

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND NORFOLK SOUTHERN CORPORATION

CONTROL AND MERGER

SUPPLEMENTAL VERIFIED COMMENTS

Andrew C. Robertson, President of Atlantic Systems, respectfully submits these comments pursuant to 49 U.S.C. §§ 10101, 11101, and 49 C.F.R. Part 1108. I previously filed comments identifying material deficiencies in the Applicants' submissions, including the absence of forward-looking market share calculations, incomplete discussion of capital requirements for IMC partners and new carload shippers, relevant market definitions, environmental impacts and unresolved issues surrounding the walk-away agreement. Although I ultimately considered the April 30 filing "complete" for purposes of addressing the merits rather than the completeness of the Application, recent developments external to the record now require the Board's immediate attention.

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ENTERED
Office of Chief Counsel
May 26, 2026
Part of
Public Record

I. INTRODUCTION

There is a need for limited but essential procedural protections to ensure that the Board's review of the proposed Union Pacific–Norfolk Southern (UP–NS) consolidation remains insulated from improper political influence.

In a wide-ranging interview for the May *Fortune*, Donald Trump proposed a government equity stake in the merged UP-NS to help reduce the national debt, comparing it to government stakes held in Intel and U.S. Steel.

“I make one of those deals every day that no normal person would make,” Trump says, while telling me about a possible railroad merger that he would want the government to have equity in. Musing on stakes his administration has claimed in companies like [Intel](#) and U.S. Steel, he continues, “***Some people actually think it’s un-American, what I do. They say, ‘You’re taking their company away.’***” Those critics aren’t seeing the big picture, he implies; after all, “We have \$38 trillion in debt.”

These statements imply a conditional relationship between federal political support and financial consideration — a posture wholly inconsistent with the Board’s statutory obligation to evaluate rail consolidations solely on competitive, service, employee, and public-interest grounds. This suggests a *quid pro quo* arrangement wherein determinative federal support for the merger is contingent upon political and financial support by the Applicants.

Given the administration’s demonstrated pattern of conditioning federal interaction on personal or political support, these statements place undue pressure on the STB. The Board is mandated to determine whether this transaction enhances competition and serves the public interest. The President’s public endorsement and solicitation of an ownership stake fundamentally undermine the integrity of this proceeding.

The integrity and enforceability of any final order issued in this docket depend upon the Board's independence from precisely this type of external pressure. The Board's authorizing statute does not contemplate and cannot accommodate executive-branch advocacy for a particular outcome in a pending adjudication.

Compounding these concerns was the removal of Board Member Robert E. Primus, allegedly linked to his perceived views on this transaction. This has created a reasonable appearance of executive influence over the composition of the adjudicative body. While I understand that the Board itself cannot reinstate a presidential appointee, the Board can and should create a transparent record of any relevant communications regarding Mr. Primus' dismissal.

II. FACTUAL BACKGROUND¹

A. Presidential Statements

President Trump publicly expressed support for the UP–NS merger and stated that the federal government “should obtain an equity stake” in the combined entity. Applicants have repeatedly welcomed the President's involvement. Concurrent reporting indicates that Union Pacific has made financial contributions to the construction of a “ballroom” on the site of the East Wing of the White House. These facts, taken together, create a substantial risk that the public will perceive the proceeding will be determined by considerations outside the statutory framework.

¹ In preparation for this submission, I referenced work done by Dan Bostek, Steve Blinn, and J. Vann Cunningham. Their relevant analysis can be found [at this link](#).

B. Removal of Board Member Primus

Board Member Robert E. Primus was removed from office during the pendency of this major consolidation. Press accounts attribute his dismissal, at least in part, to perceptions regarding his possible opposition to merger transactions before the Board. Regardless of the accuracy of those accounts, the timing and circumstances create a clear appearance of executive influence over the adjudicative process.

C. Regulatory Context

The Board must evaluate major rail consolidations under 49 U.S.C. § 11324(b). Any final order is subject to judicial review under the Administrative Procedure Act (APA), 5 U.S.C. § 706. A decision issued under circumstances suggesting political influence would be vulnerable to vacatur as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” and could raise due-process concerns.

III. ARGUMENT

A. The Board Has Authority to Protect the Integrity of Its Proceedings

The Board has the authority to safeguard its adjudicative processes. Federal agencies are obligated to ensure that their decisions are insulated from improper external influence. Courts have recognized that adjudicative impartiality is a core requirement of administrative law.

