

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND NORFOLK SOUTHERN CORPORATION

CONTROL AND MERGER

SUPPLEMENTAL VERIFIED COMMENTS

311304

ENTERED
Office of Chief Counsel
May 8, 2026
Part of
Public Record

I am Andrew C. Robertson, President of Atlantic Systems. I have previously submitted comments regarding the incompleteness of the UPNS Control Application, particularly its failure to provide a full discussion of the capital requirements that UPNS will expect from its IMC partners and new carload shippers. I later submitted additional comments concerning the proper definition of the relevant market for the UPNS combination. The Board's January 18 rejection noted that the Applicants failed to provide forward-looking market share calculations and a full explanation of the walkaway agreement.

1. Applicants' Response to STB Criticisms

Union Pacific responded on April 30 with a revised application meant to address the issues raised by the STB in January. It was unsatisfactory. UP now asserts that the relevant market for the transaction is **all freight transportation in the United States**, presumably including truck and rail traffic moving entirely within UP and NS territories (e.g., Cleveland to Atlanta). This expansive definition is an exaggeration and offers little value in understanding the

merger's competitive impact¹. Nonetheless, UP has stated its position. As it lacks credibility, opponents may reasonably offer a much narrower, perhaps even *too* narrow, definition of the relevant market that will still be far closer to reality.

The most newsworthy item in the April 30 submission is UP's claim that the merger will generate **\$3.5 billion in annual consumer benefit**. Dividing that figure by the 2.1 million "trucks off the highway" implies a savings of almost **\$1,700 per truck shipment**. The implicit assumption is that this extraordinary benefit to truck shippers will offset the real harm to UPNS's rail competitors (BNSF, CSX, CPKC, and CN), as projected in UPNS's own intramodal diversion study, as well as the possible harm to the now-larger set of potential captive shippers identified by the chemical and grain industries.

2. Possible Shipper Reactions to Merger Benefits

It would be useful to consider what the rail industry might look like after the merger, especially for the shippers who stand to gain from the \$3.5 billion consumer surplus. As an exercise, let us assume that by 2028 the UPNS merger has been approved and integration is proceeding smoothly.

A shipper in Lancaster, California, who currently sends 1,200 trucks per year to Athens, Georgia, reads that UPNS might cut his rate by as much as \$1,700 per trailer. He anticipates savings of nearly \$2 million annually by converting from truck to intermodal. Another shipper in Cincinnati sends 8,000 chemical tank trucks a year to Iowa City. He reads that UPNS has

¹ This definition of the relevant market contrasts with the more reasonable addressable market definition put forward in the Oliver Wyman traffic diversion study.

“bridged the Watershed” and that he should consider converting his truck traffic to rail carload service, again with potential savings of \$1,700 per load, about \$1.36 million per year.

But the Lancaster shipper soon learns that he must work through an intermodal marketing company (IMC). The IMC explains that UP’s linehaul cost is only one component of the total cost of moving trailers from Lancaster to Athens. The IMC is still seeking financing to acquire the 53-foot containers, chassis, and dray tractors needed to expand its business to meet expected demand. For now, it lacks the necessary yard capacity and drivers in both Los Angeles and Atlanta. The IMC explains that scaling up will take years, and that the shipper should not expect savings anywhere close to \$1,700 per trailer.

The Cincinnati shipper awaits a visit from a UPNS salesperson. When the salesperson arrives, the shipper learns that he will need to install sidetracks at both his Cincinnati and Iowa City facilities. Because UPNS does not supply tank cars, he will need to purchase or lease 100 railcars. He estimates that his (or his lessor’s) capital investment would exceed \$10 million. He also learns that service to Iowa City will require interchange with a short line, CRIC. The project becomes expensive and complicated.

Neither the Lancaster nor the Cincinnati shipper is likely to receive much of the \$3.5 billion in consumer benefit projected by Union Pacific. The Lancaster shipper will have a difficult time finding an IMC who is willing to invest in equipment, facilities, and management capacity to handle his business. And UPNS’s IMCs will need to add a **thousand (1000)** similar shippers to reach the goal of 1,200,000 truck diversions. Will the Cincinnati shipper make that multimillion-dollar investment in facilities and equipment with an uncertain return? Perhaps not. In any case, UPNS needs **two hundred (200)** similar shippers willing to shift from truck to carload service to make its diversion objective.

