf. Canadian Nat'l R.R.—Control—Kan. City S., FD 36514, slip op. at 7 (STB served May 17, 2021) (applicants failed to submit a "complete" voting trust agreement because they omitted a related document that the agreement referenced multiple times). Instead, Applicants point to several proceedings where, they assert, the Board has accepted applications that did not include every schedule or disclosure. E.g., Canadian Pac. Ry.—Control—Kan. City S., FD 36500, Appl., Agreement and Plan of Merger (filed Oct. 29, 2021). It is immaterial that

[8] Section 5.8(e) of the merger agreement states: "For the avoidance of doubt, all references to this Section 5.8 in this Agreement shall be deemed to include Section 5.8 of the Company Disclosure Schedules." (Appl. 4-76 (Ex. 2, Agreement and Plan of Merger).)

the Board has on occasion accepted a merger application that did not include all schedules referenced in the merger agreement. No party raised the missing schedules as an issue in those proceedings and the Board otherwise had no need to opine on them. Moreover, the greater scrutiny required by the current major merger rules,[9] the Transaction's unprecedented size and potential significance for the national rail network,[10] and the fact that certain of the schedules may relate to the competitive issues that the Board would consider, all support a requirement that Applicants comply with the straightforward regulation to submit "any contract or other written instrument entered into, or proposed to be entered into" that pertains to the Transaction as part of the Application. 49 C.F.R. § 1180.6(a)(7)(ii).

Finally, not only did Applicants fail to provide the missing materials, including Schedule 5.8, in the Application, they did not attempt to justify their omission under the Board's regulations, despite the fact that the materials were already the subject of discovery disagreements when the Application was filed.[11] Even in Applicants' January 2 reply, where they assert that Schedule 5.8 is privileged, they do not specify which privilege they contend applies. (Applicants Reply 26, Jan. 2, 2026.) While it is difficult to imagine a privilege claim that would apply in this context to justify Applicants' withholding of a merger agreement document—negotiated by counterparties to a transaction at arm's length and required to be submitted to the Board under § 1180.6(a)(7)(ii)—it is noteworthy that Applicants did not even make an attempt. Under these circumstances, the Board deems the Application incomplete for failure to provide the complete merger agreement. Any revised application in this matter must include complete copies of all contracts or other written instruments entered into, or proposed to be entered into, pertaining to the Transaction, including Schedule 5.8. See 49 C.F.R. § 1180.6(a)(7)(ii); supra note 7. Applicants may designate their submission Confidential or Highly Confidential, if appropriate, in accordance with the protective order entered in this proceeding.

Control of TRRA. TRRA is a Class III terminal and switching carrier that operates approximately 170 miles of rail line in and around St. Louis, Mo., including two bridges over the Mississippi River. (Appl. 2-1046, 2-1055.) UP currently holds a 42.8% interest and NS

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[9] See, e.g., Major Merger Rules, 5 S.T.B. at 546 ("[W]e believe that future merger applicants should bear a heavier burden to show that a major rail combination is consistent with the public interest.").

[10] (See, e.g., Appl. 1-13 to 1-14 ("[T]he proposed transaction is an unprecedented opportunity for our country. It will create America's first transcontinental railroad, which will transform the nation's supply chain, unleash the strength of American manufacturing, benefit consumers, and create new sources of economic growth and workforce opportunity from coast to coast.").)

[11] On January 8, 2026, CN filed a motion to compel UP and UPC to produce Schedule 5.8 to the merger agreement. CPKC and CSXT filed in support of CN's motion. BNSF also filed a motion on January 8, 2026, to compel UP and NS to produce certain materials. The American Chemistry Council, American Fuel & Petrochemical Manufacturers, Alliance for Chemical Distribution, and The Fertilizer Institute jointly filed in support of BNSF's motion. CSXT also filed in support of BNSF.

currently holds a 14.29% interest in TRRA. (Id. at 2-1046.) If the Transaction is consummated, Applicants would acquire control over TRRA. Therefore, Applicants filed a related application in Docket No. FD 36873 (Sub-No. 2) to control TRRA.

This related application treats the acquisition as a minor transaction. (See Appl. 2-1056 (citing § 1180.8(c) for minor transactions); see also Applicants Reply 27-29, Jan. 2, 2026.) A minor transaction is one that "clearly will not have any anticompetitive effects," or in which "any anticompetitive effects will clearly be outweighed by the transaction's anticipated contributions to the public interest in meeting significant transportation needs." 49 C.F.R. § 1180.2(b).

