

SERVICE DATE – MARCH 4, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Digest:¹ This decision orders the parties to provide additional information and announces a technical conference.

Decided: March 4, 2026

On May 15, 2023, 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 (ATSF), over a 67.8-mile UP-owned rail line between Kern Junction and Mojave, Cal., known as the Tehachapis Line (the Line). See Atchison, Topeka & Santa Fe Ry.—Operating Rts.—S. Pac. Transp. Co., FD 22218, slip op. at 1 (STB served May 15, 2023).

Following Board-sponsored mediation that ultimately did not result in an agreement between the parties, the Board adopted a procedural schedule on December 5, 2023, and the parties² filed their opening statements and evidence on May 3, 2024. After a period of abeyance to allow resolution of a discovery dispute, the parties filed reply statements and evidence on March 14, 2025, and final briefs on April 15, 2025.³

UP has asked the Board to revise the conditions that the Interstate Commerce Commission (ICC), the Board’s predecessor, prescribed in 1967 when it set the compensation

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² UP and BNSF collectively are referred to herein as “the parties.”

³ While attempting to avoid references to information designated as confidential or highly confidential in its decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. See Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 1 n.2 (STB served Jan. 11, 2018). Here, the Board determined that it could not adequately explain the requests without disclosing the general nature of the disputes described in the parties’ filings, discussed below.

terms for ATSF's use of trackage rights over the Line.⁴ (UP Pet. 4.) UP claims the interest rental component of the total compensation paid by BNSF to UP for BNSF's use of the Line has become inequitable. (UP Final Brief 30.) UP states that the parties cannot agree on appropriate compensation for the trackage rights and asks the Board to intervene and reset the interest rental component using the Board's "SSW Compensation" methodology.⁵ (UP Reply 1, Mar. 14, 2025.) UP and BNSF agree that the Board should use the SSW Compensation's capitalized earnings approach (CE approach) to determine the value of the Line for purposes of establishing an interest rental payment. (UP Reply 2, Mar. 14, 2025; BNSF Reply 1, 20, Mar. 14, 2025.) UP and BNSF have each calculated the annual interest rental payment per year as of 2023, but their calculations under the CE approach differ greatly.

Based on the Board's review of these filings and given the differences in the parties' calculations of the CE approach, additional information related to line segment revenues, operating expenses, and line segment operating earnings (with and without negative earnings) is required to help inform the Board. The requests are described in more detail below. The Board will also request that the parties identify all the outstanding issues requiring Board resolution. Additionally, on June 3, 2026, Board staff will hold a technical conference with UP and BNSF to discuss the data submitted.

Supplemental Data

The parties will be directed to provide the following information by April 20, 2026:

1. Revenues. The CE approach values a railroad line segment by multiplying the specific earnings assigned to the line segment by an earnings multiplier. Atchison, Topeka & Santa Fe Ry.—Operating Agreement—S. Pac. Co., FD 22218, slip op. at 2 (ICC served Mar. 26, 1993). To measure line-specific earnings, both parties have used the Board's Average Total Cost (ATC) procedures to allocate revenues attributable to the Line, but the parties disagree on how to calculate the line segment revenues under the CE approach.

BNSF excludes earnings from double-stack traffic in calculating line-specific earnings, arguing that BNSF's predecessor's unilateral investment allows double-stacked intermodal containers to move on the Line. (BNSF Reply 6.) BNSF argues that if double-stack traffic is included, this effectively makes BNSF pay multiple times for the same investment—once to improve the tunnels on the Line and again through increased interest rental payments. (Id.)

UP includes double-stack traffic revenues, arguing that inclusion of this traffic is in line with the CE approach and the parties' agreement not to increase the Line's interest rental base by

⁴ Atchison, Topeka & Santa Fe Ry.—Operating Agreement—S. Pac. Co., 331 I.C.C. 367 (1967).

