



“Tariffs, Trade, and Transportation” – SWARS 2025 Fall Meeting

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General Observations

- **Elections have consequences!**
- **Debt 100 percent of GDP (\$37 trillion), to 120 percent of GDP (\$53 trillion) by 2035; deficit \$1.7 trillion, \$2.6 trillion by 2035**
- **Are France and the UK “canaries in the coal mine” re: debt?**
- **Social Security and Medicare Trust Funds insolvent by 2033**
- **Interest nearly \$1 trillion/year now, exceeding Defense and Medicare, and grows to \$1.8 trillion in 2035**
- **National security = need to increase defense preparation**
- **Budget realities constrain all legislation – but reconciliation and recissions are key because no filibuster**

General Observations

- **“One Big Beautiful Bill” passed on a partisan basis in July.**
- **Few areas of agreement – but appropriations is one, with Sens. Collins and Murray working well; Senate and House have each passed a few appropriations bills for the other’s consideration – the way the process is supposed to work**
- **Still, mostly the funding will have to come from a Continuing Resolution for now (or “Cromnibus”)**
- **In a government shutdown, no one wins (it’s terrible policy), but the Party that causes the shutdown loses**
- **“Can China be the external threat that restores internal cohesion to our politics?” Former U.S. Ambassador to Japan Rahm Emanuel, WSJ, August 31, 2025**
- **Early take on the midterms: Dems probably win House, Reps keep Senate: history, incumbency, Trump not on ballot.**

More General Observations

- **Senate 53-47, under Republican Leader Thune**
- **Narrow Republican majority in House – 219-213 (but likely will be 220-215 after special elections)**
- **Another “reconciliation” bill in 2026 (one/FY) -- no filibuster (only need 51 Senate votes)?**
- **But – tax deal tough – Dec. 31, 2025 deadline**
- **Tariffs in flux – the next Panel will discuss**
- **Tik Tok deal, China-US meeting**
- **Two-person crews? Common-carrier obligation?**

General Observations -- STB

- **STB Chairman Patrick Fuchs; former Chairman Robert Primus terminated, but may challenge**
- **Board had been 2-2 for several months, will some new policies emerge now that it is 2-1?**
- **Board Member Schultz has been renominated for a term expiring Nov. 30, 2030; Richard Kloster, a NITL and RSA board member, to fill out former Chairman Oberman's term expiring Dec. 31, 2028; if confirmed, both can serve one "holdover year"**

General Observations – STB (Cont'd)

- **Executive Order (14215) requires independent agencies to conform to President's, AG's determinations of law**
- **Chairman Fuchs determined to act promptly, within statutory deadlines**
- **“FORR” struck down in 8th Circuit; two-person crew rule challenged in Eleventh Circuit (No. 24-11076)**

General Observations – STB (Cont'd)

- **Reciprocal Switching service rules struck down in 7th Circuit; CP-KCS merger challenge denied in DC Circuit**
- **Board approved acquisitions by CSX and CP in AL, MS, CN-Iowa National merger; STB proceeding case-by-case**
- **Competition issues get an early hearing in FD 36836, NS application to acquire control of Norfolk & Portsmouth Belt Line Railroad at Port of VA**

Union Pacific-Norfolk Southern Merger (FD 36873)

- UP to acquire NS for \$71.5 billion in stock and cash deal (\$85 billion enterprise value for NS); Notice filed July 30, 2025 with STB under 49 CFR Part 1180
- No voting trust; 25% premium to NS shareholders; \$2.5 billion “reverse termination fee”
- UP estimates \$2.75 billion in annual synergy opportunities (it also estimates \$750 million annual revenue lost to other railroads)
- Progressive Railroading reported President Trump said it “sounds good to me”
- Fewer than 20 “2-to-1 shippers” –BUT....
- Big issue -- interchanges (say shippers, CSX CEO)
- CPKC opposes mergers, BNSF -- no acquisition of CSX. The Rail Customer Coalition filed comments opposing the merger.
- Issues: Will the merger be “pro-competitive,” how will UP and NS deal with “downstream impacts,” industry balance, service
- Congress beginning to weigh in