Applicants represent that post-merger, TRRA will continue to operate as a terminal and switching carrier and that no changes to operations are expected as a result of Applicants' control of TRRA. They further claim that TRRA's operating agreement includes provisions prohibiting TRRA from discriminating in favor of any company with respect to use of its terminal facilities and from discriminating with respect to the transfer of handling of cars. (Appl. 2-1049 to 2-1050.) Applicants acknowledge that post-consummation, they will control four of the seven Director positions at TRRA but that, per an agreement between TRRA's owners, any change in a rate or fee, or establishment of a new rate or fee, charged by TRRA to any of its owners, requires a unanimous vote of TRRA's directors, and that per TRRA's bylaws, capital expenditures require a vote of three-fourths of Directors voting. (Id. at 2-1050.) Applicants also "commit to divesting NS's ownership interest in TRRA and redistributing NS's shares equally to UP and TRRA's other current owners" so as to reduce UP's ownership interest below 50%, provided those owners agree to "acquire the shares at fair market value," (Id. at 1-335 to 1-336, V.S. Novak 22-23; see also id. at 2-1045).

CSXT disputes treatment of the TRRA control application as a minor transaction. (CSXT Comments 6-8, Dec. 29, 2025.) CSXT argues that TRRA is one of two terminal railroads operating in the St. Louis gateway, and that UP wholly owns and controls the other, the Alton & Southern Railway Company. (Id. at 6.) CSXT contends that the transaction, if approved, would not only result in common control of those two direct competitors, but also "give UP complete control of the St. Louis gateway on which CSXT and all other Class I railroads rely to compete," including "both Mississippi River bridges, the two rail belts around East St. Louis, multiple joint use yards, and extensive track CSXT and other carriers rely on to connect." (Id. at 6-7.) CSXT further notes that Applicants did not indicate whether their proposed divestiture would result in a reduction in their share of Director positions. (Id. at 7.) It further claims that the contractual restrictions cited by Applicants should be "presumed to be illusory remedies that cannot replace a control proceeding," and in any event contends that it is not clear without further analysis that those provisions are sufficiently effective so as to prevent all anticompetitive effects. (Id. at 7-8.)

Applicants respond that they are not required to treat their application for control of TRRA as a significant transaction because they "have no interest in controlling TRRA." (Applicants Reply 28, Jan. 2, 2026.) Applicants contend that they applied for control authority solely because such authority would become necessary in the event they are unable to complete the planned divestiture before they are allowed to consummate their transaction. (Id.) They further emphasize the non-discrimination, rate, and capital contribution restrictions contained in

the TRRA agreements and bylaws and argue that "the Board relied on non-discrimination provisions in approving transactions in similar contexts." (Id. at 28-29 & n.40.)

Based on the information contained in this related application and the concerns raised by CSXT in its comments, the Board cannot find that Applicants' post-merger control of TRRA as presented clearly will not have any anticompetitive effects. Applicants' control of TRRA could raise "the potential for manipulation of [the terminal and switching carrier] in the interests of the majority owner." Union Pac. Corp., et al.—Control—Mo.-Kan.-Tex. R.R., 4 I.C.C.2d 409, 478 (1988) (addressing competitive risks from UP taking a majority interest in a jointly owned terminal and switching carrier in Texas). Although Applicants state that they intend to divest NS's ownership interest in TRRA to reduce their post-merger ownership interest in TRRA below 50%, they do not offer to condition the Transaction on this divestiture, and their commitment is contingent on TRRA's other owners offering to pay fair market value. (See Appl. 2-1045.) And while the non-discrimination, rate, and capital expenditure restrictions contained in TRRA's governance documents may inform any ultimate decision by the Board whether to approve Applicants' control of TRRA, with or without conditions, at the Application stage of the proceeding and given other potential impacts resulting from UP's control of NS, the Board cannot find that those provisions make it "clear" that Applicants' control of TRRA will not have any anticompetitive effects. 49 C.F.R. § 1180.2(b)(1). Neither of the cases cited by Applicants are to the contrary since neither involved application of the § 1180.2(b)(1) "clearly" standard.

The Board also cannot find that any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated public benefits. 49 C.F.R. § 1180.2(b)(2). The only alleged contributions to the public interest referenced by Applicants are those they attribute to the primary Transaction as a whole. (Appl. 2-1049 ("Applicants' acquisition of control of TRRA is part of the primary transaction, which will offer substantial competitive benefits.").) But 49 C.F.R. § 1180.2(b)(2) refers to the public benefits of the transaction that is being classified: here, the application for control of TRRA. And the proper focus is whether the public benefits attributable to Applicants' control of TRRA outweigh the potential anticompetitive effects discussed above. Because no such public benefits were identified, that finding cannot be made.

