STB SUBSTANTIVE UPDATE

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NPBL – DISCONTINUANCE OF TRACKAGE RIGHTS

Norfolk Southern Railway Company—Discontinuance of Service Exemption—In Chesapeake, VA, AB-290 (Sub-No. 299X); Norfolk and Portsmouth Belt Line Railroad Company—Discontinuance of Trackage Rights Exemption, AB-1024X (STB filed June 9, 2025)

- On June 9, 2025, CSXT filed a Petition to Reject or Reopen and Revoke ("Petition") in the above-captioned proceedings, stating that its "Petition is the final piece of CSXT's affirmative cases intended to address Norfolk Southern Railway Company's ("NSR") unlawful control of Norfolk and Portsmouth Belt Line Railroad Company ("NPBL").
- In addition to this Petition, CSXT's affirmative cases include CSXT's complaint in NOR 42183 and CSXT's terminal trackage rights application filed in FD 36859.
- CSXT seeks the Board to reopen AB 290 (Sub-No. 299X) and AB-1024X, which allowed NSR to discontinue service, and NPBL to discontinue trackage rights over 0.90 miles of railroad between milepost NS 1.30 and milepost NS 2.30, in Chesapeake, VA (the "Connecting Line"). According to the Petition, those notice of exemptions ("Notices") took effect June 14, 2008.
- In its Petition, CSXT alleges that NSR, without first obtaining the necessary abandonment authority, unlawfully removed certain track assets associated with the Connecting Line, including a double diamond at NS Junction and a connection at Carolina Junction.
- CSXT's Petition primarily asks the Board to reject the Notices a void *ab initio* because NSR and NPBL provided false or misleading information in the Notices related to rerouting overhead traffic and not providing environmental or documentation related to the discontinuance.
- Alternatively, CSXT's Petition requests that the Board reopen these proceedings and revoke the exemptions based on new evidence and substantially changed circumstances. Specifically, that NSR's and NPBL's conduct related to the discontinuances has frustrated the federal rail transportation policy ("RTP"). CSXT asserts that revocation of the exemption and restoration of the NSR service obligations and NPBL trackage rights over the Connecting Line is necessary to carry out the policy.

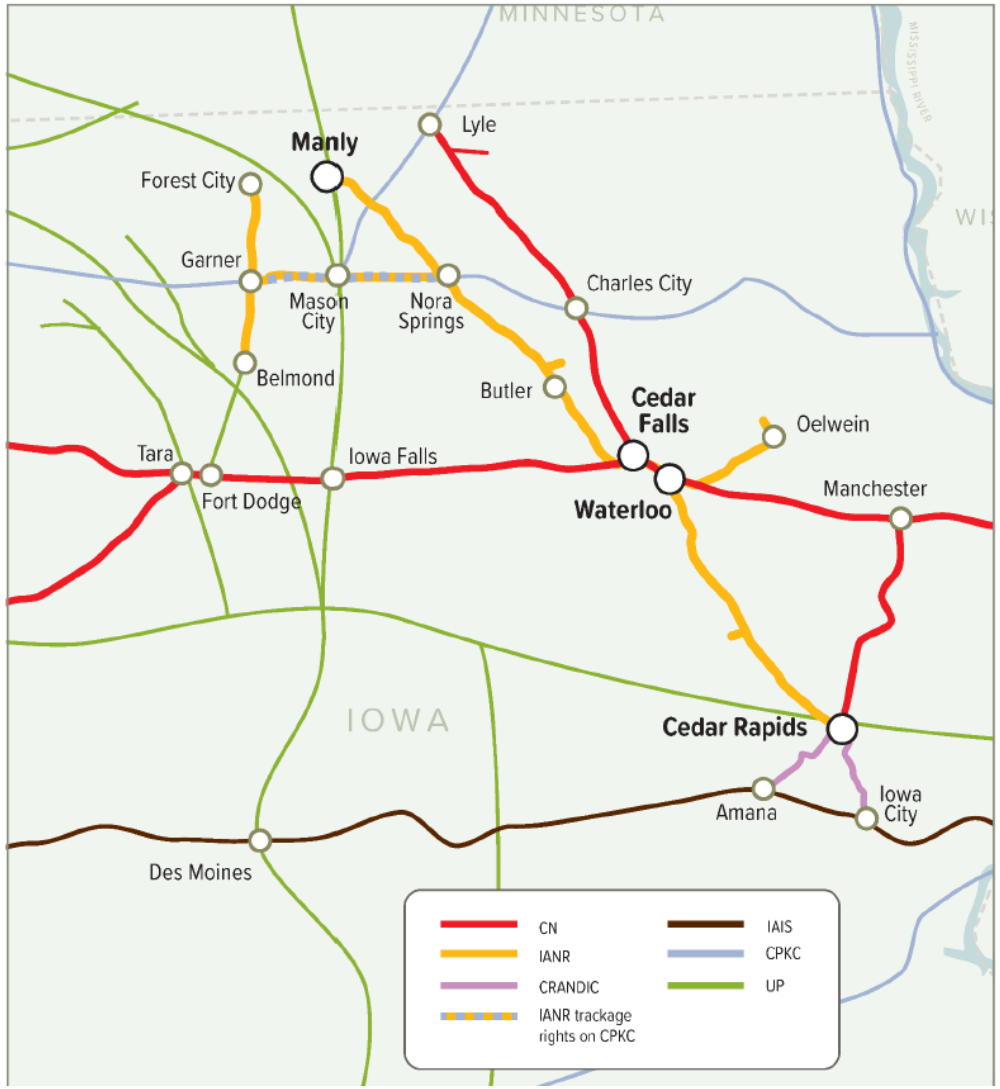
NPBL – DISCONTINUANCE OF TRACKAGE RIGHTS

Norfolk Southern Railway Company—Discontinuance of Service Exemption—In Chesapeake, VA, AB-290 (Sub-No. 299X); Norfolk and Portsmouth Belt Line Railroad Company—Discontinuance of Trackage Rights Exemption, AB-1024X (STB filed June 9, 2025) (cont'd)

- The central issue at the crux of CSXT's Petition is that the allegedly unlawful removal of track assets were and remain a key element of NSR's campaign to prevent CSXT from using NPBL switching services to compete with NSR for on-dock rail access to Norfolk International Terminals ("NIT").
- CSXT further explains that it did not oppose these Notices in 2008, as it was not clear at the time that NSR was manipulating NPBL and using these discontinuances to prevent rail competition at NIT.
- On June 11, 2025, NSR filed an unopposed housekeeping stay, that was already effective in the terminal trackage rights proceeding, FD 36859, which was granted by the Board on June 5, 2025. The housekeeping stay in the Related Proceedings stayed the procedural deadlines in the FD 36859 and NOR 42183 until the Board rules on NS's motion to hold those proceedings in abeyance.
- Accordingly, NSR has effectively suspended its reply to CSXT's Petition until further action by the Board.

MERGERS AND ACQUISITIONS – APPROVAL DECISIONS

MAP C: IOWA NORTHERN SYSTEM



Canadian National Railway Company—Control—Iowa Northern Railway Company, FD 36744 (STB served Jan. 14, 2025)

- The Board approved, with conditions, Canadian National Railway Company's acquisition of Iowa Northern Railway Company, a short line in Iowa with a 218-mile system.
- Transaction was treated as "minor." Section § 11324(d) directs the Board to approve a minor application unless it finds that
  - (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
  - (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.
- Decision was notable for being issued almost 6 months past the Board's statutory deadline.

MERGERS AND ACQUISITIONS – APPROVAL DECISIONS

Canadian National Railway Company—Control—Iowa Northern Railway Company (cont'd)

- The Board imposed a number of conditions because it found that there would likely be a substantial lessening of competition not outweighed by the public interest.
- Substantial lessening of competition
  - Overlapping routes serving the same customers as well as geographic and product markets
  - Head-to-head competition between CP-IANR and CN will be eliminated for oat shipments from Canada
  - CN-IANR may not have the incentive to offer rates and service as competitive as IANR offers today for smaller agricultural shipments or shorter-haul agricultural movements
  - CN-IANR may not have the incentive to provide the same level of quality, boutique customer service
- Conditions imposed
  - Three-year oversight period with interchange data reporting requirements
  - Development and implementation of a scheduled local service plan to preserve customer service quality
  - Gateways must be kept open financially and operationally on commercially reasonable terms, including for new shippers and new commodities moving via existing routings, and CN and IANR must provide a written justification for rate increases above the rate of inflation. Disputes with shippers over this condition will be resolved through confidential, voluntary, binding arbitration.
  - Maintain existing carrier access at commercially reasonable rates and service for all locations in CN and IAN reciprocal switching tariffs and allow reciprocal switching access for new shippers and shipments of new commodities on the IANR network.

OVERSIGHT OF NS'S ACQUISITION OF NPBL

Norfolk Southern Corporation and Norfolk Southern Railway Company—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad Company, FD 36836

- On February 14, 2025, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") filed a submission styled as an application for a "minor" transaction, seeking authorization from the Surface Transportation Board (the "STB" or "Board") of its acquisition of control of Norfolk & Portsmouth Belt Line Railroad Company ("NPBL").
- NPBL is a terminal switching company, currently owned by NS (57.14%) and CSXT (42.86%). NPBL operates over approximately 36 miles of rail line from Portsmouth, Va. to Norfolk, Va. (the "NPBL Line"). The NPBL Line connects with CSXT at Portsmouth, with NSR and the Chesapeake and Albemarle Railroad at Chesapeake, Va., and the Buckingham Branch Railroad at Norfolk, Va.
- As background, in 2022, NS filed a Petition for Declaratory Order related to its control of NPBL, effectively for the Board to determine whether the ICC granted NSC approval to control NPBL when it approved the 1982 transaction. However, in its decision served on June 17, 2022 in FD 36522, the Board held that the agency did not authorize NSC's control of NPBL in the 1982 Transaction or the notices of exemption in 1991 and 1998, and stated that it "expect[ed] the parties to take appropriate steps to address the unauthorized control issue immediately following resolution of the district court proceeding, including any appeals."
- As relevant information, the district court proceeding began in 2018 and concluded in 2024. In that matter, CSXT filed an antitrust complaint in federal district court against NS and NPBL, alleging that NS had prevented CSXT from serving NIT since 2009, when NPBL increased its switch rate to the current rate of $210 per loaded car well. In 2023, the district court granted summary judgment in NS's favor on CSXT's federal antitrust claims for damages, finding those claims were untimely. The U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision on November 26, 2024, and later in 2025, the U.S. Supreme Court denied CSXT's petition for certiorari seeking review of the Fourth Circuit's opinion.

OVERSIGHT OF NS'S ACQUISITION OF NPBL

Norfolk Southern Corporation and Norfolk Southern Railway Company—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad Company, FD 36836 (Cont.)

- In a decision served March 14, 2025, the Board found that the transaction should be classified as a "significant" transaction , and the Board treated NS's "minor" application as a pre-filing notification for a significant transaction. On July 10, 2025, the Board accepted NS's "Significant" Application and issued a procedural schedule.
- The case is currently in the discovery phase, and on July 25, 2025, the Board granted CSXT's restated Motion to Compel in which the Board directed NS to produce the seven categories of documents requested by CSXT related to the district court proceeding and "discrete documents CSXT seeks in its revised Request No. 20 within its second set of requests for production."
- There are also three proceedings related to NS's Significant Application at Docket Nos. FD 36859, FD 36223, and NOR 42183 (collectively, that "Related Proceedings").
- In a single (not consolidated) decision served on June 5, 2025, the Board granted NS's petition to stay the procedural deadlines in the Related Proceedings until the Board rules on NS's motion to hold those proceedings in abeyance.
- On August 27, 2025, comments were received from the DOJ, and an opposition letter from Governor Youngkin was filed.
- On September 4, 2025, the Board issued a decision revising the procedural schedule, extending the deadline for CSXT's comments and for Responsive Applications to September 18, 2025, with NS's response to Responsive Applications and its rebuttal also extended to November 6, 2025. Extensions were related to CSXT's assertion that it was entitled to full discovery before submitting its comments and Responsive Application. Discovery, however, was to remain open until November 26, 2025, per the Board's July 10, 2025, decision, which is now extended to December 5, 2025.
- Pursuant to the revised procedural schedule, the Board's final decision in FD 36836 is set to be served on April 6, 2026, and effective on May 6, 2026.