UP-NS Merger (Cont'd)

- Competition issue in confirmation of new STB Members
- UP-NS Application between Oct. 29, 2025 and Jan. 29, 2026; acceptance date w/i 30 days
- Responsive applications due w/i 45 days of acceptance date; comments w/i 90 days
- Seeking approval by early 2027; how many STB Members?
- WSJ reported on Sept. 11 that termination of Robert Primus means the merger “is likely to be approved.” This was based on senior Trump Administration officials meeting with UP’s Vena, he told investors on Sept. 10, 2025. But – realizing that what Vena told investors was potentially problematic – UP stated on Sept. 12, 2025 that Vena met with Trump in the Oval Office, but in the statement did not claim the President agreed with Vena’s arguments in favor of the merger. In fact, “Trump did not share his opinion about the proposed UP-NS merger,” CNN reported. But see Sept. 22 Progressive Railroad reporting, above.

UP-NS Merger (Cont'd)

- **By rule, a “pro-competitive” outcome has to be laid out in the Application – Intermodal only? – UP/NS should deal with shippers beforehand**
- **In CP-KCS merger, UP, BNSF, shipper groups proposed protection of interchange traffic to prevent “foreclosure” by use of formula like that adopted in UP-SP merger settlement agreement between UP and BNSF to set rate on CPKC portion of movement so that a connecting railroad could compete with CPKC, not be foreclosed**
- **STB rejected UP’s proposed formula, adopting instead arbitration or a regulatory remedy; however, most commercial transactions can’t wait for STB determination of rates and terms**

UP-SP Merger (Cont'd)

- **This is the “end game.” Important to get the structure of the industry right now, when the STB’s authority is at its height. Will this cause STB to approve two Class I mergers – or none?**
- **Carriers and shippers have a mutual interest in structure that provides a workable, pragmatic solution, not require a regulatory remedy, that allows a connecting railroad to quote a rate, just as a combined UP-NS could do, to provide for competition, and the “pro-competitive” outcome the 2001 merger rules require**

UP-NS Merger (Cont'd)

- **Application must deal with service assurances, environment, public interest**
- **BNSF proposed to merge with CN in 1999, leading to merger moratorium, merger rules**
- **Seems less likely to merge with a Canadian RR this time, BUT...**
- **BNSF-CSX, CPKC-CSX off the table?**
- **BNSF-CN?**
- **Balanced outcome will be key for the STB**

Congress Is Dysfunctional

- **Trump got one reconciliation bill in FY 2025, but tax bill needed and second reconciliation bill in FY 2026 likely**
- **Trump wants deregulation (esp. energy and permitting), perhaps agency consolidation/elimination**
- **Dems (esp. Senate) may want deal on appropriations, taxes, spending, crime**
- **Gov't shutdown, CRs, individual appropriation bills?**
- **Ukraine problematic, could be sanctions enacted, and there also could be deals on Israel aid, China trade**

Congress Is Dysfunctional – But?

- **Senate needs 60 votes to act except reconciliation bills, recissions, confirmations (rules tweaked to allow certain multiple nominees in one vote)**
- **CRs keep government open. Separate appropriations better policy**
- **“Railroad Safety Act” seems unlikely to pass in 2025-26, unless big derailment, but VP Vance sponsored same bill. Same re: other RR legislation**
- **STB Chairman Fuchs worked for Leader Thune, so may have more-than-usual influence on rail matters**

What Will Come Next?

