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SERVICE DATE – SEPTEMBER 26, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36873

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 5 in Docket No. FD 36873; Notice of Proposed Procedural Schedule and Request for Comments.

SUMMARY: The Surface Transportation Board (Board) invites public comments on a proposed procedural schedule for this proceeding. On July 30, 2025, Union Pacific Corporation (UPC) and Union Pacific Railroad Company (UP) (collectively, Union Pacific) and Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NS) (collectively, Norfolk Southern) (Union Pacific and Norfolk Southern collectively, Applicants) filed a notice of intent to file an application seeking authority for the acquisition of control by UPC, through its wholly owned subsidiary Ruby Merger Sub 1 Corporation, of NSC and, through it, NS, and for the resulting common control by UPC of UP and NS.

DATES: Written comments on the Board's proposed procedural schedule are due by October 16, 2025.

ADDRESSES: Any filing submitted in this proceeding, referring to Docket No. 36873, must be filed with the Board either via e-filing on the Board's website or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing must be sent (and may be sent by email only, if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) UP's representative, Michael L. Rosenthal, Covington & Burling LLP, One CityCenter, 850 Tenth Street, N.W., Washington, DC 20001; (4) NS's representative, Raymond A. Atkins, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005; (5) any other person designated as a Party of Record on the service list; and (6) the administrative law judge assigned in this proceeding, the Hon. Jenifer Soulikias, at alj.soulikias.inbox@stb.gov.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 915-3555. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: On July 30, 2025, concurrent with their notice of intent to file an application, Applicants filed a petition to establish a procedural schedule. Applicants' proposed procedural schedule provides for a 390-day period between the date an application is filed and the date on which the Board would serve its final decision on the merits. (Pet., App. A.) Applicants' proposed schedule includes a longer comment period than the one listed in 49 U.S.C. 11325, extending the due date for written comments to the date that responsive (including inconsistent) applications would be due. Applicants also propose a 90-day period for the filing of responses to comments on the primary application, rebuttals in support of the primary application, responses to protests, requests for conditions, and other opposition, and responses to responsive (including inconsistent) applications. Applicants state that the proposed procedural schedule "is in line with those in prior major merger proceedings," and provides ample time for comments and the Board's review. (*Id.* at 2.)

Given the high level of interest in this proceeding, and the potential for numerous and highly complex issues to arise, the Board proposes extending the period to file written comments and providing a corresponding 90-day period to file responses, as Applicants have proposed. The Board also proposes modifications to Applicants' proposed schedule. Specifically, for preliminary comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT), the Board proposes to conform to the time frame set forth in 49 U.S.C. 11325. Additionally, the Board's proposed schedule provides that any necessary public hearing or oral argument would be held on a date to be determined later in the proceeding.

Therefore, the Board proposes the following procedural schedule¹:

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| F | Primary application and any related application(s) filed. ² |
| F+30 | Board notice of acceptance of primary application ³ and any related application(s) to be published in the <u>Federal Register</u> . ⁴ |

¹ Substantive filings not contemplated by the procedural schedule are disfavored. Evidence attached to filings that are not contemplated by the procedural schedule will not necessarily be considered in any Board decision on the merits.

² "F" designates the filing date of the application, and "F+n" means "n" days following that date.

³ Should the Board reject the primary application as incomplete, the Board would serve a decision rejecting the application by this date and the remainder of the procedural schedule would be nullified.

⁴ Applicants propose that the Board assign an administrative law judge to handle discovery matters by this date. The proposed deadline is unnecessary because the Board's

- F+45 Notices of intent to participate due.
- F+60 Proposed Safety Integration Plan (SIP) due.⁵
- F+75 Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due.
- F+115 Responsive environmental information and environmental verified statements for responsive, including inconsistent, applicants due.
- F+120 Comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or any related application(s) due (except filings from DOJ and DOT). Responsive, including inconsistent, applications due.
- F+135 Preliminary comments from DOJ and DOT, if any, due.
- F+150 Notice of acceptance of responsive, including inconsistent, applications, if any, published in the Federal Register.
- F+210 Responses to comments (including those of DOJ and DOT, if any), protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application and any related application(s) due. Responses to responsive, including inconsistent, applications due.
- F+240 Rebuttals in support of responsive, including inconsistent, applications due.
- F+270 Final briefs due.⁶

August 28, 2025 decision assigned and authorized Judge Soulikias to entertain and rule upon discovery matters and to resolve initially all disputes concerning discovery in this proceeding.

⁵ Preparation of a SIP is required under 49 CFR 1106.4.

⁶ The Board will also provide page limits for final briefs in a later decision after the record has been more fully developed.

TBD Public hearing (if necessary).⁷ (Close of the record.)

TBD Service date of final decision.⁸

The Board invites all interested persons to submit written comments on the procedural schedule proposed here.⁹ Comments must be filed by October 16, 2025. The dates proposed in this decision are subject to change depending on the comments received or other circumstances.¹⁰ Should the Board accept an application in this proceeding, the Board anticipates that it would adopt a procedural schedule in that decision.

The Board's Office of Environmental Analysis will review the information that it has requested from Applicants needed to initiate the environmental review of the proposed transaction. The Board will address environmental review issues in a subsequent decision.

Decided: September 24, 2025.

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

⁷ See 49 U.S.C. 11324(a) (“The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.”).

⁸ Applicants’ proposed schedule includes dates for the issuance of the Board’s final decision and the effectiveness of that decision. The Board will issue its final decision in accordance with 49 U.S.C. 11325(b)(3) (requiring a final decision to be issued within 90 days of the close of the evidentiary record).

⁹ Applicants’ August 29, 2025 motion to permit ex parte stakeholder communications remains pending; therefore, written comments on the Board’s proposed procedural schedule may propose both a schedule that includes a time frame for ex parte communications and an alternative schedule that does not permit such communications. Written comments should not address the merits of Applicants’ August 29, 2025 motion, as replies to that motion were due on September 22, 2025.

¹⁰ The Board’s regulations provide that a time period, except those provided by law, may be extended by the Board in its discretion, upon request and for good cause. See 49 CFR 1104.7(b).