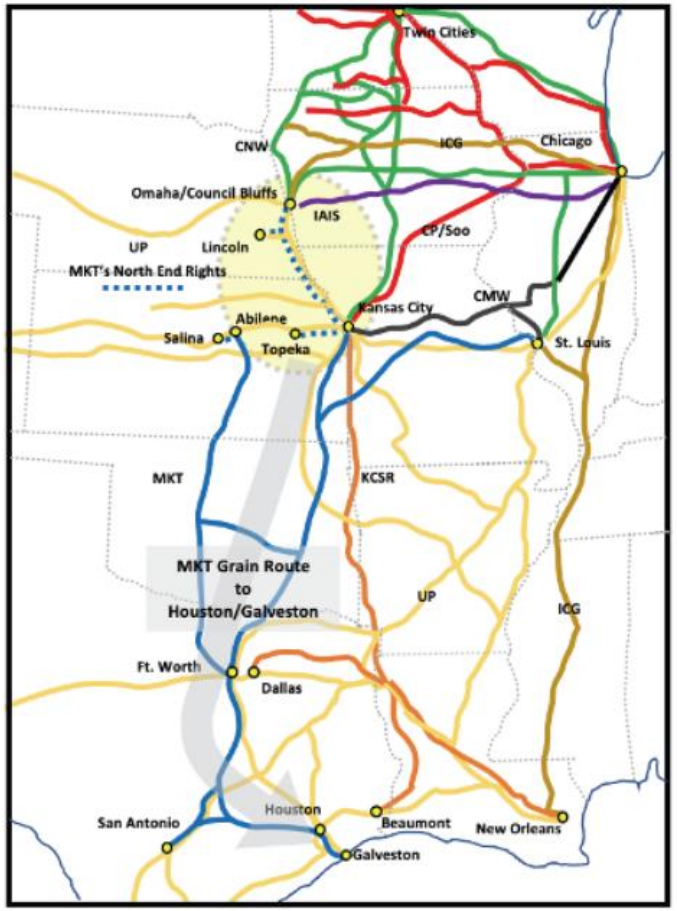
MERGERS AND ACQUISITIONS – CONDITION ENFORCEMENT

The Kansas City Southern Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas Railroad Co., FD 30800 (Sub-No. 22) (STB served July 7, 2025)

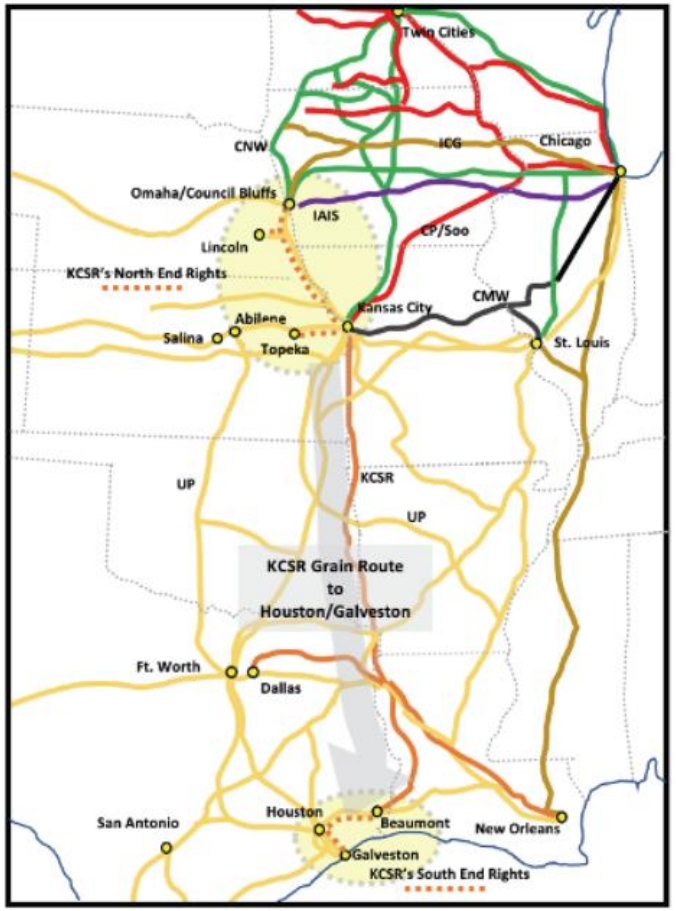
- KCSR petitioned the Board for an order declaring KCSR may continue to use the so-called "South End" rights granted during the UP-MKT merger.
- The "South End" rights allowed KCSR to handle grain traffic originating at points north and east of Kansas City, Mo. (including points served by Canadian Pacific/Soo Line Railroad Company in North Dakota and elsewhere), and received by KCSR at Kansas City for delivery to the Gulf Coast.
- The ICC approved a Term Sheet between Union Pacific and Kansas City Southern Railway and conditioned approval of the Union Pacific and Missouri-Kansas-Texas Railroad consolidation on that agreement.
- Under the Term Sheet, UP granted KCSR the North End Rights previously belonging to MKT as well as "South End" rights.
- The ICC had originally granted "North End" rights to MKT during the 1982 merger of UP and Missouri Pacific, which served a region between Omaha/Council Bluffs, NE and Topeka, KS, to preserve competitive options for shippers in that area that shipped grain to the ports of Houston and Galveston.
- The "South End" rights are haulage rights (convertible to trackage rights) that allow KCSR to move certain grain traffic between Beaumont and the ports of Houston and Galveston, TX as follows:
  - Grain traffic (1) originating or received in interchange on KCS's North End rights (2) as well as grain traffic interchanged to KCS at Kansas City, and (3) grain traffic originated by KCS at or south of Kansas City.

MERGERS AND ACQUISITIONS – CONDITION ENFORCEMENT

The Kansas City Southern Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas Railroad Co., FD 30800 (Sub-No. 22) (STB served July 7, 2025) (cont'd)



Before UP Acquired MKT



After UP/MKT with Conditions Granting Rights to KCSR

MERGERS AND ACQUISITIONS – CONDITION ENFORCEMENT

The Kansas City Southern Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas Railroad Co., FD 30800 (Sub-No. 22) (STB served July 7, 2025) (cont'd)

- UP simultaneously sued in federal court seeking a declaration that the Term Sheet does not require UP to honor the South End rights for CPKC grain traffic originating north of Kansas City on CPKC that moves in single-line service through Kansas City.
    - The court granted KCSR's motion to dismiss on the basis that the Board has exclusive jurisdiction to enforce the Term Sheet as a merger condition subject to the right to refile if the Board declined to review the Term Sheet.
- The Board found that it had jurisdiction because the entire Term Sheet was expressly imposed as a condition.
- The Board next explained that the South End rights were imposed as part of a voluntarily negotiated solution and thus the ICC articulated no policy rationale for those rights or requirement that their use be limited to the operations of pre-merger MKT.
    - The "North End" rights were the only part of the Term Sheet that the ICC imposed on UP involuntarily.
- Therefore, the Board turned to the ICC's historical understanding of "interchange," concluded that the term "interchange" means a transfer of a railcar from the account of one carrier to the account of another such that the paper interchange between sister subsidiaries DM&E and KCSR in Kansas City still counts as an interchange under the Term Sheet.
- The Board granted KCSR's petition and determined it may continue using the South End rights "for grain traffic that originates at points north and east of Kansas City and is received in interchange from CP's operating affiliates at Kansas City."
- Primus dissented on two primary grounds: (1) CP and KCS repeatedly represented that they were eliminating interchange at Kansas City as principle merger benefit and (2) CP is now an affiliate of KCS and not "another rail carrier" under the Term Sheet.

ABANDONMENT EXEMPTIONS – OWNERSHIP FOR TWO YEARS

Mohawk, Adirondack & Northern Railroad Corporation—Abandonment Exemption—In Lewis and Jefferson Counties, N.Y., AB 768X; The Lowville & Beaver River Railroad Company—Abandonment Exemption—In Lewis County, N.Y., AB 180X

- On September 11, 2023, Mohawk, Adirondack & Northern Railroad Corporation ("MAN") sought to abandon an approximately 16-mile rail line (the "Lowville-Carthage Line") and 0.5 miles of unused spur and 300 feet of terminal main line (the "Lyons Falls Track"). Separately, on September 12, 2023, the Lowville & Beaver River Railroad Company ("LBRR") filed in AB 180X to abandon a 10.57-mile rail line that connects to the Lowville-Carthage Line (the "Lowville-Croghan Line") (collectively, the "Lines").
- In their verified notice of exemptions ("Notices"), both MAN and LIBRR asserted that there had been no traffic on the referenced lines for at least 15 years.
- Both MAN and LBRR indicated that they were seeking abandonment authority because they have entered into contracts with Lewis County, N.Y., for the county to purchase the Lines and the Lyons Falls Track after the abandonment and convert portions into recreational trails for use by the public, without resorting the National Trails System Act (the "Trails Act").
- In a decision served on January 22, 2024, the Board placed AB 180X in abeyance so that LBRR could obtain after-the-fact acquisition authority for the purchase of the Lowville-Croghan Line but explained that since the authority was after-the-fact, LBRR "would not have had Board-authorized ownership of that rail line for at least two years, and therefore would not qualify for the Board's two-year out-of-service class exemption. The Board, however, indicated that LBRR could seek a waiver of the two-year ownership requirement.
- On June 26, 2024, LBRR filed a motion for waiver, stating that a waiver was warranted as there had been no service on the line for at least 15 years, and there's no reason to wait the additional two years to abandon the line."

ABANDONMENT EXEMPTIONS – OWNERSHIP FOR TWO YEARS

Mohawk, Adirondack & Northern Railroad Corporation—Abandonment Exemption—In Lewis and Jefferson Counties, N.Y., AB 768X; The Lowville & Beaver River Railroad Company—Abandonment Exemption—In Lewis County, N.Y., AB 180X (Cont.)

- In its January 14, 2025, the Board found good cause to grant LBBR's waiver since it had owned the Lowville-Croghan Line since 2016, and its failure to seek authority at the time of the acquisition does not appear to have been an effort to evade the Board's regulation.
- The Board also clarified that the two-year requirement was instituted because the ICC was concerned that a carrier might otherwise use the class exemption to evade labor protection. Citing Tulare Valley R.R.—Aban. Exemption—Kings & Tulare Cntys., Cal., 9 I.C.C.2d 1205 (1993). And that in this case, there were no affected employees on the Lowville-Croghan Line, and the LBRR stated that if there were, they would be subject to the applicable labor protective conditions.
- The Board also denies petitions to reject the Notices as the Petitioners did not demonstrate/support their arguments in opposing the abandonments here - there has been no rail service for over 15 years on the line, and the lack of specificity re: potential need for rail in the future does not support the denial of abandonment.
- Accordingly, the Notices served and published in the Federal Register on January 14, 2025, and the exemptions became effective on February 13, 2025, with Section 106 conditions being resolved on April 22, 2025, in both dockets.

ABANDONMENT EXEMPTION CASES – RAILROAD AS NITU HOLDER

CSX Transportation, Inc.—Abandonment Exemption—In Pinellas County, Florida, AB 55 (Sub-No. 794X) (STB served Nov. 14, 2023)

- CSX Transportation, Inc., filed a verified notice of exemption to abandon an approximately 0.86-mile rail line on its Clearwater Subdivision in St. Petersburg, Pinellas County, Florida.
- CSXT chose to negotiate for interim trail use/rail banking with its subsidiary, the Georgetown and High Line Railway Company LLC, instead of The City of St. Petersburg, because CSXT and the City had negotiated for years without reaching an agreement and the City lacked the funds necessary to purchase the line. CSXT and GHL entered into an interim trail use/rail banking agreement for the Line in June 2021.
- In late 2022, the Board received a letter from the DOJ concerning the railbanked status of the Line that detailed certain information obtained during the course of discovery in a Fifth Amendment takings case related to the Line being litigated in the Court of Federal Claims.
- The Board ordered briefing on the DOJ letter and CSXT and GHL informed the Board during briefing that the line was not yet open to the public and that GHL was serving as a placeholder trail sponsor until a substitute could be identified.
- In June 15, 2023 status report, CSXT disclosed to the Board that CSXT and GHL were in negotiations with the City concerning trail sponsorship.
- On November 14, 2023, the Board revoked the NITU issued to CSXT and GHL for "not meeting the statutory requirements of the Trails Act" because "no tangible progress appears to have been made" towards opening the line to the public and CSXT and GHL had "offered no explanation for this inactivity."
    - **Member Fuchs** and **Member Schultz** dissented on the basis that the Board had taken a "new, more-than-ministerial approach" to the Trails Act by "set[ting] new development and deadline requirements" that exceed the two statutory requirements for qualifying as a trail sponsor.

ABANDONMENT EXEMPTION CASES – RAILROAD AS NITU HOLDER

CSX Transportation, Inc.—Abandonment Exemption—In Pinellas County, Florida, AB 55 (Sub-No. 794X) (STB served Nov. 14, 2023) (cont'd)

- In January 2024, the Board reopened the proceeding and issued a NITU to CSXT and the City.

Appeal

- CSXT and GHL sought review of the Board's decision in the 11th Circuit and the court held the appeal in abeyance for a year to afford CSXT and the City an opportunity to reach an interim trail use agreement that would moot the appeal.
- CSXT and GHL raised three challenges to the Board revocation decision:
  - (1) the Board exceeded its ministerial role under 16 U.S.C. § 1247(d)—which only authorizes the Board to establish a trail sponsor's willingness to accept managerial, legal, and tax liability for the line and consent to the condition that the trail can be reactivated for future rail use—by regulating trail use and development.
  - (2) the Board failed to provide GHL written notice of conduct that may result in revocation of the license (NITU) and an opportunity to cure as required by the Administrative Procedure Act.
  - (3) the Board acted arbitrarily and capriciously by providing no meaningful standard on how quickly and to what degree a trail sponsor must make a trail available to the public.
- Briefing concluded in July 2025 and oral argument has yet to be scheduled.