⁵ The framework for calculating trackage rights compensation, known as "SSW Compensation," was first established in St. Louis Southwestern Railway—Trackage Rights over Missouri Pacific Railroad—Kansas City to St. Louis, 1 I.C.C.2d 776 (1984), and was modified in St. Louis Southwestern Railway—Trackage Rights over Missouri Pacific Railroad—Kansas City to St. Louis, 4 I.C.C.2d 668 (1987).

the cost of ATSF's contribution to tunnel improvement costs. (UP Final Brief 9.) UP also states that inclusion of line earnings from double-stack traffic is equitable because UP will be using the Line to move double-stack traffic regardless of whether ATSF contributed to tunnel improvement costs and UP repaid Southern Pacific's share of the costs decades ago. (UP Final Brief 10.)

BNSF also argues that not all of BNSF's earnings are attributable to UP's ownership of the Line's track infrastructure and, therefore, should not be paid as rent to UP. (BNSF Final Brief 17.) According to BNSF, some portions of these revenues are based on "above-the-wheel" items related to BNSF's own operations and investments. (Id.) BNSF therefore only allocates half of its line-specific earnings to the valuation of the Line, and thus to the rental amount that would be paid to UP. (Id. at 17-18).

UP does not exclude half of BNSF's non-double-stack line earnings, arguing that the only potential adjustment needed is to subtract half of BNSF's tunnel-clearance investment costs from the interest rental base. (UP Reply, V.S. Mathur 23-32.) UP states that excluding 50% of BNSF's line earnings would inequitably require UP to subsidize BNSF's use of the Line. (UP Final Brief 12.)

To help the Board better assess the parties' calculations, both parties will be ordered to provide line segment revenues for each of the following scenarios:

A. For all traffic.

B. Excluding UP and BNSF earnings for intermodal containers moving in double-stack service that are attributable to the Line.

C. Reducing BNSF's non-double-stacked-traffic earnings by one-half.

2. Operating Expenses. To develop operating expenses attributable to the Line, both parties have used the Board's Uniform Railroad Costing System (URCS). However, the parties differ on the calculation of fixed costs when calculating operating expenses.

BNSF estimates the operating expenses for the Line using fully allocated URCS costs and removes the effects of a return on investment (ROI). (BNSF Reply, V.S. Baranowski/Zebrowski 27; BNSF Final Brief 14.) BNSF argues this is appropriate since the URCS variable costs do not include ROI when fully allocated and that ROI is not an expense item. (BNSF Reply, V.S. Baranowski/Zebrowski 18, 26.) BNSF states that allocating expense items proportional to, at least in part, the non-expense item of ROI included in URCS creates a distortion in the data. (Id. at 26.)

UP includes an ROI component in URCS, converting URCS costs into operating expenses for the Line. (UP Final Brief 25.) UP does this because it maintains that excluding ROI overstates the fixed costs assigned to the Line, which are higher because the Line's density exceeds system-average density and thus overstates operating expenses. (Id. at 26.) UP argues that "as long as ROI's impact on the system-wide ratio is the same as on the Line's ratio, the ROI factor cancels out." (Id. at 25.)

Both parties will be ordered to provide line-segment operating expenses for each of the following scenarios:

A. For all traffic: (i) Calculated based on the methodology described in each party's case in chief, including ROI; and (ii) Calculated based on the methodology described in each party's case in chief, using fully allocated URCS less ROI.

B. Excluding UP and BNSF earnings for intermodal containers moving in double-stack service that are attributable to the Line: (i) Calculated based on the methodology described in each party's case in chief, including ROI; and (ii) Calculated based on the methodology described in each party's case in chief, using fully allocated URCS less ROI.

C. Reducing BNSF's non-double-stacked-traffic earnings by one-half: (i) Calculated based on the methodology described in each party's case in chief, including ROI; (ii) Calculated based on the methodology described in each party's case in chief, using fully allocated URCS less ROI.

3. Earnings. The parties also disagree on how to calculate the URCS variable costs underlying ATC revenue allocations in determining line earnings.

BNSF would treat shipments generating negative earnings attributable to the Line as generating zero earnings. (BNSF Reply, V.S. Baranowski/Zebrowski 25.) UP would allocate revenues proportional to average variable costs when revenues initially allocated to the Line using ATC were below the URCS variable costs assigned to the Line. (UP Final Brief 25.)

