UP/NS MERGER UPDATE: THE FACTS REMAIN THE SAME

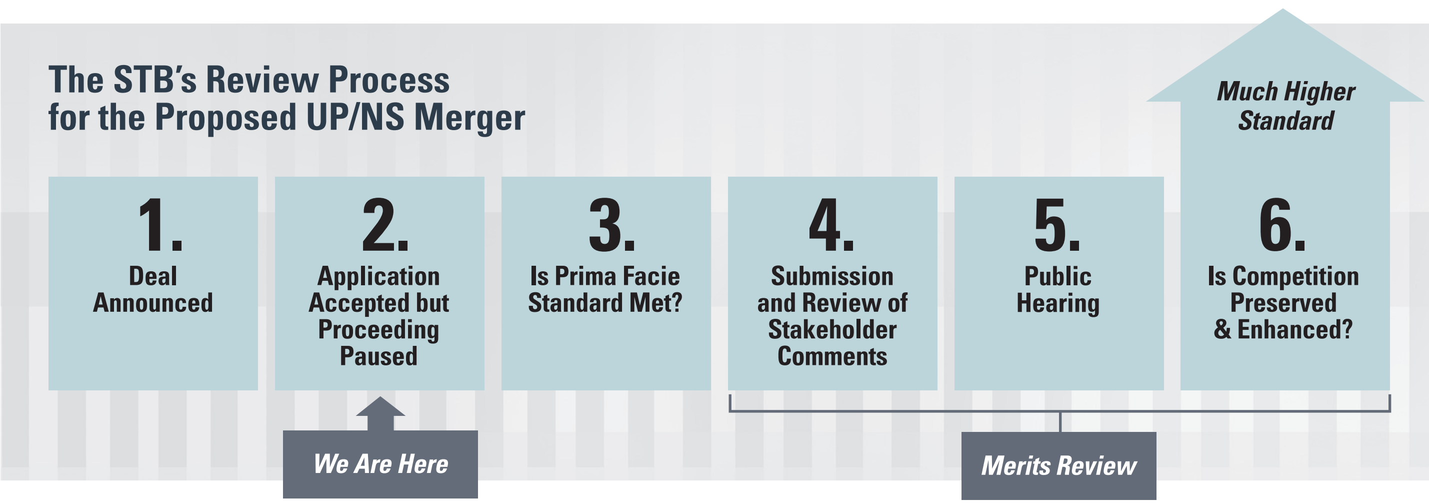
Union Pacific's proposed acquisition of Norfolk Southern has taken a few twists and turns since it was first announced nearly a year ago in July 2025.

UP/NS filed its first application in December, but it was rejected by the STB as incomplete. UP/NS then submitted a second application in April. The STB recently accepted that second application as complete but simultaneously put the entire review process in "abeyance" because it still contained significant deficiencies. The STB also required UP and NS to submit substantial additional information by the end of July before substantive review of the merits of the transaction could begin.

This sequence of events – and what it means for interested stakeholders – can be confusing for those who don't regularly follow STB proceedings.

This paper is intended to clarify where the process stands and provide a factual, straightforward explanation of what "abeyance" means in the context of the STB review.

Importantly, all of the same core questions that existed at the outset of UP's efforts to acquire NS – around competition, service, and the broader impact on the U.S. supply chain – remain unresolved.



The Meaning of Abeyance: A Pause, Not Progress

The STB's May 28 decision found only that the UP and NS's second application contained the minimum amount of information necessary to be considered complete under the STB's regulations. This was the "fairly narrow procedural" hurdle that UP/NS failed to achieve with their first application in December.

But at the same time, the STB found that key aspects of the UP/NS application were "unclear or underdeveloped," and "lacked clarity and detail" needed by stakeholders to fully understand and comment on the proposed transaction. Because of these deficiencies, the STB decided to hold the merger review proceeding "in abeyance" and required UP and NS to submit additional information by July 27, 2026.

Putting the regulatory proceeding into abeyance is often misunderstood. In practical terms, abeyance means the STB has paused the proceeding. No procedural schedule has been established, and no deadlines have been set for stakeholder participation. Most importantly, the STB's review of the substantive merits of the proposed transaction has not yet started.