ABANDONMENT EXEMPTIONS – CONSUMMATION NOTICE

Saratoga Railroad, Inc.—Abandonment Exemption—In Carbon County, WYO, AB 1343X

- On January 13, 2025, Saratoga Railroad, LLC (Saratoga) filed a verified notice of exemption to abandon an approximately 23.71-mile rail line between milepost 0.57, near Walcott, Wyo., and milepost 24.28, at Saratoga, Wyo., in Carbon County, Wyo. (the "Line").
- The Line was originally acquired by the Wyoming and Colorado Railroad Company, Inc. ("WYCO") in 1987 as part of a 131.52-mile rail line from the Union Pacific Railroad Company ("UP") and subsequently acquired by Saratoga from WYCO in 2017.
- In a decision served on May 31, 2006, the Board had previously authorized WYCO, the then-owner, to abandon the Line; however, WYCO did not file a notice of consummation by the May 2007 deadline, and, as a result, its abandonment authority automatically expired at that time.
- On April 1, 2024, Saratoga filed a petition asking the Board to waive the requirement for WYCO to have filed a consummation notice or extension request by the May 2007 deadline, in order to permit Saratoga to consummate the 2006 abandonment authority itself. However, Saratoga's petition was denied, and Saratoga was advised to file for abandonment authority in a new docket, which it did in AB 1343X.
- Saratoga's verified notice of exemption stated that, "at present, the Line has no track, shippers, or stations and no traffic has been handled on the Line since January 2003." Moreover, Saratoga further stated that "this abandonment is being filed to clean up a regulatory omission." Saratoga also provided an explanation that the salvage had been completed, as WYCO had mistakenly deemed that the Line had been abandoned after receiving the Board's authority in 2006, and that some segments of the Line's right-of-way ("ROW") had been sold to adjacent landowners.

ABANDONMENT EXEMPTIONS – CONSUMMATION NOTICE

Saratoga Railroad, Inc.—Abandonment Exemption—In Carbon County, WYO, AB 1343X (Cont.)

- On January 31, 2025, the Board served and published the notice of exemption ("Notice") in the Federal Register, and the Section 106 condition imposed by the Board's Office of Environmental Analysis ("OEA") was removed in the Board's February 28, 2025.
- On March 3, 2025, Saratoga advised the Board in a letter that it had exercised the authority granted to it and had fully consummated the abandonment of the Line.
- The Board, here, gives import to the consummation notice requirement, which should not be overlooked by practitioners.

ADVERSE ABANDONMENT – PRESERVATION OF RAIL SERVICE

Colorado Landowners—Adverse Abandonment—Great Western Railway of Colorado, LLC in Weld County, Co., AB 857 (Sub.-No. 2) (STB Served July 30, 2025)

- On October 5, 2022, a group of landowners ("Landowners") filed an application under 49 U.S.C. § 10903 asking the Board to authorize the third-party, or "adverse," abandonment of an approximately 6.2-mile rail line (the "Line") owned by the Great Western Railway of Colorado, LLC ("Great Western") in Weld County, Colo.
- The Line primarily served the sugar beet industry until the 1970s, but fell into disuse when the local sugar beet industry shut down. Great Western also sought to abandon the Line in 2008, but the abandonment authority expired without being exercised.
- In the Landowner's adverse abandonment application ("Application"), the Landowners contended that public convenience and necessity ("PC&N") permits abandonment because the Line will benefit the public by allowing the Landowners to put their land to productive use.
- On October 14, 2022, Great Western filed a reply to the Landowners' Application stating that Great Western is making efforts to reinstitute rail service. Additional information in support of its efforts was also filed by Great Western in response to replies from the Landowners and letters in support of the adverse abandonment from the Town of Johnston, Colo. (the "Town"). Great Western's additional information included engagement with multiple potential customers and its efforts to repair and maintain the Line, including spending $1.5 million from 2022 to 2024 to repair and maintain the Line.
- In a decision served on July 30, 2025, the Board evaluated the Applicant's proof under the public convenience and necessity standard, describing it as a "heavy burden."

ADVERSE ABANDONMENT – PRESERVATION OF RAIL SERVICE

Colorado Landowners—Adverse Abandonment—Great Western Railway of Colorado, LLC in Weld County, Co., AB 57 (Sub.-No. 2) (STB served July 30, 2025) (Cont.)

- The Board noted that adverse abandonment applications "may only be granted in limited circumstances and have given the potential for continued freight services near dispositive weight when assessing the PC&N in adverse abandonment proceedings." In fact, since 1996, the Board has not granted an adverse application where there was an active shipper on the Line.
- The Board denied the Landowners' Application based on Great Western's actionable plan to reinstate freight service, and it clearly noted in its decision that, "while there is presently no need for rail service, Great Western has committed itself to restoring the Line and attracting rail business. Under these circumstances, there is a reasonable potential for future rail use, and extended nonuse of the Line is not a sufficient reason to remove rail assets from the interstate rail network."
- The Board also highlighted adherence to Congressional intent of keeping rail lines within the rail system where possible to support the shipping public.

EX PARTE PROCEEDINGS

Petition for Rulemaking to Adopt Rules Governing Private Railcar Use By Railroads, EP 768 (STB served June 26, 2025)

- In July 2021, shipper groups filed a petition for rulemaking that would allow private railcar providers to assess a "private railcar delay charge" on a railroad if that railroad delays the movement of privately owned (non-carrier owned) freight cars beyond a specified time.
- Petitioners propose that Car Location (CLM) Event Sighting Codes published by Railinc could be used to determine whether the allowable transit idle time has been exceeded, and charges would be assessed on railroads when the "CLM location city of CLM sighting code has not changed for more than [72] hours" and at rate similar to the railroad's applicable demurrage or storage charge.
- Petitioners argue the Board has authority to adopt the proposed regulations pursuant to 49 U.S.C. § 11122(a)(2), which provides that the Board's car-service regulations may include, in addition to the compensation to be paid, "the other terms of any arrangement for the use by a rail carrier of a locomotive, freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person."
- On June 26, 2025, the Board issued a decision that it is unable to reach a majority on the petition for rulemaking.
- **Member Primus** (with **Member Hedlund** concurring) supported granting the petition because it would function as a system of reciprocal demurrage to alleviate car supply issues and incentivize rail carriers to timely return private cars, particularly to captive shippers with little to no alternative transportation options.

EX PARTE PROCEEDINGS

Petition for Rulemaking to Adopt Rules Governing Private Railcar Use By Railroads, EP 768 (STB served June 26, 2025) (Cont.)

- **Member Schultz** expressing concern about the Board's authority to promulgate the proposed rule because existing Supreme Court and 7th Circuit precedent suggests that the Board cannot interpret the car-service statute so broadly that it would permit regulation of "'the transportation service rendered by means' of the vehicles of transportation" (*i.e.*, "the details of day-to-day movements of rail cars").
- **Member Fuchs** wrote separately to explain his decision to call for votes despite the absence of a majority in an effort to be transparent about where each Member stands and why no action had yet been taken on the petition.
- This petition remains open and could be decided when a 5th Board Member is confirmed

EVIDENTIARY OVERSIGHT – MOTION TO COMPEL

Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Company, FD 22218 (STB served February 7, 2025)

- In a decision served May 15, 2023 ("May 2023 Decision"), the Board granted a petition by Union Pacific Railroad Company (UP), as successor to Southern Pacific Transportation Company, to reopen this proceeding to revise conditions governing trackage rights of BNSF Railway Company ("BNSF"), as successor to the Atchison, Topeka & Santa Fe Railway Company, over a 67.8-mile UP-owned rail line between Kern Junction and Mojave, Cal., known as the Tehachapis Line (the "Line").
- In the May 2023 Decision, the Board provided a 60-day period for discovery, directed the parties to participate in Board-sponsored mediation, and directed the parties to propose a procedural schedule if mediation was unsuccessful. Following the discovery period and unsuccessful mediation, the Board adopted a procedural schedule proposed by UP and BNSF.
- On June 26, 2024, as part of the post-opening statement discovery period, BNSF filed a motion to compel UP to produce documents and requested expedited relief ("Motion to Compel").
- In its Motion to Compel, BNSF asserted that UP had objected to BNSF's discovery requests seeking (1) UP's trackage rights agreements currently in effect with other Class I railroads and their corresponding rates, (2) UP's traffic forecast data for the Line for the period from 2013 to 2018, and (3) UP's appraisals or valuations of intangible assets since 2019.
- First, with respect to the production of UP's trackage rights agreements with other Class I railroads, BNSF argues that the additional trackage rights are needed to specifically refute an assertion by UP's expert witness, Dr. Mathur, in UP's opening statement.
- In a decision served on February 7, 2025 ("February 2025 Decision"), however, the Board denied BNSF's Motion to compel UP's trackage rights agreements with other Class I railroads as BNSF failed to demonstrate how these additional agreements related to UP's opening statement.

EVIDENTIARY OVERSIGHT – MOTION TO COMPEL

Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Company, FD 22218 (STB served February 7, 2025) (Cont.)

- Specifically, the Board found that Dr. Mathur's assertion that BNSF references is simply a general statement that Capitalized Earnings is the most reasonable method to determine the interest rental component for the Line, and the additional agreements do not need to be produced to address this assertion, with which BNSF agrees.
- Second, with respect to the production of UP's traffic forecast data for the period between 2013 and 2018 for the Line, BNSF argues that it is entitled to test the appropriateness of Dr. Mathur's decision to use a system-wide multiplier. UP contends that it did not refer to or rely on UP's traffic forecasts in its opening evidence and that Dr. Mathur's testimony does not make any assumptions based on UP's traffic forecasts.
- In its February 2025 Decision, the Board found that Dr. Mathur relied on UP's actual profitability figures for that period, not forecasts, and accordingly denied the traffic forecast data portion of UP's Motion to Compel as BNSF again failed to demonstrate how these traffic forecasts were responsive to information presented in UP's opening statement and evidence.
- Third, BNSF sought to compel all documents and communications related to any appraisals or valuations of intangible assets UP has conducted or commissioned from 2019 to present that BNSF asserted are needed to evaluate and rebut Dr. Mathur's analysis.
- In its February 7, 2025, Decision, the Board ordered UP to provide "information regarding the book value of [its] [intangible] assets" as specified in its reply, but found that BNSF did not explain why the discovery of additional information regarding "how UP appraised and valued" its intangible assets is appropriate in the more targeted, post-opening discovery stage.
- Accordingly, in its February 2025 Decision, the Board primarily denied BNSF's Motion to Compel, as BNSF's requests were not targeted enough toward UP's Opening Statement, as appropriate in the post-opening discovery phase.

COMMON CARRIER OBLIGATION – ADEQUATE SERVICE CASES

Evergy, Inc., et al. v. BNSF Railway Co., Docket No. NOR 42180 (STB served Mar. 4, 2025)

- The Evergy complainants filed a complaint and petition for declaratory order seeking $55 million in damages and alleging BNSF breached its common carrier obligation by failing to provide the needed service frequency and also failed to provide adequate car service to provide coal to facilities in Missouri and Kansas by restricting the placement of private railcar trainsets into service.
- BNSF filed a motion to compel the Evergy complainants to disclose the assumptions, calculations and methodology underlying their damages claim and produce additional relevant materials on Complainants' other plants and rail transportation suppliers.
    - BNSF argued withholding damages information until opening evidence was prejudicial and increased revenues at other plants due to the limitations at the Missouri and Kansas facilities was relevant to damages.

Board Rulings

- Denied BNSF's request for assumptions, calculations, and methodology as privileged until filed with the opening evidence.
    - Admonished BNSF that if it wanted a different procedural schedule or approach to discovery, it was free to propose a different procedural schedule at the start of the case but did provide an additional two months for BNSF's reply evidence.
- Agreed that evidence of increased revenue at other plants would be relevant to the damages issue which was based in part on lost profits and opportunity costs and compelled production.

Procedural Issue

- Resolved an open procedural question, explaining that the 10-day deadline for motions to compel in 49 C.F.R. § 1114.31(a) does not apply to motions to compel document production, which may be filed under 49 C.F.R. § 1117.1 prior to the close of discovery.

Status

- BNSF's reply evidence is due October 23, 2025, the Evergy complainants' rebuttal evidence is due November 26, 2025, and final briefs are due on December 29, 2025.