B. The President’s Statements Create a Structural Risk to This Proceeding

The concern is not merely one of appearance. A final order issued after public presidential advocacy for a specific outcome combined with reports of financial contributions by an Applicant to executive-affiliated initiatives would face substantial risk of judicial vacatur. The

D.C. Circuit has held that external pressures and ex parte communications can constitute procedural violations requiring remand. Protecting the enforceability of any final order is itself a compelling basis for the relief requested.

C. Transparency Is Necessary to Preserve the Administrative Record

Under the APA, agency decisions must be supported by the administrative record. 5 U.S.C. § 706. If executive-branch communications bearing on this transaction exist but are not placed in the record, courts may be unable to determine whether the Board's decision rested on permissible statutory grounds. A transparent record protects both the Board and the parties.

D. The Proposed Federal Equity Stake Raises Independent Concerns

The President's suggestion that the federal government acquire an equity interest in the merged railroad raises novel issues regarding competitive neutrality, rate regulation, and the Board's authority to regulate a carrier in which the federal government holds a financial interest. These issues fall outside the statutory criteria for merger review and warrant formal recognition and briefing. To be clear, I do not have ideological objections to government investment in or indeed control of critical technologies such as space transportation and artificial intelligence. However, any such investment must serve the public interest and protect national security. A railroad merger does not meet those criteria.

E. The Composition of the Board

With the addition of Richard Kloster, the Board now has three of the five members needed to comprise a full complement. Nonetheless, the analytical workload on the understaffed Board may jeopardize a full and comprehensive evaluation of the merits of the

UP-NS combination. The absence of an experienced former Board member, Robert Primus, further burdens the Board's workload. This must be remedied.

F. Conclusion

Donald Trump has on several occasions made public his support of the UP-NS merger. The President has seemingly asked for a quid pro quo share of Union Pacific Corporation's equity in return for his approval of the merger. To date, Applicants have publicly expressed satisfaction with the President's involvement. The summary dismissal of STB Board Member Robert Primus coupled with reports of financial contributions by Union Pacific to the White House "ballroom" has created an atmosphere where, to be blunt, "the fix is in".

This political intrusion undermines the extensive efforts of the Applicants' employees, counsel, and consultants in developing the Control Application. Most importantly, it threatens the legitimacy of the STB's deliberative process:

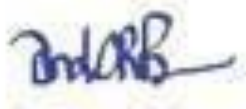
- **Institutional Integrity:** Any favorable recommendation issued by the Board under these circumstances will be viewed as compromised, inviting litigation from shareholders, competitors, and shippers.
- **Regulatory Stability:** Any approval tainted by political influence would likely be reversed by subsequent administrations, creating long-term uncertainty for the rail industry.
- **Precedent:** The prospect of federal ownership in private enterprise—ranging from railroads to sectors like steel, critical materials, artificial intelligence and space transportation—raises profound questions regarding shareholder dilution, corporate governance, and the role of government in private enterprise.

IV. PRAYER FOR RELIEF

For the foregoing reasons, I respectfully request that the Board:

1. **Issue a Declaratory Order** confirming that this proceeding will be evaluated exclusively under 49 U.S.C. § 11324(b), and that no external political communication, advocacy, or financial consideration will bear upon the Board's determination.
2. **Require Applicants to Disclose** within twenty (20) days all communications between any representative of the Applicants and any officer or employee of the Executive Office of the President, the Department of Transportation, or any federal agency relating to this transaction, including communications regarding potential federal equity participation, the White House 'ballroom' and the dismissal of Robert Primus.
3. **Direct Board Staff to Compile a Log** of any ex parte contacts from the executive branch concerning this transaction and place that log in the public docket.
4. **Issue a Public Statement** affirming the Board's commitment to conduct this proceeding independently, free from executive influence, and based solely on the record.
5. **Convene a Hearing or Require Briefing** on the implications of any proposed federal equity stake in the merged entity, including effects on competition, shipper interests, and the Board's regulatory authority.
6. **Issues of Board Composition Must Be Resolved.** The Board must be brought up to a full complement as soon as possible. To my understanding the STB has never ruled on a transaction of this importance with partial membership. The return of Robert Primus to the Board would ease the administrative burden caused by the UP-NS transaction.

Respectfully submitted,

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

Andrew C. Robertson

President

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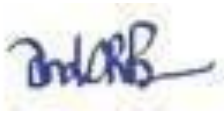
acr@transmatch.com

Date: May 26, 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 26, 2026.

A handwritten signature in blue ink, appearing to read 'ACR', is centered on a light yellow rectangular background.

Andrew C. Robertson

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