To assist the Board in its calculations, both parties will be ordered to submit earnings calculations with and without negative earnings for each of the scenarios listed in the "Revenues" section, above.

4. Earnings Multipliers, Inflation Indices, and Usage Factor.

The parties do not agree on which years to use when calculating the earnings multipliers, inflation, and usage factors. UP does not use or include data from 2019 and 2020, stating those years do "not best capture the current economic conditions on the [] Line," (UP Reply, V.S. Mathur 12, 54-55.), while BNSF includes these years of data in their filing.

The parties also disagree on how to calculate the earnings multiplier. Under the CE approach, after developing base annual line-specific earnings, an earnings multiplier is applied to convert that amount into a line valuation. BNSF states that it applied the Board's pre-tax industry cost of capital as the earnings multiplier. (BNSF Final Brief 18-19.) UP uses a market-based multiplier. (UP Reply, V.S. Mathur 49.)

BNSF also argues that UP impermissibly triple-counts the effects of inflation, in part by applying an earnings multiplier that already includes inflation and earnings growth. (BNSF Final Brief 20.) UP disputes BNSF's allegations of triple counting inflation. (UP Final Brief 18-20.)

The parties also disagree on usage factor calculations. UP's usage factor calculations are based on UP's and BNSF's actual car miles, whereas BNSF uses a 50 percent usage factor. (UP Reply, V.S. Mathur 22; BNSF Reply, V.S. Baranowski/Zebrowski 53.) BNSF states that this is historically how the parties calculated usage factors. (BNSF 53). UP argues that the original parties' agreement has long expired and that UP is not bound to subsidize BNSF's use of the Line. (UP Final Brief 5.)

To assist the Board in understanding the parties' positions, UP will be ordered to provide an enterprise value-based earnings multiplier, using the methodology it submitted for 2021 through 2022, that includes data for the years 2019 through 2020, inflation indices for the years 2019 through 2020, and usage factors for the years 2019 through 2020.

5. Outstanding Issues. Because the parties agree on many of the elements of the CE approach and concede that some disputes have been resolved over the course of the evidentiary proceeding, each party will be ordered to provide a list of all outstanding issues that it believes still need to be resolved.

Technical Conference

The parties will also be directed to take part in a technical conference with Board staff at the Board's offices at 395 E Street, S.W., Washington, DC, at 10 a.m. EDT on June 3, 2026. The parties shall submit a list of participants, including names, positions, email addresses, and phone numbers, to Hearings@stb.gov no later than May 22, 2026, and shall indicate whether their participation will be in person or virtual. Participants located in the Washington, D.C., metropolitan area, including counsel for the parties, are encouraged to participate in person. In addition to counsel, the parties will be expected to make available individuals with the knowledge and expertise to discuss the issues in detail. The parties will be expected to discuss the calculations and conclusions put forth by the parties in their submissions completely at the conference and to respond to questions from staff regarding the submissions. The Board expects the parties to use this meeting as an opportunity to communicate their positions and to work collaboratively with Board staff.

Because the conference will involve discussion of material that has been designated as Highly Confidential and Confidential, pursuant to the protective order issued in this case, participation will be limited to the parties and may include employees of the parties, outside counsel, and outside consultants. In order to participate when confidential information is being discussed, the parties' employees, outside counsel, and outside consultants must have first executed the required confidentiality undertaking. Employees of a party may not participate when material designated Highly Confidential by the other party is being discussed. The conference will not be open to the public but will be transcribed. The transcription, redacted as necessary to protect confidential information, will be placed in the public record.

It is ordered:

1. The parties are directed to submit supplemental information, as described in this decision, by April 20, 2026.
2. Board staff will hold a technical conference with the parties on June 3, 2026, at 10 a.m. EDT at the Board's offices at 395 E Street S.W., Washington, DC, with an option for parties to join in person or virtually.
3. The parties are directed to submit a list of participants, including names, positions, email addresses, and phone numbers, to Hearings@stb.gov no later than May 22, 2026, and shall indicate whether their participation will be in person or virtual.
4. This decision is effective on the date of service.

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