PETITIONS FOR DECLARATORY ORDER – JURISDICTION

Kansas Department of Transportation and Sunflower Redevelopment, LLC—Petition for Declaratory Order, FD 36817 (STB served May 30, 2025)

- KDOT and Sunflower petitioned the Board for a declaratory order that approximately 1,850 feet of rail track located at the former Sunflower Army Ammunition Plant in De Soto, Kansas was outside the Board's jurisdiction. KDOT and Sunflower desired to construct a new interchange for a state highway in preparation for a new electric vehicle battery plant.
- The Board does not have jurisdiction over private track that is built and maintained by a shipper, at the shipper's expense, and operated by the shipper (or its contractor) to serve only that shipper. Private track is not considered part of the national rail network even if a common carrier operates on the track so long as that operation is solely to serve the track owner under a contractual arrangement with that owner.
- The Board concluded that the track was private track outside its jurisdiction because it was built, owned, and maintained by the federal government and operated by contractors to serve the government production facilities at the site.
  - Although there were some vague references in historical documents to possible rail activity by non-government parties leasing the property, the Board could not conclude from those references that the subject track was ever anything other than private track.
  - The Board found no prior agency proceedings seeking authority to operate common carrier service over the track and BNSF had not claimed any interest in the track despite having supposedly operated over it as ancillary track in the 1990s.

PETITIONS FOR DECLARATORY ORDER - PREEMPTION

Township of Pilesgrove, N.J.—Petition for Declaratory Order, FD 36770

- On May 1, 2024, the Township of Pilesgrove, N.J. ("Pilesgrove") filed a petition for a declaratory order seeking the Board to determine whether and to what extent 49 U.S.C. 10501(b) preempts certain local and state laws regarding land use and land development by SMS Rail Service, Inc. ("SMS").
- Subsequently, on June 10, 2014, the Township of Mannington, N.J. ("Mannington") filed a petition for leave to intervene asserting that it has a legitimate interest in the proceeding because SMS's rail line also extends through Mannington, and Mannington has similarly attempted to enforce its municipal land regulations on SMS and its operational affiliate Woodstown Central Railroad ("WCR").
- Essentially, the Petitions ask the Board to determine what the Townships "can and/or cannot regulate and require in terms of compliance with local ordinances and regulations, including zoning and/or planning requirements, and where federal preemption applies"
- On July 18, 2024, Pilesgrove filed a letter requesting an update on the status of its Petition and enclosing a letter, in which SMS's attorney requested that Pilesgrove and Mannington withdraw complaints filed in N.J. Municipal Court.
- In its decision served on September 13, 2024, the Board granted Mannington's petition to intervene and initiated a declaratory order proceeding to resolve the controversy and allow SMS to participate in the proceeding in order to develop a more complete record.
- On October 24, 2024, the Board adopted a procedural schedule for supplemental evidence, SMS's reply, submissions by other parties, and rebuttal statements by Pilesgrove and Mannington.

PETITIONS FOR DECLARATORY ORDER - PREEMPTION

Township of Pilesgrove, N.J.—Petition for Declaratory Order, FD 36770 (Cont.)

- On December 16, 2024, SMS submitted its Reply Evidence and Argument, asserting primarily that the railroad and facilities should remain under the Board's exclusive jurisdiction, and therefore not be subject to state laws. SMS's Reply was supported by Amicus Briefs, filed concurrently, from the American Short Line and Regional Railroad Association, Mendocino Railway, and Sierra Northern Railway, as well as a letter from the California Short Line Railroad Association.
- These Amicus Briefs concentrated on the position that freight and excursion operations should not be bifurcated, as this would unnecessarily subject freight operations to local ordinances and regulations when Congress sought federal regulation over common carrier obligations.
- Accordingly, collectively, SMS's Reply, supported by Amicus Briefs, urged the Board to preempt the attempted interference with SMS's integrally related freight and excursion operations by the Petitioner.
- Pilesgrove and Mannington filed Rebuttals on January 14, 2025, and SMS filed a Sur Reply on March 6, 2025, which Pilesgrove and Mannington jointly object to its admission into the record on March 26, 2025.
- No further action has been taken.

PETITIONS FOR DECLARATORY ORDER - PREEMPTION

Grafton and Upton Railroad Company—Petition for Declaratory Order, FD 36464 (STB served Dec. 18, 2024)

- Grafton and Upton Railroad Company (GURR) sought a declaratory order that 49 U.S.C. § 10501(b) preempts the Town of Hopedale's enforcement of its right of first refusal under Massachusetts General Laws Chapter 61 to purchase 130 acres of forestland acquired by GURR to expand an existing rail yard.
- The 130 acres was part of a larger 155-acre tract bisected by GURR's rail line. After acquiring control through a real estate trust, GURR began development of the land. The Town asserted its purchase rights and filed suit in the Massachusetts Land Court.
- The Board dismissed the petition in 2021 following a settlement agreement, but Massachusetts courts later ruled the agreement invalid. The Land Court vacated the stipulation of dismissal, and the Town resumed its Chapter 61 claims.
- In 2024, GURR moved to reopen the STB proceeding, arguing that the Town's renewed enforcement of Chapter 61 was federally preempted under both categorical and as-applied standards (though the STB found that GURR had waived the categorical arguments).
- The Board granted the motion to reopen but denied the petition.
- Chapter 61's right of first refusal provisions were not categorically preempted under the present facts because Chapter 61 is a law of general applicability that gives state municipalities the option to purchase land classified as forest land if the owner wishes to sell the land for, or convert it to, another use. Therefore, Chapter 61 does not intrude on matters that are directly regulated by the Board, such as railroad rates, services, or rail line construction or abandonment and it is not a permitting or preclearance requirement, as the Town is not requiring any kind of notification or permitting as a prerequisite to conducting rail operations.

PETITIONS FOR DECLARATORY ORDER - PREEMPTION

Grafton and Upton Railroad Company—Petition for Declaratory Order, FD 36464 (STB served Dec. 18, 2024) (Cont.)

- The Board found no unreasonable interference with rail operations under the as-applied standard because the Town did not undermine the settlement agreement, GURR failed to challenge the state court decision, GURR undertook significant development activities *before* reaching a settlement, GURR presented limited evidence of any reliance on the settlement agreement, and the status of property ownership remained unresolved in the state court.
- The case has been appealed. See Grafton & Upton Railroad Company v. Surface Transportation Board et. al, 25-1058 (United States Court of Appeals for the District of Columbia Circuit)
- ASLRRA amicus brief filed on May 21, 2025.

PETITIONS FOR DECLARATORY ORDER – STB LICENSING PROCESS

Mendocino Railway—Petition for Declaratory Order, FD 36868 (filed July 2, 2025)

- Mendocino Railway has been forced to spend millions of dollars in legal fees and accrued lost opportunity costs from challenges to its status as a common carrier over the past four years (related to grants, its RRIF loan, and various court proceedings).
- State and local government entities have asserted in various forms that Mendocino Railway was not a common carrier, while other such entities have sought adverse abandonment of its operating rights (AB-1305X) because, from those entities' perspective, Mendocino lacks a rail license and/ or does insufficient freight to be a common carrier.
- These entities have used ambiguities in the Board's licensing process to advance claims that Mendocino Railway is not an STB-regulated carrier entitled to preemption. In meetings with the Board earlier this year, several legal practitioners expressed the need for a Board process to confirm licensure.
- On July 2, 2025, Mendocino Railway filed a declaratory order asking the Board to declare that Mendocino is a common carrier subject to the Board's jurisdiction, entitled to any protections of applicable federal preemption.
- On August 20, 2025, Mendocino Railway renewed its request for expedited consideration by the Board, noting that the record had closed on August 11, 2025, following the submission of a reply by a single commenter, the California Coastal Commission, who requested that the Board decline to issue a declaratory order based on Mendocino Railway's unusual and unsupported petition.

CONSTRUCTION AND OPERATION EXEMPTION CASES

Savannah Industrial Transportation, LLC—Operation Exemption—In Effingham County, FD 36489 (STB served Aug. 5, 2025); Savannah Industrial Logistics, LLC—Construction Exemption—In Effingham County, FD 36723 (STB served Aug. 5, 2025); Savannah Industrial Transportation, LLC—Lease and Operation Exemption—Line of Savannah Industrial Logistics, LLC In Effingham County, FD 36489 (Sub-No. 1) (STB served Aug. 5, 2025)

- The parties sought after-the-fact construction and operation exemption for an 11,404 rail line within an industrial park that would connect to CSX and Norfolk Southern's networks. Savannah Industrial Logistics (SIL) would construct the line and Savannah Industrial Transportation (SIT) would lease and operate the line.
- The parties previously anticipated SIT would function as a private switching carrier within the customer facility outside the STB's jurisdiction, but after constructing the line, SIT decided to become a regulated common carrier to obtain more regular payment from interchange partners CSX and Norfolk Southern.
- The STB authorized SIT to continue providing rail service to the sole shipper already located on the line, but denied a petition from SIT and SIL for authority to serve additional shippers during the pending construction and lease and operation proceedings.
- The STB granted the exemption, following a NEPA analysis, and subjected the transaction to an environmental mitigation condition that required SIT to inspect all project-related culverts semi-annually (or more frequently, as seasonal flows dictate) for debris accumulation and remove and properly dispose of debris, to further minimize or avoid impacts to water from continued rail operations.
- Primus filed a concurring opinion criticizing SIL and its parent, OmniTRAX, for the decision to construct the line as private track despite earlier representations to the Office of Environmental Analysis that it would be jurisdictional common carrier track as well as for delays in the environmental review process.

CONSTRUCTION AND OPERATION EXEMPTION CASES

Union Pacific Railroad Company—Construction and Operation Exemption—in Maricopa County, Ariz., FD 36501 (STB served June 3, 2025)

- Union Pacific sought an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a 6-mile rail line (known as the PIRATE project), which would connect a manufacturing area to UP's mainline in Maricopa County, Arizona.
- In July 2023, while preparing the final Environmental Assessment, the Board's Office of Environmental Analysis discovered that there had been significant ground disturbance and damage to National Register of Historic Places-eligible archaeological resources within the right-of-way Area of Potential Effects ("APE").
  - Construction activities occurred in five locations, including excavation of two retention basins, removal of 40,500 cubic yards of soil, grading of approximately 6.6 acres, and excavation for a pipeline, all within or in close proximity to archaeological sites.
  - In December 2023, the Board initiated an investigation into whether UP engaged in "anticipatory demolition" of historic properties in violation of Section 110(k) of the National Historic Preservation Act.
- UP acknowledged that the ground disturbing activity was unacceptable but explained that the activity was conducted by third-parties (not UP or UP agents) and without intent to subvert the environmental and historical review process.
- UP identified the causes of the ground-disturbing activity as communication failures between departments within UP and a lack of awareness of the historic review process among departments dealing with the third parties that engaged in the unauthorized activities.
- UP pledged to make the following improvements to ensure historic and cultural resources are protected in future projects:
  - Implement training on STB environmental review process, NHPA requirements, Federal Indian Law, and tribal consultation
  - Ensure third-party contracts require notice and written consent from UP before construction activities commence
  - Include provisions relating to the historic review process in outside consultant contracts
  - Utilize an internal project manager well-versed in the STB regulatory review process for future projects to ensure effective communication of historic review process information

CONSTRUCTION AND OPERATION EXEMPTION CASES

Union Pacific Railroad Company—Construction and Operation Exemption—in Maricopa County, Ariz., FD 36501 (STB served June 3, 2025) (cont'd)

- UP argued it lacked the requisite intent for a Section 110(k) violation, which requires two findings: (1) the applicant "intended to significantly adversely affect a historic property" and (2) did so with "the intent to avoid the requirements of Section 106."
- The Board was unable to reach a majority on whether UP violated Section 110(k) of the NHPA in its June 3, 2025 decision, so no determination that Section 110(k) is applicable will be issued under 36 C.F.R. § 800.9(c), and the Board resumed consideration of UP's petition on the merits.
- **Member Hedlund** found UP engaged in anticipatory demolition and asserted that a general intent (failure to protect historic and tribal properties), not the specific intent asserted by UP, should be sufficient to support a violation.
    - In her view, the breakdown of internal processes did not absolve UP of responsibility for the significant ground-disturbing activities that occurred on its property and that she believes UP actively facilitated for its benefit.
    - Nevertheless, Member Hedlund agreed to move the historic review process forward.
- **Member Schultz** (with **Member Fuchs** joining) found the statute requires specific findings: If UP did not act, or fail to act, with the intent to avoid the requirements of Section 106, then Section 110(k) has not been satisfied.
- **Member Primus** agreed with Member Hedlund that UP engaged in anticipatory demolition and stated that resolution of UP's petition should not move forward until the question of whether UP violated Section 110(k) is resolved.
- Shortlines (and counsel) should be aware that the Advisory Council on Historic Preservation offers free and low-cost training ($50) on § 106. For upcoming sessions: https://www.achp.gov/training/webinars.

