

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
June 12, 2026
Part of
Public Record

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

**COMMENTS OF
RAIL CENTS ENTERPRISES, INC.**

1. Overview

Rail Cents Enterprises, Inc. previously submitted comments for FD 36873 on August 18, 2025 and on January 20, 2026. These previous comments questioned that there would be benefits as a result of the proposed merger in terms of enhanced competition or revenue growth that would not be possible without a merger. Competition and growth are the central issues in this proceeding. In their Amended Railroad Control Application of April 30, 2026, UP and NS refine their case concerning enhanced competition and revenue growth in the statements of Dr. Elizabeth Bailey, Dr. Mark Israel, and Mr. David Hunt. Their case is not convincing.

2. Competition

In his statement in the Amended Application, Dr. Mark Israel repeats verbatim from the Initial Application the following explanation of why the merger would not reduce competition:

Consider a situation in which a transcontinental route is served by one railroad in the West (UP) and two railroads in the East (NS and CSX). Prior to the merger, the shipper will play the Eastern Railroads against each other to get the best rate. The railroads will compete until price falls to the cost of the higher-cost railroad, and then the lower cost railroad will price just under that cost and win the business because the higher cost railroad cannot profitably match that price.¹ ... [T]he merger does not alter the factors that determine price....²

¹ Initial Application, Volume 2, pp. 150-1, and Amended Application, Volume 2, p. 196

² Initial Application, Volume 2, p. 151, and Amended Application, Volume 2, p. 196

In order for the above explanation to have merit—in order for the proposed merger not to reduce competition—all of the following assumptions have to be true:

1. Unit costs must exist for manifest traffic.
2. Pricing officers must know what those unit costs are.
3. Pricing officers must use unit costs as their basis for quoting rates.
4. Pricing officers must not use considerations such as revenue per car, contribution to overhead per car, length of haul, or the number of single-line carloads per se as their basis for quoting rates.

The likelihood that all of the above are true is infinitesimal. Less than infinitesimal is the chance that a merger would increase pricing competition.

In her statement in the Amended Application, Dr. Elizabeth Bailey repeats, almost verbatim, from the Initial Application the following statements concerning the effect that the merger would have on incentives.

The combined railroad will also have stronger incentives to market and price single-line services aggressively....³ A merger between these two firm aligns incentives: a common owner internalizes externalities as the combined entity will, post-transaction, take into account the effect of each firm's actions on the overall combined firm.⁴

In the above, Dr. Bailey effectively refutes Dr. Israel's contention that the pricing officer for a combined system would offer rates only in consideration of costing measurements. Her statements acknowledge that a merged system would bring into play the pricing considerations enumerated in #4 above and reduce competition in the process. Even if a definitive unit cost for a carload in manifest service exists,⁵ the pricing officer for a merged system is incented 1) to quote rates that favor single-line service and 2) to refuse to quote a differentiated factor to a gateway.

³ Initial Application, Volume 2, p. 23, and Amended Application, Volume 2, p. 29 (with the deletion of "market and" before the word "price")

⁴ Initial Application, Volume 2, p. 31, and Amended Application, Volume 2, p. 32

⁵ which has been a matter of continuous controversy since the inception of railroading

The remedy for providing competitive factors to gateways for joint-line pricing that is proposed by UP and NS, Committed Gateway Pricing, is seriously flawed in multiple regards:

- It relies on a complicated and inflexible methodology that leaves no room for differential pricing of such factors;⁶
- It is vulnerable to tacit collusion in order to carve up markets, which becomes more possible as the number of players decreases; and
- It expires at the end of any merger oversight period, whereupon UP+NS would not have to provide competitive joint line factors to gateways at all.⁷

The other side of the competition coin is the internal competition of ideas needed to foment innovation and growth. Each railroad is an assortment of individuals, some of whom have personality conflicts. As the pool of separate Class I's shrinks, individuals who leave one carrier have fewer options to keep their institutional knowledge and their diversity of opinion inside the industry. More Class I railroads creates more degrees of freedom for innovation.

3. Growth

In the statement of Mr. David Hunt in the Amended Application, the Applicants have revised downward their estimate of normalized annual revenue growth by three percent, from \$4.214 billion⁸ down to \$4.089 billion.⁹ Additional traffic would supposedly be attracted to the merged system by its faster, more reliable service. In the words of their opening statement:

The increases between the current market shares provided by Dr. Bailey and the projected shares provided by Mr. Hunt are solely the result [of] customers shifting from truck and less efficient rail options to the more efficient single-line service that UP/NS will provide as a result of the merger.¹⁰

⁶ Differential pricing was arguably the greatest benefit bestowed on the railroads by the Staggers Act of 1980, because it allows railroads to set a rate in consideration of truck competition for a particular movement.