Because neither showing that would signify a minor transaction has been made based on the transaction as presented, the transaction is significant. Accordingly, because the TRRA application does not satisfy the requirements for a significant transaction, that related application, and as a result, the primary Application, are incomplete.

Conclusions. Given the deficiencies described above, the Board finds the Application is incomplete and, under the terms of the statute, must be rejected. See 49 U.S.C. § 11325(a) ("[I]f the application is incomplete, the Board shall reject it by the end of [the 30-day] period."). The Board's decision to reject the Application should not be read as an indication of how the Board might ultimately assess any revised application or future informational needs, should Applicants decide to submit a revised application.

Although commenters have argued that the Application is incomplete for other reasons, the Board declines to reject the December 19 Application on these other grounds. However, the Board

reiterates that—should Applicants choose to file a revised application—nothing prevents Applicants from making additional changes to improve their Application now that they have received comments from other stakeholders.

Procedures for Filing a Revised Application. Consistent with the Board's regulations and practice where an application is rejected, this decision does not result in the dismissal of this proceeding, and Applicants are permitted to file a revised application in Docket No. FD 36873. See 49 C.F.R. § 1180.4(c)(7)(ii); CSX Corp.—Control—Pan Am Sys., Inc., FD 36472 et al. (STB served May 26, 2021). Any revised application must contain Applicants' entire application, notwithstanding the provision in 49 C.F.R. § 1180.4(c)(7)(ii) that would otherwise allow Applicants to incorporate any part of the December 19 Application into a revised application by reference. Revised impact analyses (as well as correction of the other omissions described in this decision and any other changes Applicants may choose to make) will likely result in substantial changes to multiple parts of the voluminous application such that incorporating portions of the December 19 Application by reference would be impractical and complicate review of any revised application. Submission of a fully self-contained revised application will facilitate review by the Board and interested parties. The Board therefore will waive 49 C.F.R. § 1180.4(c)(7)(ii) to the extent it would otherwise allow Applicants to incorporate any part of the December 19 Application into a revised application by reference.

Additionally, for the primary transaction as well as the PPU and TRRA transactions, the Board will waive the requirement in 49 C.F.R. § 1180.4(a)(1) that Applicants file paper copies of their revised applications. However, Applicants must file 20 unbound paper copies of the map (exhibit 1), as required by 49 C.F.R. § 1180.6(a)(6). The Board will also waive the mailing requirement for those entities identified in 49 C.F.R. § 1180.4(c)(5)(i)-(iv). Applicants will be required to serve a conformed copy of any revised applications by first-class mail to those entities only upon request. Additionally, the Board will waive the requirements that Applicants submit prefiling notifications and pay a filing fee. See 49 C.F.R. §§ 1180.4(b), (c)(1); see also 49 C.F.R. § 1002.2.[12]

Instead, Applicants shall file a letter in this docket by February 17, 2026, informing the Board and the public whether, and if so, when, Applicants anticipate filing a revised application in this docket. Applicants will be permitted to file a revised application in this docket any time prior to June 22, 2026.

Any statutory time periods that follow from the timing of the filing of the application will be computed from the filing date of any revised application, if it is accepted. Upon filing of a revised application, the Board will publish a decision accepting or rejecting the revised

[12] Specifically, the Board will waive the filing fee for a revised primary, major merger application. To the extent Applicants have submitted a "minor" transaction application filing fee for the PPU related application in Docket No. FD 36873 (Sub-No. 1), the filing fee for a re-filed minor PPU control application will be waived. As for the related TRRA control application in Docket No. FD 36873 (Sub-No. 2), the filing fee for a "significant" transaction application will be reduced by the amount of any fee previously paid for the initial, "minor" application. See CSX Corp.—Control—Pan Am Sys., Inc., FD 36472 et al., slip op. at 3 (STB served Mar. 25, 2021).

application within 30 days. 49 C.F.R. § 1180.4(c)(7)(ii). The Board will also establish an appropriate procedural schedule for the remainder of the proceeding.

It is ordered:

1. The Application in Docket No. FD 36873 and the related applications in Docket Nos. FD 36873 (Sub-No. 1) and FD 36873 (Sub-No. 2) are rejected, without prejudice to refiling.