UP-NS LANDMARK MERGER DEAL

Union Pacific Corporation—Control—Norfolk Southern Corporation, FD 36873

- On Tuesday, July 29, 2025, Union Pacific Corporation (“UP”) and Norfolk Southern Corporation ("NS") announced a landmark merger deal that will create America’s first transcontinental railroad, linking more than 50,000 route miles from coast to coast across 43 states. According to news outlets, UP reached an agreement to acquire NS in a deal worth $85 billion.
- On July 30, 2025, UP/NS filed a notice of intent for the proposed merger, indicating the railroads entered into an Agreement and Plan of Merger under which UP, through a wholly owned subsidiary, would acquire all outstanding shares of NS for consideration consisting of shares of UP common stock and cash. NS would become a directly wholly owned subsidiary of UP.
- As UP operates west of the Mississippi River, and NS operates tracks that are mostly east of it, the combined company would deliver freight faster by eliminating the need to switch railroads. The merger of UP and NS would create the only railroad that stretches from the West Coast to the East Coast of the United States.
- The major railroad merger will face significant scrutiny from the Surface Transportation Board (the “Board”), and the estimated timeline from the initial notification of intent to merge to a final decision could take nearly two years.
- The potential acquisition of NS by UP would have significant implications for the railroad industry and may include potential growth opportunities for shortline railroads.
- Applicants intend to file their application on or before January 29, 2026.
- Multiple Class I railroads and labor unions have already filed notices of intent to participate in the proceeding.

APPENDIX CASES

(In Chronological Order)

PETITIONS FOR DECLARATORY ORDER

Soo Line Railroad Company a/k/a CPKC—Petition for Declaratory Order, FD 36734 (January 2025)

- On October 27, 2023, Soo Line Railroad Company a/k/a CPKC ("CPKC") filed a petition for declaratory order ("Petition") that the ICC Termination Act, 49 U.S.C. 10101, et seq. ("ICCTA") preempts enforcement of Wisconsin's pre-construction, environmental permitting requirements with respect to the emergency repair and maintenance of a railroad bridge in Milwaukee, Wisconsin, located at milepost 88.74 on the Watertown subdivision of the line that crosses the Menomonee River.
- CPKC's Petition came after years of disputes with the Wisconsin Department of Natural Resources ("Wisconsin DNR") that began in late 2017, when a CPKC engineer determined that emergency repairs were required and immediately needed due to the risk of the bridge losing structural support as a result of the scour damage. CPKC sought and received an RGP permit from the Army Corp of Engineers and sought § 401 state certification to proceed with the necessary repairs. However, the Wisconsin DNR responded to CPKC's repair notification and request for certification and indicated that the State required studies to be conducted, pre-construction permits were needed, and that rip rap must be used to repair the bridge damage.
- In November of 2017, CPKC, however, moved forward with the repairs, relying on Board precedent that the Wisconsin DNR requirements were preempted by ICCTA.
- In March of 2018, the Wisconsin DNR issued a notice of violation to CPKC alleging violations of Wisconsin State Chapter 30 requirements and Wisconsin Administrative Code § 299.03(1). CPKC stood by the decision-making for the grout mat repairs but ultimately filed for a Chapter 30 permit under protest in October of 2018.
- In February of 2020, the DNR put CPKC's permit on hold due to environmental concerns. CPKC responded to this notice detailing their compliance; however, the DNR did not respond for over three years.
- In June 2023, the State of Wisconsin threatened suit against CPKC and indicated they would seek injunctive relief that would force CPKC to remove the grout mat repairs and alter the bridge to conform to DNR standards. Despite the parties' attempts to resolve the dispute, a settlement could not be reached.

PETITIONS FOR DECLARATORY ORDER

Soo Line Railroad Company a/k/a CPKC—Petition for Declaratory Order, FD 36734 (January 2025) (Cont.)

- As a result, CPKC filed its above-stated Petition seeking a declaratory order from the Board that Wisconsin state laws are preempted by ICCTA.
- On January 10, 2024, and the Association of American Railroad ("AAR") filed a reply letter in support of the Petition, noting that "AAR's members have strong interest in the proper application of ICCTA to prevent railroad operations from being impeded by a disorderly patchwork of state and local regulations and to ensure the uniform regulation of the railroad industry. Noting that "Wisconsin's preconstruction permitting process interferes with rail transportation by preventing and unduly burdening appropriate and timely—and, here, urgent—repair of rail infrastructure facilities necessary for the safe movement of rail."
- On that same day, the State of Wisconsin (the "State") filed its Reply in opposition to the Petition in which it indicated a desire to resume settlement negotiations. Following the State's Reply, CPKC and the State agreed to resume settlement negotiations, and the Board granted a joint motion to hold the proceeding in abeyance on February 25, 2024.
- Negotiations continued until December 9, 2024, when the State filed a Motion to Lift Abeyance ("Motion") as settlement negotiations had not proved successful.
- On December 27, 2024, CPKC filed a reply to the State's Motion ("Reply") and sought leave to reply to the State's January 10, 2024, Reply. While CPKC did not oppose lifting the abeyance, it argued against the State's contention that the action at the STB was premature, asserting that the case is ripe for a decision by the STB. Specifically, stating that "the preemption issues are already briefed" and "within the Board's primary jurisdiction."
- On January 16, 2025, the State requested leave to file a reply to a reply and reply to CPKC's Reply to the State's Motion to address and correct certain statements and arguments made in CPKC's Reply.
- The parties await a decision from the Board on the State's Motion to Lift Abeyance.

PETITIONS FOR DECLARATORY ORDER

Ohio Rail Commission—Petition for Declaratory Order, FD 36822 (STB served March 21, 2025)

- On December 3, 2024, the Ohio Rail Development Commission ("ORDC") filed a petition for a declaratory order asking the Board to find that a rail line owned by ORDC, which extends 43.2 miles from milepost 81.1 at North Warren, Ohio, to milepost 124.3 at Ashtabula, remains subject to the Board's jurisdiction.
- ORDC also asked the Board to find that certain state law adverse possession claims asserted by Charles Supplee with respect to the Line are preempted and that the Line was railbanked pursuant to federal law prior to the issuance of the railbanking regulations in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591 (1986).
- ORDC's Petition related to state law claims filed by Mr. Supplee on December 6, 2023, claiming that he obtained title to the Line via adverse possession. On October 4, 2024, the Court of Common Pleas granted ORDC's motion for judgment on the pleading for failure to state a claim. Mr. Supplee appealed the state court's decision to the Court of Appeals of Ohio, Tenth Appellate District, but on December 17, 2024, the Court of Appeals, at the request of ORDC, stayed all further proceedings in the matter until the Board ruled on ORDC's Petition.
- In its decision served March 21, 2025, the Board determined that a controversy existed regarding the jurisdictional status of the Line and whether state law adverse possession claims to portions of the Line are preempted under 49 U.S.C. 101501(b). The Board also noted that the Court of Appeals would like the Board to address the uncertainty.
- Accordingly, a declaratory order proceeding was instituted.

PETITIONS FOR DECLARATORY ORDER

Rail Link, Inc.—Petition for Declaratory Order, FD 36629 (STB served April 10, 2025)

- Rail Link, Inc. (Rail Link) petitioned the STB to determine whether it is a common carrier subject to Board jurisdiction, a question referred by the District Court of Harris County, Texas in connection with a FELA lawsuit filed by a Rail Link employee.
- The Board instituted the proceeding on September 19, 2022. Shortly after Rail Link filed its opening statement, the employee, Demaree Reed, moved to stay the case, having filed a writ of mandamus in Texas state court challenging the referral.
- The STB held the proceeding in abeyance on October 28, 2022, pending resolution of Reed's petition.
- On February 21, 2025, the Board directed Reed to update the STB following the denial of his mandamus petition. Reed responded that he had filed a new petition with the Texas Supreme Court and requested further abeyance.
- The Texas Supreme Court temporarily abated its proceeding to allow a new District Court judge to reconsider the original referral. A hearing was held April 1, 2025.
- On April 10, 2025, the Board continued the abeyance, finding it would avoid duplicative proceedings and allow the state courts to potentially resolve the jurisdictional issue potentially. Parties were directed to notify the Board upon final resolution in state court.

ABANDONMENT EXEMPTIONS

Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, N.J., AB 167 (Sub-No. 1189X) et al. (STB served May 23, 2025)

- Consolidated Rail Corporation (Conrail) sought authority to abandon the 1.36-mile Harsimus Branch in Jersey City, New Jersey. The line has not been used for rail service in decades and contains no remaining track or infrastructure.
- The City of Jersey City filed an Offer of Financial Assistance (OFA) to purchase the line for passenger/light rail development. Conrail opposed the offer, citing lack of any identified freight rail need or feasibility.
- The Board found that the City failed to demonstrate a commercial need for freight rail service. No current or potential shippers were identified, and the City acknowledged its primary intent was to develop light rail.
- The City's plan relied on additional Conrail-owned property not part of the Harsimus Branch, raising feasibility and jurisdictional concerns.
- The Board emphasized that the OFA process is for preserving freight rail service and rejected the OFA, finding no evidence of a genuine intent to operate freight service or likelihood of future traffic.
- Notably, the City suggested it would cease hypothetical freight operations after the required two-year post-sale period, reinforcing the Board's finding of an improper use of the OFA process.

ABANDONMENT EXEMPTIONS

Norfolk Southern Railway Company—Abandonment Exemption—In the City of Baltimore, AB 290 (Sub-No. 412X) (STB served January 2, 2025)

- Norfolk Southern Railway Company ("NSR") filed a verified Notice of Exemption ("Notice") to abandon its freight rail easement over an approximately one-mile rail line in the City of Baltimore, Maryland (the "Line") to fulfill its contractual obligation pursuant to a 1990 Agreement of Sale, wherein NSR agreed to abandon the Line if it did not exercise its freight rights over a period of sixty (60) consecutive months.
- On December 9, 2024, the Acting Director of the Office of Proceedings ("Acting Director") granted NSR's Request to Withdraw its Notice based on unresolved real estate and other issues that came to its attention following its filing and subsequent offer of financial assistance by James Riffin ("Riffin") via a Notice of Intent ("NOI") on November 25, 2024.
- Following the Acting Director's Decision, Riffin filed a "Petition to Stay" but ultimately the Board construed Riffin's Petition as one for reopening, as that decision was already effective, and there was nothing to stay.
- Concurrently, Riffin sought judicial review of the December 9, 2024, decision and instituted a proceeding on December 23, 2024, in the United States Court of Appeals for the District of Columbia Circuit.
- In a decision served April 14, 2025, the Board found that the Acting Director was correct to grant NSR's request to withdraw its Notice, noting that it was consistent with Board precedent and explained that it normally grants a carrier's motion to withdraw, even over the objection of a potential offeror, because carriers are not compelled to abandon rail lines. And that the Board would only deny a withdrawal request "where doing so would be highly adverse to the OFA scheme."

ABANDONMENT EXEMPTIONS

Norfolk Southern Railway Company—Abandonment Exemption—In the City of Baltimore, AB 290 (Sub-No. 412X) (STB served January 2, 2025) (Cont.)

- Based on this, the Board considered, and specifically denied, Riffin's argument that he had a vested right to purchase the Line. The Board also found Riffin's argument that the significant changes made to the OFA process in EP 729 in 2017, including the addition of 49 C.F.R. 1152.27(c)(1), which requires a preliminary showing of financial responsibility with the filing of a NOI, did not constitute changed circumstances warranting reopening. Noting the new requirement was a safeguard for railroads seeking abandonment and for the Board, rather than a new right for a potential offeror.
- The Board also discussed Riffin's Petition to Stay and concluded that Riffin's stated harm was purely speculative, that he did not have a vested right to the information, and that he did not have a right to acquire the Line.
- On June 18, 2025, Riffin also sought judicial review of the Board's April 14, 2025, decision.

ABANDONMENT EXEMPTIONS

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In King County, Wash., AB 6 (Sub-No. 380X) (STB served February 14, 2025)

- On January 29, 2025, Waverly Hills Club, Inc. (the “Club” or “Petitioner”) filed a Petition to Reopen the 1998 NITU Decision in order to de-railbank the Waverly Beach Area, or in the alternative, sought a Declaratory Order regarding the County’s
- misuse of the railroad easement and/or trail easement due to the County’s
- contention that it can preclude the Club’s use of the right-of-way or charge rent.
- In 1998, the Board railbanked the Redmond-Issaquah Line, which extends 12.45 miles along the eastern shore of Lake Sammamish in King County, Washington (the “Line”) and authorized King County as trail sponsor pursuant to an interim trail use agreement and the Board’s 1998 NITU.
- According to the Petitioner, the Club owns the fee underlying the right of way subject to the railroad and trail easements.
- On January 28, 2025, Waverly Hills Club, Incorporated (“Waverly Hills Club” or “the Club”), brought this Petition to obtain relief regarding usage of a railbanked corridor—the Redmond-Issaquah Line, along the eastern shore of Lake Sammamish in King County, Washington—namely, the Club wished to “maintain existing minor improvements within the railroad right of way for the Club’s community beach to use for a grass picnic area and tables, a chain-link security fence with gate, and a gravel surface parking lot.”
- The Surface Transportation Board (Board) railbanked the corridor and authorized King County as the trail manager pursuant to an interim trail use agreement and the Board’s 1998 Notice of Interim Trail Use (NITU) (amended 2000).
- The Club argued that King County was misusing the railroad and the trail easements by seeking to preclude the Club’s noninterfering use of the right of way.

