



# SURFACE TRANSPORTATION BOARD

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[www.stb.gov](http://www.stb.gov)

Contact:  
[Media@stb.gov](mailto:Media@stb.gov)  
202-245-0245

## STB FINDS UP-NS MERGER APPLICATION IS INCOMPLETE

The Surface Transportation Board (STB or Board) today announced a unanimous decision finding that the major merger application filed by Union Pacific (UP) and Norfolk Southern (NS) (together, Applicants) with the Board on December 19, 2025, is incomplete because it does not contain certain information required by the Board's regulations. Under the law, the Board therefore must reject the application, and does so without prejudice to Applicants resubmitting a revised application remedying the deficiencies identified in the decision. Today's decision is based solely on the incompleteness of the December 19 application and should not be read as an indication of how the Board might ultimately assess any future revised application.

The Board's regulations at 49 C.F.R. part 1180 detail the information that must be contained in a major merger application. This includes: (1) full system impact analyses that include, among other things, market share projections for the entity to be created by the transaction; and (2) the entire merger agreement, including the submission of any contract or other written instrument that pertains to the transaction.

Under 49 C.F.R. § 1180.7(b), Applicants are required to submit "full system" impact analyses that include actual and projected market shares of certain revenues and traffic volumes demonstrating, among other things, the impacts of the transaction on competition. In the application, Applicants project that the merger will result in traffic growth, including diversions, and state that the full impacts of the transaction will not be realized until three years post-consummation. However, Applicants present as the projected market shares only the sum of actual 2023 UP and NS estimated market shares. The application does not contain future market share projections showing the combined effects of merger-related growth, diversions, and merger-influenced and other changes to market conditions that Applicants anticipate. Today's decision finds that Applicants' market impact analyses must necessarily project market shares beyond the transaction's consummation date, and therefore that the application does not include the "projected market shares" as required. These market-share projections are necessary 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." 49 C.F.R. § 1180.1(c)(2)(i).

In addition, under 49 C.F.R. § 1180.6(a)(7), 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' submission to the Board includes their "Agreement and Plan of

Merger" document but does not include certain schedules and documents that are expressly made part of the merger agreement and that define Applicants' obligations under it. Nor do Applicants attempt to justify why they withheld these materials from the Board.

The plain text of the Board's regulations requires submission of these documents. Such documents—disclosure schedules, exhibits, and other documents that supply terms of the agreement—may contain information that relates to competitive issues the Board must consider in its review of the proposed transaction. One of the merger agreement schedules, referred to as "Schedule 5.8," describes the contractual term "Materially Burdensome Regulatory Condition" which, if imposed by the Board or a court, would give UP the contractual right to walk away from the merger agreement. Because the application failed to provide the complete merger agreement and all contracts or other written instruments pertaining to the transaction, including Schedule 5.8, today's decision finds the application is incomplete.

In addition to these issues, today's decision identifies further deficiencies with the application. Specifically, the decision finds that Applicants' related application for acquisition of control of the Terminal Railroad Association of St. Louis is a significant transaction, not a minor transaction as submitted to the Board. Finally, the decision identifies several technical, minor issues that should be addressed in any revised application.

In accordance with statute, based on the findings in today's decision, the Board must reject the application. The decision does not result in the dismissal of the merger proceeding, and Applicants are permitted to file a revised application in the docket, which would commence a new review by the Board for completeness. The decision directs Applicants to file a letter in the docket by February 17, 2026, indicating if and when they anticipate filing a revised application. 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.

Today's decision in Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, Docket No. FD 36873, may be viewed and downloaded [here](#).

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