- **Deals on Security? Permitting? Trade?**
- **Grant money for freight railroads, ports, Amtrak likely declining unless Dems make a deal**
- **Highway Trust Fund – insolvent by 2028**
- **Security issues likely of bipartisan concern**
- **Confirmation fights take up much of the Senate's time, preventing it from working on other issues, but Senate has adopted “nuclear” rule change**

STB Developments

- **Reciprocal Switching, EP 711 (Sub-1) -- terminated**
- **RS Rules for Inadequate Service (EP 711 (Sub-2)) struck down**
- **CP/KCS merger (FD 36500) approved – challenge denied**
- **STB approved CSX, CP acquisitions in AL, MS (FD 36730-32)**
- **CN merger with Iowa National Railway approved, FD 36744**
- **NS seeking control of Norfolk & Portsmouth Belt Line RR (FD 36836)**
- **Most ongoing STB matters case-by-case, not policy or rulemakings**
- **How EO (No. 14125) applies to STB will be seen**

More STB (Including in the Courts)

- **Former Chairman Primus issued a statement on January 16, 2025 attacking railroads for retaliation against shippers who seek relief at the STB**
- **Revenue adequacy (EP 766) – WCTL sought “to compel agency action unreasonably delayed,” which was denied, 108 F.4th 905 (DC Cir., 2024)**
- **FORR rules (EP 755) vacated. 113 F.4th 823(8th Cir. 2024), rehearing denied (Dec. 10, 2024) (No. 22-3648, et al.); see May 30, 2025 STB statement**
- **RS rules for inadequate service, EP 711 (Sub-No. 2), reversed and remanded, 7th Cir., No. 24-1811 (July 8, 2025)**
- **Rate-challenge process does not work -- Chairman Fuchs acknowledges. What next?**

Notable Recent or Pending STB Adjudicatory Proceedings

- **Evergy v. BNSF Railway – complaint for damages for delays in delivering coal; NOR 42180 (damages)**
- **Navajo Transitional Energy Co., LLC – Ex Parte Petition for Emergency Service Order (June 23, 2023); NOR 42178 (common carrier obligation); settled with BNSF**
- **Sanimax previously filed a complaint against UP for reducing service from 5 to 3 days/week; NOR 42171 (CCO); settled**
- **Lake Providence Port Commission, LA, with support from North Louisiana and Arkansas Railroad, NELMMD, SEAEDD, filed an amended “feeder line” application to take a line of railroad from Delta Southern Railroad; FD 36447 (STB intends to take further action by end of September 2025)**

Notable Recent or Pending STB Adjudicatory Proceedings (Cont'd)

- Shipper associations (NAFCA, et al.) v. UP-- complaints for charging for delivery of empty tank cars to/from repair facilities; STB denied reparations but will require UP to compensate shippers for charges to/from repair facilities. NOR 42144, et al.; Shippers seeking reconsideration, UP seeking judicial review (Eighth Circuit, No. 25-1121)
- Approval of new 88-mile rail line in Utah overturned by DC Circuit on environmental grounds, remanded. No. 22-1019 (D.C. Cir. Aug. 22, 2023), FD 36284; Supreme Court reversed DC Circuit (No. 23-975, May 29, 2025), remanded for further consideration – DC Circuit erred in holding that STB was required to consider environmental impacts of activities beyond its authority

Notable Recent or Pending STB Adjudicatory Proceedings (Cont'd)

- **Savage Tooele R. Co. (FD 36616) – STRC granted exemption to build an 11-mile line of railroad to connect to UP; review in DC Circuit (No. 25-1117)**
- **Soo Line/CP (FD 35068) – Reconsideration granted to deny reopening of exemption allowing CP to acquire line of railroad previously owned jointly with BNSF to provide New Century Ag with level of competition expected when STB approved transaction**
- **UP (FD 36501) – Exemption sought to allow line construction to serve shipper facilities; issues concerning premature construction, disruption of tribal lands; STB unable to conclude that Section 110(k) of NHPA was violated by UP's "anticipatory demolition"**

Notable Recent or Pending STB Adjudicatory Proceedings (Cont'd)

- **Restoration of Amtrak service along the Gulf Coast, FD 36496 (settled).**
- **Amtrak complaint involving “Southwest Limited” on-time performance (NOR 42175) (dismissed)**
- **Amtrak case against CN (FD 35743) continues**
- **See STB Press Release, dated 6/30/2025, discussing delayed STB proceedings, stating intent to resolve such matters promptly**
- **Chicago Metra granted terminal trackage rights from UP (FD 36844, 9/3/25), comp to be decided**

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