ABANDONMENT EXEMPTIONS

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In King County, Wash., AB 6 (Sub-No. 380X) (STB served February 14, 2025) (Cont.)

- Ultimately, the Club asked the Board to authorize the Club's use of the right of way with minor improvements at Waverly Beach and to declare that the County cannot charge the Club rent.
- On January 30, 2025, Raymond and Lael Spencer, who own property burdened by the railbanked railroad right-of-way easement and separate trail easement held by King County, Washington, filed a petition for a declaratory order.
- The County had threatened them with fines and legal action to prevent them from using their property, but the Spencers had historically used their property within the borders of the 100 foot right of way before and after railbanking, off the railroad's tracks, and now off King County's trail and this use was not in conflict with either easement.
- On February 14, 2025, the Board granted a motion to extend time to respond to petitions for declaratory order.

CASES INVOLVING AMTRAK

Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2, NOR 42175 (STB served Feb. 21, 2025)

- In 2022, Amtrak filed a Complaint and Petition against multiple railroads invoking 49 U.S.C. § 24308(f)), which authorizes the Board to initiate an investigation into the customer on-time performance (OTP) of Amtrak's passenger service and award damages and other relief.
- The Board established a new procedural framework, which would inform future OTP cases, that proceeded in two stages.
  - Stage 1 consists of the Board's investigative questions and document requirements, party-led discovery, and party briefing, after which the Board determines whether Amtrak's delays are the result of any host railroad's failure to provide Amtrak with preference.
  - Stage 2 concerns damages and other relief if the Board finds preference was not given and follows a similar format to Stage 1.
- Only July 31, Amtrak and Union Pacific reached a settlement agreement that included UP commitments regarding the Sunset Limited's customer OTP and employee training and education on preference as well as a process for certifying the Sunset Limited schedules.

Confidentiality Dispute

- Amtrak filed a motion asking the Board to remove Union Pacific's reply brief on the basis that it improperly disclosed information that could competitively harm Amtrak, which the Board granted on a temporary basis to allow the parties to find an amicable solution.
- Although the Board went out of its way to avoid disclosing even the general topic of the material that Union Pacific disclosed, content in the Board's February 21 decision reveal that the dispute was over the parties' operating agreement.
- The Board concluded that the confidentiality issue should be decided by a court or other dispute resolution forum because Union Pacific obtained the subject information outside of the Sunset Limited proceeding, resolution of the confidentiality dispute could have consequences extending well beyond a single proceeding, and the dispute was a matter of contract interpretation.
- Amtrak initiated an action before the National Arbitration Panel on March 14, 2025, but the parties reached agreement on an appropriate set of redactions for UP's reply brief and Amtrak dismissed the arbitration.

ACQUISITION EXEMPTION

Watco Holdings, Inc.—Acquisition of Control Exemption—Great Lakes Central Railroad, Inc., FD 36843 (STB served Aug. 29, 2025)

- Watco Holdings (Watco), a noncarrier holding company of a Class II rail carrier and 43 Class III rail carriers, sought to acquire control of the Great Lakes Central Railroad Inc. (GLC), a Class III railroad in Michigan.
- GLC is owned by Federated Capital Acquisitions (FCA) a subsidiary of Federated Capital Holdings, LLC which operates 379.2 miles of rail in Michigan. The state of Michigan owns about 350 miles of track over which GLC operates pursuant to certificates of public convenience and necessity.
- GLC connects to a Watco Owned line, the Ann Arbor Railroad (AARR), but serve no common facilities. The AARR and Norfolk Southern have an interchange commitment in Toledo, which Watco asserts will not incentivize it to direct GLC traffic to NS instead of other carriers.
- The STB found Watco's initial filing deficient and directed Watco to supplement its petition. On August 29, 2025, the Board issued its final decision granting Watco's petition for exemption.
- In granting the exemption, the STB imposed a condition holding Watco to its representation that it would keep all currently active GLC and AARR gateways open on commercially competitive terms commensurate with future traffic volumes, shipper demand, and subject to the cooperation of third-party interline partners in facilitating traffic movements through such gateways.
- The STB concluded, based on supplemental and highly confidential information provided by Watco, that the interchange commitment will not incentivize anticompetitive or inefficient practices.
- The STB also expressed that there would be no reduction in rail options for shippers resulting from the combination of two carriers, Watco and GLC, that already physically connect.

ACQUISITION AND OPERATION EXEMPTION

Sierra Northern Railway—Acquisition and Operation Exemption—in Yolo County, Cal., FD 36841 (STB served May 14, 2025)

- Sierra Northern Railway (SNR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire and operate 0.58 miles of double-track rail line between milepost 4.01 and milepost 4.31 in Yolo County, California.
- SNR stated it originally constructed the line as an industrial track under 49 U.S.C. § 10906. The exemption was noticed in the Federal Register on May 1, 2025, with a scheduled effective date of May 15, 2025.
- The Sacramento-Yolo Port District (District) filed a request for a "housekeeping stay," arguing that the Board should evaluate whether SNR should have sought construction authority given the recent construction of the line.
- The District did not oppose SNR operating as a carrier but sought time for further discussion and review of the construction's regulatory status. SNR filed a same-day reply opposing the stay.
- The Board denied the stay request, finding the District had not provided sufficient information to justify delaying the exemption or shown why additional time was needed.
- The Board noted the District remained free to file a petition to revoke the exemption under 49 U.S.C. § 10502(d), and clarified that the District had not attempted to meet the standards for a traditional stay.

ACQUISITION AND OPERATION EXEMPTION

Soo Line Railroad Company D/B/A Canadian Pacific Railway—Acquisition and Operation Exemption —BNSF Railway Company, FD 35068 (STB served April 11, 2025)

- In a 2007 decision, the STB approved Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CP") request for acquisition and operation authority for BNSF's property interests in 35.26 miles of rail line that were jointly owned by CP and BNSF and a contiguous 9.96-mile rail line that was solely owned by BNSF.
- In December 21, 2018, New Century Ag ("NCA"), a farmer-owned co-operative with grain elevator facilities located on the subject line, filed a petition to reopen or, in the alternative, revoke the exemption, alleging that CP has taken steps that have reduced competitive options by depriving NCA of access to BNSF rail service.
- In a December 2020 decision ("2020 Decision"), the STB reopened the proceeding. The STB was concerned about limits to the competitive options available to NCA under CP's exceedingly narrow application of the Haulage Agreement and post-2007 actions. Fuchs wrote a dissenting opinion expressing concern about reopening a thirteen-year-old proceeding and imposing a potentially problematic requirement, particularly when the shipper has not met the standard for reopening.
- CP filed for reconsideration of the 12/29 Decision in 2021, on the basis that the majority materially erred in reopening the proceeding and would compound that error if CP were to be subject to conditions that would not have existed absent the transaction.
- NCA filed in opposition to CP's petition for reconsideration.

ACQUISITION AND OPERATION EXEMPTION

Soo Line Railroad Company D/B/A Canadian Pacific Railway—Acquisition and Operation Exemption —BNSF Railway Company, FD 35068 (STB served April 11, 2025) (Cont.)

- In April, the Board held that the 2020 Decision materially erred in determining that CP's restrictions on BNSF carloads and the resulting impact on NCA's rail options constituted a "change in circumstances" that warranted reopening.
  - The 2020 Decision suggests that the service restrictions that CP imposed on BNSF were inconsistent with the "broad representations" made in the Joint Petition concerning the preservation of competitive options. Upon review, the Board found the restrictions are consistent with the service framework established by the Haulage Agreement, which was before the Board at the time of the 2007 Decision. Moreover, the record indicated that the Haulage Agreement would govern future access by BNSF. Moreover, in support of the transaction, petitioners included a letter from NCA indicating its understanding that CP would "handle existing BNSF traffic through a haulage agreement." Representations regarding the preservation of rail options flowed from the Haulage Agreement and did not create additional service obligations.
  - Although the Board recognizes the potential benefits to NCA regarding its ability to receive unit train service from BNSF, especially considering its substantial investment after the 2007 Decision, the Board maintains other potential avenues for shippers to pursue such relief in these circumstances.
- Concerns of detrimental reliance and the need for administrative repose become greater the longer the time between a Board decision in a case and the time a petition for reopening is filed.

ACQUISITION EXEMPTION

Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Central Kansas Railway, LLC, FD 34030 (STB served Feb. 25, 2025)

- Weskan Grain LLC petitioned to reopen and partially revoke a 2001 exemption granted to Kansas & Oklahoma Railroad (K&O) to acquire a lease from Union Pacific (UP), arguing that an "unlawful" interchange commitment restricts competition and routing flexibility for grain shipments.
- Weskan alleged that the commitment prevents K&O from interchanging traffic westward with Colorado Pacific Railroad (CXR), limiting service options for shippers in western Kansas and Colorado.
- K&O and UP opposed the petition, arguing Weskan failed to cite any statutory violation and that rate relief, not revocation, was the appropriate remedy.
- Weskan's filings revealed that K&O and UP modified and renewed the lease in 2018–2019 without notifying the Board, including altering the interchange commitment. The STB confirmed these lease amendments required prior authority.
- The Board denied Weskan's petition, finding the 2001 exemption does not authorize the 2019 lease amendments, and thus the challenge to the interchange commitment was procedurally misplaced.
- K&O was ordered to file a petition for exemption or application by March 27, 2025, to obtain after-the-fact authority for the lease renewal and amendments, including the modified interchange commitment.
- The Board encouraged private negotiations and reiterated that it prefers voluntary dispute resolution where possible.

CONSTRUCTION AND OPERATION EXEMPTION

Savage Tooele Railroad Company—Construction and Operation Exemption—Line of Railroad in Tooele County, Utah, FD 36616 (STB server March 3, 2025)

- On June 30, 2022, Savage Toole Railroad Company ("STR"), a noncarrier, filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 ("Petition") to construct and operate approximately 11 miles of rail line Tooele County, Utah (the "Line"). STR explained in its Petition that Line would reestablish the form Warner Branch connection to UP's Shafter Subdivision at Burmester, Utah, and that STR would provide common carrier service over the Line to enable tenants of the industrial park to ship and receive commodities and other products by rail.
- In a decision served on August 24, 2022, the Board instituted a proceeding under 49 U.S.C. § 10502(b) and sought clarification on the plans for the right-of-way and track located between milepost 0.0 and milepost 1.04.
- Within is Petition, STR asked for the Board to conditionally approve the Petition subject to the completion of the Board's Office of Environmental Analysis ("OEA") review of potential environmental impacts of the project pursuant to NEPA and the Board's regulations. On January 17, 2023, STR supplemented its request for conditional approval and asked that such conditional approval be granted on or before March 31, 2023.
- In a decision served on March 30, 2023, the Board denied STR's request for the Board to preliminarily address the transportation merits of the proposed Line prior to the completion of the environmental review process, noting that STR had not shown any "unique or compelling circumstances." Board Members Fuchs and Schultz dissented to the majority's decision.
- On March 1, 2024, the Board's OEA issued a Final Environmental Assessment, which responded to 21 comments received on the Draft EA (issued September 29, 2023) and recommended numerous environmental conditions, including 37 voluntary mitigation measures proposed by STR.

CONSTRUCTION AND OPERATION EXEMPTION

Savage Tooele Railroad Company—Construction and Operation Exemption—Line of Railroad in Tooele County, Utah, FD 36616 (STB served March 3, 2025) (Cont.)

- In a decision served on April 1, 2024, the Board granted STR's exemption from the prior approval requirements of § 10901, adopting the analysis and conclusions in the Final EA, and authorizing STR to construct and operate the Line, subject to the environmental mitigation measures recommended in the Final EA.
- Board Members Schultz and Fuchs dissented in part, stating that they would not impose the climate change mitigation measure as it is vague and the executive order referenced was applicable to federal agencies, not businesses.
- On April 22, 2024, the Utah Physicians for a Healthy Environment, Erda Community Association, Sid Atkin, and Kyle Mathews (collectively, the "Petitioners") filed a joint petition for reconsideration of the April 2024 Decision pursuant to 49 C.F.R. § 1115.3, alleging that the Board materially erred in adopting the Final EA because, they argued, it was "severely deficient in meeting the legal requirements established by [NEPA] for protecting the public and the environment."
- In a decision served on March 3, 2025, the Board denied the petition for reconsideration because the Petitioners did not substantiate their claims of material error or introduce evidence that is "new," nor did they explain how their purported new evidence would have led to a different result.