3. The Balance: Harm to Competition vs. UPNS's Claimed Public Benefits

To date, Union Pacific has been dismissive of the substantial cost burdens it is placing on its IMC partners and prospective new carload shippers. These are real costs, and they must be weighed against the merger's purported \$3.5 billion consumer benefit. That figure rests on several assumptions in the UPNS application:

- UPNS will divert 2.136 million trucks to intermodal and carload service.
- The blended UPNS cost advantage over current truckload rates would be 47%.
- The mix of diversions will be 60:40, intermodal: carload which explains why UPNS will have such a cost advantage over truckers.
- UPNS's IMC partners will acquire the containers, chassis, dray tractors, yards, and drivers needed to double their operations, essentially creating a new JB Hunt, *on their own dime*, for a revenue gain of only \$500 million on 1.2 million drays at both origin and destination.
- Current truck to carload shippers will make multibillion-dollar investments in sidetracks and railcars, again *on their own dime*.
- The *entire* cost advantage that UPNS gains over truckers will be generously passed through to shippers.

The claim of \$3.5 billion in public benefit is dependent on this set of tenuous assumptions. It does not account for the very real investments in equipment acquisition and facility expansion demanded of IMCs and new carload shippers. My earlier analysis estimated these investments could approach \$4.5 billion². Even if the IMCs and shippers can be persuaded to make those investments, they do not guarantee that the diversion target (2 million trucks off the highway!) will be reached. Furthermore, the benefit is highly sensitive to the **mix** of diversions as diversions from high cost truck to lowest cost carload service is an essential assumption. If those third party IMCs

² In an earlier analysis, I estimated that the "average" 1000 car a year truck-to-carload shipper would need to invest in railcars and plant facilities (side tracks) with a cost of over \$12,000,000. For the 188 shippers required to meet the earlier truck to carload diversion projection, the total would be \$1.8 billion assuming some would have private cars and side tracks. I estimated that IMCs as a group would need 72,000 containers, 58,000 chassis, 4600 dray tractors as well as yard improvements. These IMC investments could total \$2.4 billion. I have been recently informed that my earlier estimates made for the original filing may be too low

and shippers do not make that large financial commitment to the UPNS vision, the UPNS growth plan will certainly fail.

4. Conclusion

The revised UPNS control application meets the minimal completeness requirements set out by the Board in January. Serious deficiencies remain in the post-merger market share calculations. The explanation of UP's walkaway conditions (Section 5.8) raises more questions than it answers. The TRRA issue has been set aside for now. Nonetheless, UP has met the procedural threshold established by the Board. What UP has *not* done is provide a complete picture of how heavily its merger plan depends on the cooperation and financial commitments of its IMC partners and prospective new carload shippers.

The UPNS merger must meet the requirements set out by the STB in 2001 that it enhances competition and delivers material public benefits. Traffic diversion from other railroads is clearly a *diminishment* of competition. The applicants hope that by presenting a massive \$3.5 billion consumer benefit, the STB will draw a favorable comparison and approve the merger. However, while losses to other railroads (a *diminishment* of competition) are almost certain, the purported public benefit (\$3.5 billion) rests on an unstable foundation of overly optimistic, unrealistic, and perhaps naive assumptions.

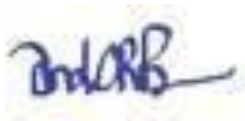
If UPNS cannot credibly explain their central claim that the merger will create a public benefit of \$3.5 billion, it must be denied by the STB.

Prayer for Relief

The Surface Transportation Board should accept the revised UPNS merger application as complete as it meets the STB's earlier procedural objections. However, in its

analysis of the merger over the coming months, the Board must pay close attention to the investments and operating costs that UPNS will impose on its IMC partners and new carload shippers. A credible calculation of the merger's net consumer benefit must be weighed against the merger's competitive harms.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Andrew Robertson", is centered below the closing. The signature is fluid and cursive.

Andrew Robertson

President

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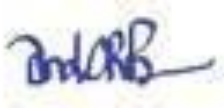
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May 8, 2026

cc. Parties of record

VERIFICATION

I, Andrew C. Robertson, verify under penalty of perjury that the statements contained in this filing are true and correct to the best of my knowledge, information, and belief. Executed on May 8, 2026.

A handwritten signature in blue ink, appearing to read "Andrew C. Robertson", is placed over a yellow rectangular highlight.

Andrew C. Robertson

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