The STB will only decide if the application is ready to move to the merits phase after reviewing what UP and NS submit by the end of July. This is what is called the STB's "prima facie" review. And the additional information UP and NS must submit is significant – covering more than 40 questions (with sub-questions) across 10 different substantive topics. UP and NS recently submitted a small portion of this additional information about postmerger control of certain jointly owned entities. They have said they will submit the remaining required information on or before July 27.

If the STB moves to the merits phase, stakeholders will have the chance to comment on whether the proposed transaction would actually preserve and enhance competition, as is required by the STB's public interest test.

Where Things Stand Today

The current "abeyance" posture reflects status quo more than change. As a result of the STB's May 28 decision:

- *The review of the merits of the proposed transaction has not formally started,*
- *The evidentiary record remains underdeveloped, and*
- *The timing and structure of the next phases of the proceeding remain undefined.*

Importantly, stakeholders still have time to file a Notice of Intent to Participate to ensure their voice is heard as this process evolves.

Until all of the requested supplemental information is provided – and evaluated by the STB – the UP/NS application will not move forward.

The Facts Remain the Same

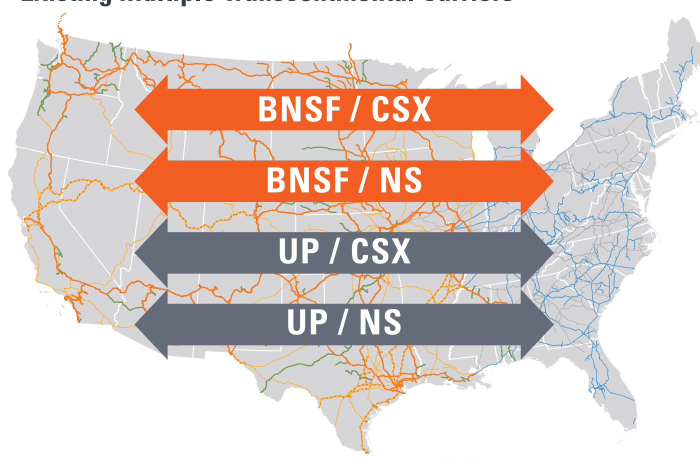
Despite new filings and public claims, the fundamental issues at the center of the proposed merger have not materially changed.

Competition and Choice Are at Stake

At its core, the STB must determine whether the proposed merger meets the high bar of being in the public interest by both preserving and enhancing competition in the U.S. rail network.

Today's system is built on multiple transcontinental options for rail customers that provide routing flexibility, service options and competitive tension across major lanes. That structure is not incidental – it is the foundation of how freight moves efficiently and reliably across the country.

Existing Multiple Transcontinental Carriers



The proposed merger would replace this highly functioning structure with a single transcontinental railroad handling 50% of all Class I freight originating in the U.S. The STB must ultimately determine whether that extraordinary market power can be mitigated and competition enhanced – or whether it will cause a fundamental reduction in effective choices for shippers.

The Proposed Gateway Protections Will Not Be Effective

UP and NS point to an "open" gateway commitment as a way to preserve competition. However, experience across prior mergers demonstrates that vague intentions or promises to keep gateways nominally "open" do not guarantee that competitors can use them effectively.

Truly effective competitive access occurs when routes are usable in practice after taking into account pricing, timing, service design, operational alignment and other factors. If any of those elements is constrained, theoretical access doesn't translate into preserving or enhancing alternatives for customers.

The committed gateway pricing framework also falls short of preserving, much less enhancing the competition that the current system of multiple transcontinental options provides. CGP excludes approximately 99% of shipments from participation, and for many of those that remain eligible, prices would actually go up. This would reduce, not preserve nor enhance, competition.

The current proposal does not change the underlying reality that access alone is not the same as competition.

UP Previously Acknowledged the Risks

In the much smaller CPKC merger, identical commitments to keep gateways open at "competitive" rates did not preserve optionality. In their own words, UP reinforced this fact in its filing opposing the CPKC merger.