CONSTRUCTION AND OPERATION EXEMPTION

Green Eagle Railroad, LLC—Construction and Operation Exemption—In Maverick County, Tex., FD 36652 (STB served Aug. 29, 2025)

- On December 14, 2023, Green Eagle Railroad, LLC ("GER"), a noncarrier subsidiary of Puerto Verde Holdings, filed a petition under 49 U.S.C. § 10502 for authority to construct and operate a 1.335-mile double-tracked common carrier rail line in Maverick County, Texas.
- The proposed line would connect Union Pacific Railroad's ("UP") Eagle Pass Subdivision (near MP 31) with a new international rail and commercial vehicle crossing at the U.S.-Mexico border, forming part of the Puerto Verde Global Trade Bridge corridor. The broader corridor includes a rail extension into Mexico (connecting with Ferromex), a new CMV roadway, a two-span international bridge, and customs facilities.
- On March 13, 2024, the Board instituted a proceeding under § 10502(b) to consider the petition. A Presidential Permit application for the cross-border elements was submitted to the U.S. Department of State in October 2023.
- On August 6, 2025, the Board's Office of Environmental Analysis issued the Final Environmental Impact Statement. UP filed comments opposing the proposed construction on August 25, 2025, focusing on transportation-related concerns.
- Per a decision served August 29, 2025, replies to UP's comments are due by September 15, 2025.

LEASE AND OPERATION EXEMPTION

Kansas & Oklahoma Railroad, LLC—Lease and Operation Exemption with Interchange Commitment—Union Pacific Railroad Company, FD 36849 (STB served Aug. 8, 2025)

- Kansas & Oklahoma Railroad ("K&O") sought after-the-fact authority to renew and amend a lease with Union Pacific ("UP") covering approximately 166 miles of line in western Kansas and eastern Colorado, which K&O filed in response to the Board's directive in a separate proceeding brought by Weskan Grain LLC to partially revoke an acquisition exemption (FD 34030).
- Weskan Grain LLC ("Weskan") opposed the petition for exemption, arguing that the interchange commitment is anticompetitive because it is intended to "preserve UP's market power and to restrict competition" by making it "economically infeasible for K&O" to transport agricultural products originating in Kansas to points west of the CXR interchange at Towner.
- Weskan asked the Board to deny the petition, and if the Board considers the petition, to allow for discovery. Weskan also sought to extend the discovery schedule, citing the extensive nature of its requests and difficulties coordinating with K&O and UP.
- In instituting the proceeding, the Board directed K&O to serve a copy of the decision on all shippers that used the rail line within the past two years, in case other shippers were similarly affected.
- On August 8, 2025, the Board granted a 58-day extension of the procedural schedule, moving the discovery deadline to October 8, 2025 (and directed the parties to cooperate). It also declined K&O's request to bar Weskan from serving additional discovery. The Board authorized an administrative law judge ("ALJ") to adjudicate a discovery dispute, reflecting the Board's growing use of ALJs for complex procedural matters.
- Of notable significance, it is relatively uncommon for the Board to grant disclosure of lease terms filed under seal, which it did in this proceeding.

EASEMENTS UNDER STATE LAW

Baylands Development, Inc.—Petition for Declaratory Order, FD 36660 (March 18, 2025)

- On February 24, 2023, Baylands Development, Inc. (“Baylands”), a noncarrier, filed a petition for declaratory order (“Petition”) requesting that the Board determine that a railroad spur, consisting of an approximately, 2,000-foot long, railroad right-of-way in counties of San Francisco and San Mateo, Cal. (the “Spur”), is abandoned and no longer needed as part of the interstate rail network.
- According to Baylands, the Spur was once owned by the Southern Pacific Railroad (“SP”) and part of SP’s Bayshore Yard, which was closed by SP in 1979. Thereafter, in 1989 and 1990, SP sold the Bayshore Yard site to the predecessors in interest of the property’s current owners, Visitacion Investment, LLC (“Visitacion”), and Sunquest Properties, Inc. (“Sunquest”), who have retained Baylands for coordination of non-rail development of the Bayshore Yard.
- In 2015, Union Pacific (SP’s successor in interest) sold property interests, including the Visitacion Track Easement, to Patrick McNerney, who in turn conveyed that property to Jessie Historic Properties, LLC (“JHP”). UP/SP retained its interest in the Sunquest easement
- In 2019, Visitacion initiated a state court action involving the interpretation and enforceability of an easement owned by JHP, seeking a determination that the Visitation Track Easement had been abandoned under state law.
- In its Petition before the Board, Baylands argues that JHP’s position in state court-that JHP’s easements have not been abandoned- raises the question about whether a common carrier obligation remains on the Spur.
- On March 16, 2023, JHP filed a reply in opposition to Baylands’ Petition, asserting, among other things, that the Board “should not intervene to usurp the California State Court’s Judgment governing Visitacion’s and JHP’s property rights under state law.”

EASEMENTS UNDER STATE LAW

Baylands Development, Inc.—Petition for Declaratory Order, FD 36660 (March 18, 2025) (Cont.)

- In its decision, served on September 18, 2023, the Board held the proceeding in abeyance, pending resolution of the state court action. In that September 2023 Decision, the Board concluded that the abeyance was appropriate as evidence of UP's activities will be critical to confirming whether the Spur is expected track. For example, if the Visitacion Easement continued in effect, the need for a declaratory order would be obviated because, "even if the Board determined that its jurisdiction over the Spur had been removed, JHP would still be allowed to use the Visitacion Easement under state law. Citing Great Walton R.R.—Pet. for Declaratory Ord., AB 1242 (Sub-No. 1), slip op. at 11-12 (STB served June 9, 2020), corrected (STB served June 23, 2020) (holding docket in abeyance pending resolution of state property law issues that could impact the need to determine whether excepted track remains part of the interstate rail system).
- In its February 21, 2025, decision, the Board noted that the Board had not received any subsequent decisions or final disposition in the state court action to date, and ordered the parties to provide, by March 7, 2025, a status report on the state court litigation and any other recent developments.
- On March 6, 2025, JHP and Baylands jointly provided a status report, notifying the Board that in October 2024, the state court sent the parties to a settlement conference, during which they agreed to settle their respective claims and counterclaims. As the November 2024 settlement agreement resolved the dispute between the Parties, Bayland, on March 6, 2025, also submitted a voluntary and unopposed Motion to Dismiss, which was granted by the Board on March 6, 2025.

PETITION TO REVISE THE BOARD'S NITU PROCEDURES

Joint Petition for Rulemaking to Consider Amendments to Regulations Governing Interim Use of Rights-of-Way as Trails (49 C.F.R. Part 1152), EP 777 (April 8, 2025)

- On December 20, 2024, the U.S. Department of the Interior ("DOI") and the U.S. Department of Justice's Environment and Natural Resources Division ("ENRD") (collectively, the "Government") petitioned the Board to open a rulemaking proceeding to amend the Surface Transportation Board's (the "STB" or "Board") rules under 49 C.F.R. § 1152.29(d)(1) and (d)(1)(iii) regarding the process governing interim use of railroad rights-of-ways as trails ("railbanking") under the National Trails System Act Amendments of 1983.
- The recommended amendments first seek to implement a revised approach to railbanking by allowing railroads to pursue railbanking through a discontinuance exemption, rather than abandoning the line.
- The Petition, however, sought to leave in place existing provisions that allow railbanking to occur incident to an abandonment proceeding, albeit while clarifying that the abandonment and railbanking processes are distinct and modifying terminology to more accurately describe the administrative railbanking process.
- Specifically, railroads seeking to railbank would need to indicate whether an Interim Trail Use Agreement has or has not already been reached with a trail sponsor. If the former, then the Board would issue a Notice of Railbanking after the exemption proceeding.
- The amendments would also change the terminology of "Notice of Interim Trail Use (NITU) to "Notice of Negotiations."
- Comments were provided by the Lassen Land and Trail Trust, National Association of Revisionary Property Owners, the Association of American Railroads ("AAR"), the American Short Line and Regional Railroad Association ("ASLRRA"), and other interested persons in opposition and support.

PETITION TO REVISE THE BOARD'S NITU PROCEDURES

Joint Petition for Rulemaking to Consider Amendments to Regulations Governing Interim Use of Rights-of-Way as Trails (49 C.F.R. Part 1152), EP 777 (April 8, 2025) (Cont.)

- AAR and ASLRRA both jointly opposed the rulemaking, contending that the proposed rules would have the unintended consequences of making discontinuance proceedings more complicated, not less, and that the proposed rules would also likely upend decades of settled federal takings precedent.
- Per a decision on April 8, 2025, the Board deferred ruling on the rulemaking petitioner until further notice, and gave the petitioners until June 9, 2025, to submit additional filings. Thus, the 120-day deadline for granting or denying the petition for rulemaking, pursuant to 49 C.F.R. 1110.2(d), was waived. On June 12, 2025, Petitioners were granted additional time, until August 8, 2025, to submit their filings. DOJ filed comments in support of its petition on August 8 and DOI withdrew from the proceeding.

60-DAY LABOR NOTICE RULE ENFORCED BY STB

Central Oregon & Pacific Railroad, Inc.—Lease and Operation Exemption Including Interchange Commitment—Union Pacific Railroad Company, FD 36818 (STB served Apr. 8, 2025)

- Central Oregon & Pacific Railroad, Inc. (CORP), a Class III carrier and Genesee & Wyoming Inc. subsidiary, filed for a lease and operation exemption to acquire 27.58 miles of line in Oregon from Union Pacific Railroad Company.
- The Brotherhood of Railroad Signalmen (BRS) objected to not receiving advance notice, as required by 49 C.F.R. § 1150.42(e), despite other labor organizations being notified. CORP later served BRS and the International Brotherhood of Electrical Workers (IBEW), but sought a waiver of the 60-day labor notice rule.
- The Surface Transportation Board denied the waiver, citing CORP's lack of explanation for omitting BRS and IBEW and finding no exceptional circumstances justifying a shortened notice period.
- BRS argued it was unable to proactively assess or respond to the transaction's impact due to CORP's failure to notify, and raised concerns over unreported grade crossings and potential safety implications.
- Opposing comments also came from SMART-TD, the Oregon state legislature, local officials, and individuals, who raised concerns about safety, reduced service quality, and CORP's capacity to manage hazardous materials and local operations effectively.
- CORP defended its safety record, citing compliance with Federal Railroad Administration rules and the training support of its parent company. It also submitted letters from shippers supporting the transaction.
- The Board denied petitions to reject the notice, finding no false or misleading information and no justification for additional regulation under the Rail Transportation Policy of 49 U.S.C. § 10101.
- The Board reaffirmed its longstanding position that labor protection cannot be imposed in acquisitions by Class III railroads under 49 U.S.C. § 10902(d).

PRIVATE TANK CAR – RATE DISPUTE

North America Freight Car Association v. UP, NOR 42144,Valero Marketing v. UP, and Tesoro Refining v. UP, Tesoro Refining v. UP, Arkema Inc. v. Union Pacific Railroad Company, NORs 42150, 42152, and 42153 (collectively "Complainants") (STB served April 25, 2025)

- The collective cases involve disputes between private (non-railroad) providers of tank cars and UP.
- The Complaints, filed over several years, starting in 2015, alleged that UP acted unlawfully by imposing a charge for moving their tank cars to and from repair facilities by charging allegedly non-compensatory zero-mileage rates rather than paying mileage allowances. Complainants based these claims primarily on the car service provisions of 49 U.S.C. § 11121 and § 11122.
- The evidentiary record was complete in 2019, and in a decision served March 22, 2021, the Board direct the parties to address (1) the applicability to this proceeding of language § 11122(a) regarding "encourag[ing] the purchase, acquisition, and efficient use of freight cars," and (2) whether the Board's statutory authority to establish the "terms of any arrangement" for car service permit it to prescribe the amount of an empty repair move charge by a rail carrier.
- In a decision served on January 15, 2025, the Board found that UP did not act unlawfully by using zero-mileage rates instead of mileage allowances, as UP reasonably relied on ICC precedent authorizing separate empty repair move charges, which expressly declined to require mileage allowances or any other compensation mechanism.
- However, the Board directed UP not to charge for moving private tank cars to and from repair shops unless it could demonstrate that car providers are reimbursed for those expenses.
- The Board ultimately denied the complaints in all other respects and did not award damages for past charges because the evidence regarding UP's zero-mileage rate is inconclusive and did not make the directive to UP apply retroactively.

PRIVATE TANK CAR – RATE DISPUTE

North America Freight Car Association v. UP, NOR 42144,Valero Marketing v. UP, and Tesoro Refining v. UP, Tesoro Refining v. UP, Arkema Inc. v. Union Pacific Railroad Company, NORs 42150, 42152, and 42153 (collectively "Complainants") (STB served April 25, 2025) (Cont.)

- Board Member Hedlund and Schultz express concerns about the delay in issuing the decision, with Member Hedlund acknowledging the Board's very heavy agenda since 2022, including the Amtrak Forces Access case (FD 36496 and the first Class I rail merger in over 20 years (FD 36500).
- Board Member Fuchs concurred in part and dissented in part, arguing that Complainants met their burden to show UP failed to compensate them adequately and disagreed with the prospective burden-shifting directive to UP to prove that it had provided adequate compensation for empty tank car repair moves.
- On January 27, 2025, the Board issued a decision that UP had instituted a court action on January 22, 2025, in the United States Court of Appeals for the Eighth Circuit, seeking judicial review of the Board's January 15, 2025, decision.
- On March 6, 2025, Complaints filed a Petition for Reconsideration alleging the Board committed a material error on three grounds. First, the Board failed to address the obstacles faced by Complaints in recovering repair move costs. Second, the Board's failure to consider whether the Complainant's evidence satisfied their burden of proof with respect to recovery of Item 55-C. Third, the Board's conclusion that UP had a reliance interest in IHB-II was arbitrary and contrary to precedent.
- On April 25, 2025, after being granted an unopposed 30-day extension, UP filed a Petition for Reconsideration.