2. If Applicants file revised applications for the primary transaction and related transactions, the Board waives requirements in 49 C.F.R. §§ 1180.4(a)(1), (b), (c)(1), (c)(5)(i)-(iv), and (c)(7)(ii), as specified above. No revised application filed in this docket may incorporate any portions of the December 19, 2025 Application by reference.

3. Applicants are directed to file a letter in this docket by February 17, 2026, indicating whether, and if so, when, they anticipate refiling.

4. Any revised application in this docket is due no later than June 22, 2026.

5. This decision is effective on January 16, 2026.

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

TECHNICAL APPENDIX

The Board has identified what appear to be minor technical discrepancies, errors, or ambiguities in the Application. The Board separately identifies these minor issues, which were not raised by commenters, that must be addressed in any revised application. The Board also provides guidance about workpapers if Applicants file a revised application.

Commuter and Passenger Rail. Under 49 C.F.R.§ 1180.8(b)(2), Applicants are required to detail any impacts anticipated on commuter or passenger services operated over the lines of the Applicants. Further, in the Service Assurance Plan required by 49 C.F.R. § 1180.10, Applicants must describe definitively how they would continue to facilitate Amtrak or commuter services operated over the Applicants' lines so as to fulfill existing performance agreements on those services.

The Application attempts to include all commuter and passenger services hosted by UP and NS. This includes services on hosted lines on which no additional freight trains will be added as a result of the proposed merger. (Appl. 2-638 to 2-659 (Ex. 13, Operating Plan).) Nonetheless, the Application appears to omit entirely several services hosted by UP and NS, and fails to address impacts on some other services. Applicants shall provide an impact analysis and Service Assurance Plan details for the omitted passenger and commuter services or explain otherwise why they are not needed.

Capital Improvements. Under 49 C.F.R. § 1180.10(d), Applicants must identify potential infrastructure impediments and develop a Capital Improvement Plan to support the Operating Plan. There appear to be inconsistencies in the descriptions and mileposts of the capital improvements, specifically the locations described in the text and listed in the tables of the verified statement of John W. Turner. (Appl. 2-770 to 2-811, V.S. Turner 43-84.) Accordingly, Applicants shall explain or correct any inconsistences in their Operating Plan and Capital Improvement Plan should they file a revised application.

District of Columbia. In response to 49 C.F.R. § 1180.6(a)(5), which requires Applicants to provide "[a] list of the State(s) in which any part of the property of each applicant carrier is situated," Applicants note that their list "does not include Washington, DC." (Appl. 1-36 n.4.) Applicants appear to be suggesting that they need not consider Washington, D.C., when responding to section 1180.6(a)(5) and that this approach is "[c]onsistent with agency practice and precedent." See id. Under 49 C.F.R. § 1101.1, however, the Board has adopted the definitions in 49 U.S.C. § 10102 for purposes of "this chapter" (i.e., Chapter X of Subtitle B of Title 49, which includes 49 C.F.R. § 1180.6(a)(5)), and 49 U.S.C. § 10102(8) defines "State" as "a State of the United States and the District of Columbia." Accordingly, in any revised application, Applicants must clarify whether "any part of the property of each applicant carrier is situated" in the District of Columbia.

Workpapers. There have been a number of technical issues with Applicants' workpapers.[13] In the event that Applicants file a revised application, all supporting workpapers exceeding the file size limitations of the Board's e-Filing system must be provided via a Secure File Transfer Protocol website (SFTP) in as few separate zip files as practicable, combining as much related material as practicable into each zip file (e.g., all the workpapers supporting a large section of the narrative such as the Operating Plan or impact analyses, or in the alternative, all the workpapers supporting a single verified statement).[14] And, if Applicants make changes to their workpapers after they submit a revised application, they shall follow the process established for this proceeding. See Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 (STB served Jan. 2, 2026).

[13] The Board appreciates that very large datasets underpin the Application and acknowledges the technical complexity that this introduces. As Applicants are aware, (Applicants Reply 12, 22-23, Jan. 2, 2026), Decision No. 3 outlines technical procedures that "shall apply to all evidentiary submissions filed in this proceeding." Decision No. 3, FD 36873, slip op. at 4. The aim of those procedures is "[t]o support the Board's efficient processing" of the data-intensive record here. Id.

[14] To ensure the integrity of workpapers received in this process, Applicants must provide a file hash along with any SFTP transmissions, using the same process followed with the December 19, 2025 transmission.