⁷ "unless extended by the Board," as anticipated by the Applicants in their opening statement (Volume 1, p. 23)

⁸ Initial Application Volume 2, p. 385

⁹ Amended Application Volume 2, p. 482

¹⁰ Amended Application, Volume 1, p. 56

The details of the faster and more reliable proposed service that are referenced by Mr. Hunt are itemized in the first two appendices of the joint statement of Mr. Eric Gehringer and Mr. John Orr: Appendix A—Optimized Train Plans and Appendix B—Growth Plan Trains.¹¹ It is a contention throughout the Application that these service improvements are the only requirement in order to generate the additional \$4.214 billion in normalized annual revenue. Supposedly not required in order to generate growth are:

- reductions in rail rates,
- more internal commercial resources,¹²
- more coordination with Intermodal Marketing Companies,
- fewer shippers who outsource transportation to truck carriers or have internal fleets,¹³
- better switching service,
- the prospect of reciprocal switching, or
- increased capital expenditures.¹⁴

If the operational changes outlined in Optimized Train Plans and Growth Plan Trains were the only requirements in order to trigger \$4+ billion in new annual revenue, such changes would be lucrative as run-through trains that avoid bottlenecks or rubber interchanges, without the necessity for merger.

In his comments about “The Volume Growth Credibility Gap” entered on May 6, 2026, Vann Cunningham succinctly states the problem with the Applicants’ projection of growth:

¹¹ There are discrepancies concerning Growth Plan Trains in the Applicants’ opening statement to their Amended Application, where 14 new intermodal trains are referenced (Volume 1, p. 19) versus 15 being listed in Appendix B (Volume 2, pp. 834-841), and where 11 new manifest trains are referenced (Volume 1, p. 19) versus 10 being listed in Appendix B (Volume 2, pp. 842-844). There were also substantial additions made in the Amended Application to Growth Plan Trains from the Initial Application, which had listed 12 new intermodal trains and 6 new manifest trains. These changes are indicative of the fluid nature of traffic opportunities and their measurement.

¹² Particularly helpful for prospective manifest customers would be more railroad assistance in the design of new sidetracks, limits on markups above out-of-pocket cost for the railroad’s portion of new turnouts, and limits on the customer’s responsibility for trackage that the railroad determines is necessary in order to closet local trains or otherwise assist with switching operations.

¹³ In his Verified Statement, David Hunt repeats a reference to a Transearch study (Volume 2, p. 506) showing that 45 percent of domestic truck tons move by in-house fleets or are outsourced to trucking contractors that would be stubbornly resistant to giving traffic to a railroad. This study was also in the Initial Application (Volume 2, p. 409).

¹⁴ A \$133 million decrease in annualized capital expenditures by UP+NS is predicted in both the Initial Application (Volume 1, p. 73) and the Amended Application (Volume 1, p. 57).

The applicants project approximately 12 percent volume growth within three years of consummation, attributing approximately 75 percent of that growth to truck-to-rail diversion. ... The credibility problem is empirical and structural. The combined volumes of UP and NS declined by 13 percent over the preceding decade. Projecting near-term double-digit growth against a documented decade-long trend of equivalent decline is an extraordinary claim that requires a structural explanation that the application does not provide. The methodological upgrade improves the projection model without addressing the barriers to achieving the projected outcomes.¹⁵

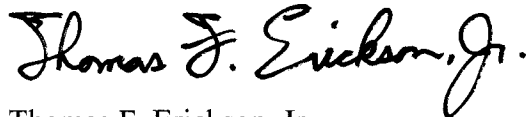
The Amended Application estimates that over half of projected revenue growth will come from intermodal traffic.¹⁶ The statements of Andrew Robertson,¹⁷ speaking as President of Atlantic Systems, Inc., illuminate the need for substantial capital and operating inputs by the Intermodal Marketing Companies and the absence of coordination with IMC's in the Application by UP and NS. In his submission entered May 8, 2026, Andrew Robertson states that:

I estimated that IMC's 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.¹⁸

4. Conclusion

The Amended Application of UP & NS repeats the same basic flaws inherent in their Initial Application, by failing to reasonably substantiate claims about enhanced competition and revenue growth as a result of the proposed merger.

Respectfully submitted,



Thomas F. Erickson, Jr.
Proprietor
Rail Cents Enterprises, Inc.
P. O. Box 235
Wallingford, PA 19086
Tel: 610-565-8458
tom.erickson@railecents.com

¹⁵ Letter of Comment of J. Vann Cunningham, pp. 6 & 7, entered on May 6, 2026 into Docket No. FD 36873

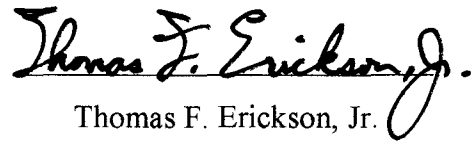
¹⁶ \$2.38 billion in intermodal revenue growth out of \$4.089 billion in total revenue growth (58 percent intermodal), per Exhibit 8-1, Volume 2, p. 482

¹⁷ See the submissions by Atlantic Systems Inc. entered on January 13, 2026; February 5, 2026; and May 8, 2026.

¹⁸ Supplemental Verified Comments of Andrew C. Robertson, footnote 2, entered on May 8, 2026

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing comments of Rail Cents Enterprises, Inc. has been electronically filed with the Surface Transportation Board this 12th day of June, 2026, and served via e-mail upon all parties of record.


Thomas F. Erickson, Jr.