DENIAL OF WAYBILL REQUEST

Waybill Request WB25-18, Decision No. 52596 (STB served May 5, 2025)

- Escalation Consultants Inc., represented by Thompson Hine LLP, requested access to the unmasked, Confidential Carload Waybill Sample (CCWS) for 2023 under 49 C.F.R. § 1244.9(c).
- The stated purpose of the request was to analyze the impact of rail pricing on the competitiveness of American products. The requester noted that the results would be shared in aggregate with the American Chemistry Council (ACC).
- The American Association of Railroads (AAR) objected, arguing the request sought CCWS data, including unmasked revenues and contracts, for commercial purposes in violation of Board precedent.
- The STB denied the request, finding it sought information for a private, competitive analysis inconsistent with prior decisions, including U.S. Wheat (WB 20-40) and Trinity (WB 20-50).
- The Board also found the request deficient because it failed to include a detailed justification for the specific data sought or explain how the data would be used in any analytical model.

TERMINAL TRACKAGE RIGHTS CASE

Commuter Rail Division of the Regional Transportation Authority D/B/A Metra—Terminal Trackage Rights—Union Pacific Railroad Company, FD 36844 (STB Served June 1, 2025)

- On March 7, 2025, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) filed an application for terminal trackage rights under 49 U.S.C. § 11102(a) to continue commuter rail service over three lines owned by Union Pacific Railroad Company (UP) in the Chicago area.
- According to the Board's March 20, 2025, decision, Metra and UP (the "Parties") have been working for several years to transition UP's decades-long operation of Metra's passenger trains over these lines to Metra, but negotiations have failed, including Board-ordered mediation in 2024, and the Parties have been unable to negotiate a successor trackage rights agreement to allow Metra to operate over the UP lines.
- On June 30, 2025, Metra filed a petition requesting an emergency temporary injunction or an emergency service order (the "Petition"). The latter pursuant to 49 U.S.C. 11123(a), Metra contends is necessary because "cessation of service would produce 'irreparable harm' to Metra and the public interest and create 'an emergency situation' with 'substantial adverse effects on shippers or on rail service,' because residents of and visitors to the Chicago region will be unable to commute to work or will be forced to take other transportation, leading to gridlock."
- Metra explained that it had been operating pursuant to a Purchase of Services Agreement ("PSA") over UP lines, but instead of extending that agreement, UP presented Metra with a document termed "Conditions of Entry" ("COE") to govern Metra's use of the lines, beginning July 1, 2025. According to Metra, UP presented it with an impossible choice, either to the Board that UP has presented Metra with an impossible choice, either stop commuter service or agree to the objectionable terms in the COE. Metra stated in its Petition that it "informed UP that it will continue to operate on the Lines after expiration of the PSA, but would not consent to the terms of the COE.

TERMINAL TRACKAGE RIGHTS CASE

Commuter Rail Division of the Regional Transportation Authority D/B/A Metra—Terminal Trackage Rights—Union Pacific Railroad Company, FD 36844 (STB Served June 1, 2025) (Cont.)

- In its decision served July 1, 2025, the Board took into account that UP stated in its reply to Metra's Petition that it would not exclude Metra from the Lines and the enforceability of the COE, that Metra has not consented to, remains to be determined. Based on the foregoing record, the Board found that Metra had shown neither the irreparable harm needed for injunctive relief nor the emergency circumstances under which the Board may order service. Thus, Metra's Petition was denied.
- On September 3, 2025, the Board issued a decision granting Metra's application for terminal trackage rights over UP's lines. The Board's significant rulings were:
  - Metra satisfied the jurisdictional criterial set forth in 49 U.S.C. § 10501(c)(3)(B) for a commuter railroad.
  - The relevant terminal area was the Chicago Freight Terminal ("CFT") and the portions of the UP lines that fell outside the CFT were a reasonable distance from the terminal area.
  - The showing of anticompetitive conduct required by Midtec is inapplicable because this proceeding does not involve freight-to-freight competition and applying it in the passenger context would render it impossible for commuter railroads to obtain relief.
  - Granting trackage rights is in the public interest even though Metra already has access to the UP lines because Metra provides a "vital public service" and Metra need not show a service inadequacy under Grand Trunk because that would subject Metra to unreasonable terms and conditions without access to the Board intervention and Grand Trunk concerned freight-to-freight competition.
- The Board directed the parties to negotiate compensation for 60 days, declined to impose interim terms and conditions, determined that compensation did not need to be addressed prior to Metra gaining access to the lines, and found that compensation was adequately secured because Metra is a governmental entity.

EVIDENTIARY OVERSIGHT – CONFIDENTIALITY

Kansas & Oklahoma Railroad, LLC—Lease and Operation Exemption with Interchange Commitment—Union Pacific Railroad Company, FD 36849 (STB served June 25, 2025)

- Following the February 2025 decision in FD 34030, Kansas & Oklahoma Railroad (K&O) filed a petition under 49 U.S.C. § 10502 for after-the-fact authority to renew and amend its lease with Union Pacific (UP), covering 165.98 miles of rail lines in western Kansas and eastern Colorado.
- The renewed lease includes an interchange commitment restricting K&O from interchanging traffic with third-party carriers, specifically Colorado Pacific Railroad (CXR), the only other connection on the line.
- Weskan Grain LLC opposed the petition, alleging the commitment is anticompetitive and designed to divert all traffic east to UP rather than west via CXR. Weskan cited harm to its Stockton facility, which depends on routing flexibility to reach BNSF via CXR.
- The Board instituted a proceeding under § 10502(b) to evaluate whether the transaction meets the exemption criteria. A 45-day discovery period was established, and K&O was directed to supplement the record with detailed evidence on the commitment's competitive impact.
- UP was invited to participate in the proceeding, and the Board sought comments from CXR, BNSF, and affected shippers.
- While the lease was filed under seal, the Board noted its review would require a sufficient public record to evaluate the interchange restriction. Disclosures of sealed lease terms are uncommon, heightening the importance of the parties' evidentiary submissions.

PETITION FOR CLARIFICATION

BNSF Railway Company — Petition for Clarification—Service to Colorado Materials, FD 32760 (Sub-No. 49) (STB served June 30, 2025)

- On February 14, 2024, BNSF Railway Company ("BNSF") filed a petition seeking clarification of certain conditions imposed by Board as part of its approval of the 1996 merger between Union Pacific Railroad Company ("UP") and Southern Pacific Rail Corporation (SP), as applied to the Colorado Materials Facility (the "Colorado Facility") located on an UP owned Industrial Lead (the "Lead").
- The condition was part of an updated settlement agreement in 200, the Restated and Amended Settlement Agreement ("RASA"), which BNSF and UP entered into to incorporate additional conditions imposed by the Board in its Decision No. 44, approving the UP-SP merger.
- BNSF argues that the RASA ensures BNSF access to "New Shipper Facilities" located at (1) 2-to-1 points and (2) on "Trackage Rights Lines" post-merger. BNSF argues that this applies to the Colorado Facility, as they claim it's a new shipper facility located at a 2-to-1 point. BNSF acknowledges that the RASA contains a list of 2-to-1 points, where both UP and SP could serve shippers prior to the UP-SP Merger, but argues that the list is a non-exhaustive list.
- BNSF's argument also rests on its contention that because the Lead was owned by SP and UP had trackage rights over the Lead through their affiliate, the Missouri Pacific Railroad Company (MP), this satisfies the 2-to-1 condition. Thus, from BNSF's perspective, the Colorado Facility is located at a 2-to-1 point as both UP (via MP) and SP had the right to provide service on the Lead at the time of the merger.
- In its March 6, 2024, Reply, UP disagreed with BNSF's interpretation of the merger condition and the RASA, and argued that BNSF is not entitled to access the Colorado Facility as it is not located at a 2-to-1 point.
- UP's main argument rested on that the Lead was not a dual-served line at the time of the merger, as the agreement between SP and MP only provided MP with overhead trackage rights. As such, only SP had the right to serve shippers located on the Lead.

PETITION FOR CLARIFICATION

BNSF Railway Company — Petition for Clarification—Service to Colorado Materials, FD 32760 (Sub-No. 49) (STB served June 30, 2025) (Cont.)

- UP also contended that the definition of a 2-to-1 point still requires that at least one existing shipper be located on the Lead at the time of the merger that was open to both UP and SP, and no other railroad. UP claims that BNSF provided no support that such a qualifying shipper existed.
- In its June 30, 2025, decision, the Board found that BNSF's argument fails as it rests on " a faulty interpretation of the RA SA." Specifically, the Board indicates that the RASA limits 2-to-1 points to locations with an existing shipper facility at the time of the merger that was open to UP and SP, and not to another railroad.
- Despite the Board finding that BNSF failed to demonstrate the Colorado Facility is at a 2-to-1 point based on the current record, the Board allowed BNSF to seek discovery form UP as it was also found by the Board that the Colorado Facility could be deemed to be located at a 2-to-1 point if there has been a shipper facility located on the Lead or in the vicinity of Colorado Materials that was open to service from UP (via MP) and SP at the time of the merger.
- The Board's permitting limited discovery was based on some information on the record that a shipper facility was open to both UP (via MP) and SP that may have existed on the Lead at the time of the merger, as the trackage agreement with MP indicates that MP may h ave been given access to serve shipper facilities on the Lead.
- BNSF was directed by the Board to obtain discovery and submit an amended petition with additional relevant information and argument for the Board for consideration by August 29, 2025, with UP's reply due September 29, 2025.

INVOKING TRAILS ACT FROM A DISCONTINUANCE

Walkersville Southern Railroad, Inc.—Discontinuance of Service Exemption—Frederick County, MD, AB-1339X (STB served July 21, 2025)

- Walkersville Southern Railroad, Inc. ("WSRR"), filed a verified notice of exemption to discontinue service over an approximately 2.21-mile rail line ("Line"), which is owned by the Maryland Transit Administration ("MTA").
  - MTA and Frederick County, Maryland, wished to railbank the rail line upon WSRR's cessation of service.
- The Director of the Board's Office of Proceedings ("Director") denied Frederick County, Maryland's NITU request, finding that the Board lacked jurisdiction to issue a NITU because the Line had previously been abandoned.
  - Per a 1993 Decision, the Line was previously abandoned. The May 2024 Decision further noted that "if a party that does not own the underlying right-of-way subsequently is authorized to operate over an abandoned line, the transportation service becomes subject to the Board's jurisdiction, but the underlying right-of-way does not return to the Board's jurisdiction. The May 2024 Decision further explained that, where the Board does not have jurisdiction over the underlying right-of-way, it cannot issue a NITU under the Trails Act.
- MTA and Frederick County appealed the May 2024 Director's decision denying the NITU on the basis that the line remained subject to the Board's jurisdiction and, as such Board could issue a NITU and that the evidence does not support the finding that the rail line was abandoned.
- The Board, in affirming the Director's Decision, found that MTA/Frederick County had too broadly read the Trails Act.
  - The Trails Act only authorizes the Board "to issue a NITU if the Board retains jurisdiction over the line or service on the line." When a NITU is issued in an abandonment proceeding, it operates as a barrier to the carrier's consummation authority (i.e., the Board does "permit" the abandonment), and the Board maintains jurisdiction over the line while the NITU remains in effect. The Trails Act cannot be used to railbank a line that was already abandoned.

DISCONTINUANCE OF SERVICE EXEMPTION

Walkersville Southern Railroad, Inc.—Discontinuance of Service Exemption—Frederick County, MD, AB-1339X (STB served July 21, 2025) (Cont.)

- Board rejects MTA/Frederick County's arguments that separating jurisdiction over rail service and jurisdiction over the underlying right-of-way would lead to an absurd result.
  - When viewed through the lens of the purpose of the Trails Act—to prevent abandonments from causing rights-of-way over which railroads hold only an easement from reverting under state property law—such results are entirely reasonable. A line that has been inactive for years but not abandoned remains eligible for railbanking because an abandonment could cause a reversionary interest to vest. A line that was abandoned but reactivated is ineligible for railbanking because the prior abandonment may have already caused reversionary interests, if any, to vest, and in that case, there would be no reversionary interests left to protect against.
- Appellants' evidence is also insufficient to show that the Line had not been abandoned. To abandon a rail line, a railroad must first obtain abandonment authority from the Board (or, prior to 1996, the ICC), and then the railroad must consummate that abandonment authority. The Board found Appellants' arguments that, in this case, neither step in the abandonment process was completed unpersuasive.

THANK YOU!

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