> **"In short, Applicants would face enormous post-merger pressure to divert traffic from existing railroad A interline service to railroad B single-line service using strategies that reduce shippers' existing competitive options. Railroad B would have the ability to implement such anticompetitive strategies by raising rates shippers must pay for interline service or degrading the quality of service shippers receive when using interline service."**

Growth Claims Remain Highly Unlikely

UP is projecting significant growth as a result of the merger – the vast majority in the form of intermodal volumes. These theoretical projections are highly inflated because they ignore some basics of how the supply chain operates in the real world.

UP argues that only a single, transcontinental railroad can effectively compete with trucks in some intermodal markets. The truth is that interline service already does compete effectively in many of the intermodal markets where UP says it can't.

Why is that? Because interchange between rail carriers functions extremely well.

For example, BNSF services connecting Southern California to the Northeast and Southeast rely on Chicago and Birmingham interchanges that typically take less than an hour. These quick transitions for crew changes and locomotive servicing keep freight moving with minimal delay.

Offering transcontinental single-line service also doesn't change the mechanical and regulatory reality that trains must stop to refuel and change crews. Trains are different from airplanes – you don't need more fuel or new crews to fly six hours from New York to Los Angeles.

Just as importantly, rail performance is heavily influenced by network density. Freight does not move in isolation. It moves in blocks, built from sufficient volumes moving between similar origins and destinations. On lower-density lanes, shipments must still wait to be grouped into efficient train movements. That dynamic does not change simply because a route becomes single line. Even if the theoretical transit path is shorter, the practical movement of freight is still governed by volume and network flow.

UP and NS's filings with the STB have not demonstrated that a merger is needed to enable, or even would enable, the unrealistic volume growth they project. History is telling – over the past two decades, UP's volume has consistently declined even though its revenue per unit has increased to be 37% higher than the Class I average.

Metrics Still Do Not Reflect Customer Choice

The application cites Gross Ton Miles (GTMs) as evidence of system balance and competitiveness. Most shippers have probably never heard of GTMs, and for good reason – rail rates are typically quoted on a per railcar or per intermodal unit basis, never on a per-GTM basis.

GTMs provide a measure of network utilization by combining weight and distance. They do not capture the concentration of market power or the availability of competitive options at the customer level.

For shippers, the relevant question is whether there are multiple viable choices for moving their freight. GTMs do not measure those market dynamics.

UP and NS cite GTMs because it is a statistic that makes their combined railroad look smaller post-merger. But that is just statistical gamesmanship. The fact is that this merger would give UP control over half of all Class I freight that originates in the United States, which will drastically reduce shipper choice and increase UP's pricing power.

10K+ FACILITIES
WOULD BE SOLE-SERVED BY UNION PACIFIC
IF THIS MERGER IS APPROVED.

What Happens Next

The path forward will depend on how UP and NS respond to the STB's concerns regarding their "unclear or undeveloped" positions on key aspects of the merger review.

The current phase is not about deciding the merits of UP/NS's proposed merger– it is about determining whether UP/NS have presented sufficient facts for the proposal to be reviewed at all.

UP and NS are required to submit additional information addressing all the gaps identified by the STB by July 27, 2026. Only after reviewing that information will the Board determine whether the application is sufficiently developed to remove the proceeding from "abeyance" and begin a formal evaluation.

Until then:

- *The process remains paused,*
- *No review timeline is in place, and*
- *No stakeholder deadlines have been established.*

While the procedural status of the proposed UP/NS merger has evolved, the fundamentals have not. UP and NS have continued to leave key questions unanswered. As a result, despite some procedural activity, the process remains at a standstill.

The central issues – competition, service outcomes, and the real-world effectiveness of proposed protections – continue to define the STB's review. Ensuring those impacts are fully understood will depend on continued engagement from customers and stakeholders as the process advances.

50%	0.4%	8%	50%+	72 vs. 7
Share of U.S. Class I freight that could be concentrated under one railroad	**Share of rail traffic eligible for proposed Committed Gateway Pricing protection**	**Share of total rail traffic represented by merger-supporting shippers**	**Share of total rail volumes represented by shippers raising concerns**	**Statements of concern or opposition vs. support in Congress**
Unprecedented level of market concentration	*Most shippers would not benefit from claimed safeguards*	*Support does not reflect majority of rail users*	*Customers have said the merger would harm competition and raise costs*	*Broad, bipartisan concern about impacts*