
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND NORFOLK SOUTHERN
CORPORATION
CONTROL AND MERGER

VERIFIED COMMENTS OF ATLANTIC SYSTEMS INC. ON THE
COMPLETENESS OF THE EVIDENTIARY RECORD IN LIGHT OF THE UP-CN
AGREEMENTS

Andrew C. Robertson, President of Atlantic Systems Inc. ("ASI"), submits these Comments pursuant to 49 C.F.R. Part 1180 and the procedural schedule established in this docket. ASI submits these Comments to bring to the Board's attention a material gap in the evidentiary record: the Application and related supplemental submissions do not account for the operating, traffic, and network arrangements reflected in the recently announced agreements between Union Pacific Corporation ("UP") and Canadian National Railway Company ("CN"), including the Memoranda of Understanding ("MOU") executed on July 22, 2026.

These Comments do not take a position on the merits of the proposed UP-NS transaction, nor do they ask the Board to determine at this stage whether competition will be enhanced,

preserved or impaired by the UP–CN arrangements. Their sole purpose is to ensure that the Board and interested parties have a complete and current record that reflects Applicants' present network capabilities, operating arrangements, and evidentiary assumptions before the proceeding advances to its merits phase. As the Application stands, it appears materially incomplete because it does not account for the UP–CN agreements announced after the Application and related supplemental submissions were filed. These agreements have only been described in broad terms; more detail is needed to allow a complete understanding of their implications for this Application.

ASI respectfully urges the Board to require Applicants to submit supplemental filings correcting and updating the record, and to adjust the procedural schedule as necessary to allow parties a meaningful opportunity to review and respond to that supplemental information. ASI supports any Motion filed by other parties in this proceeding seeking the same supplemental production and reserves the right to supplement these Comments after the Board's *prima facie* ruling or after supplemental materials from Applicants are produced.

I. STATEMENT OF ASI'S INTEREST

ASI is a transportation consulting firm in traffic diversion studies and market impact. ASI has participated in prior STB proceedings involving railroad mergers and acquisitions for both Union Pacific and Canadian National. ASI has submitted comments on several occasions in this proceeding and has a direct interest in ensuring that the Board's review of the UP–NS transaction is grounded in a complete and accurate evidentiary record. The deficiencies identified in these Comments are not peripheral; they go to the operating, traffic diversion, market impact, competitive analysis and environmental assumptions that form the foundation of Applicants' public benefits case.

II. BACKGROUND

On April 30, 2026, Applicants submitted their Revised Application seeking authority under 49 U.S.C. §§ 11323–11325 for common control of UP and NS. UP supplemented the Application on July 27. On July 22, UP and CN executed agreements involving significant operating rights, trackage rights, and terminal governance changes. Those reported arrangements include:

- UP access over CN's EJ&E outer beltway around Chicago;
- CN trackage rights over UP lines from Memphis, Tennessee, to the Eagle Pass, Texas gateway;
- CN access between Tuscola and East St. Louis, Illinois, and to certain Missouri and Illinois shippers;
- Access to UP's Neff Yard; and
- Changes involving terminal ownership interests in KCT and TRRA.

These agreements appear to materially alter the operating and evidentiary baseline against which the UP–NS Application must be evaluated. Clearly the objective is to address competitive problems identified by the Applicants themselves. The Board need not decide in response to these Comments whether those arrangements improve competition, reduce competition, or leave competitive conditions materially unchanged. The immediate point is narrower: the Application's operating plan, competitive impacts, public interest benefits, and environmental evidence no longer describe the network and contractual arrangements that would exist if the transaction is approved.

III. THE BOARD SHOULD REQUIRE A COMPLETE AND CURRENT EVIDENTIARY RECORD

The Board's obligation under 49 U.S.C. § 11324 and 49 C.F.R. Part 1180 is to evaluate the UP–NS transaction on a full and accurate record. ASI submits that the record as currently constituted does not satisfy that standard in four specific areas, each addressed in turn below.

A. The Comprehensive Operating Plan Requires Updating

The Comprehensive Operating Plan currently before the Board models Chicago-area operations and related train flows without incorporating UP's reported EJ&E access and the full set of related CN rights. As the EJ&E provides a bypass for anticipated UP-NS traffic, those arrangements will certainly affect blocking, train counts, crew and locomotive deployment, interchange patterns, terminal use, and the routing of overhead traffic on the merged railroad as well as on CN. They may also affect where work is performed within the network, including whether traffic that avoids one Chicago terminal function requires classification, blocking, or density-building activity elsewhere.

ASI does not rely on any categorical assertion that routing around Chicago necessarily changes a fixed amount of terminal dwell, train velocity or transit time. The relevant point is that the Board and parties must have an updated operating plan explaining how Applicants now expect traffic to move, where blocking and classification functions would occur, and how those changed assumptions affect the Application's operating claims. Without that updated plan, the evidentiary record provides an incomplete and potentially misleading picture of how the combined railroad would operate.

B. Traffic Diversion and Market Impact Materials Should Be Updated

The diversion and market impact materials should likewise be updated to reflect the rights and access described in the UP–CN agreements. The Application's prior assumptions treated UP as a carrier without EJ&E access capability and did not account for the additional CN rights and related terminal changes now described in the MOU. Updated modeling is therefore necessary for

the Board to understand what traffic, if any, would be rerouted, what assumptions underlie Applicants' public benefit claims, and whether the existing evidence remains reliable.

This request does not depend on arguing that the UP–CN agreements increase competition. The agreements will likely change the operational picture in Chicago, Memphis, and other locations, but ASI's point here is limited to record completeness. If Applicants' evidentiary showing relies on operating assumptions, diversion estimates, or public benefit claims that have been overtaken by the UP–CN arrangements, those materials should be corrected or supplemented before interested parties are required to respond on the merits.

C. Environmental and Community Impact Analysis Should Reflect Revised Operating Assumptions

If the UP–CN agreements would materially change train routings, terminal activity, or traffic flows, those changes must also affect environmental and community impact analysis. Rerouted traffic can shift locomotive emissions, noise, gross ton-miles, grade-crossing delay, and localized operational impacts among different communities and facilities especially in suburban Chicago. The Board's environmental review must therefore be based on the operating plan and traffic assumptions that Applicants now expect to use, not on a superseded baseline.

Communities and stakeholders along affected corridors have an interest in accurate environmental and community impact information. The Board's obligation to consider environmental impacts under applicable law is not satisfied by analysis grounded in assumptions that Applicants have since revised through the UP–CN agreements. Supplemental environmental analysis should accompany any updated operating plan and diversion modeling.

D. The Procedural Schedule Should Be Adjusted After Supplemental Filings Are Produced

ASI respectfully urges the Board to adjust the procedural schedule in a manner that gives parties a meaningful opportunity to review supplemental materials after they are filed. ASI does not propose a fixed review period measured in advance from the submission of supplemental filings. The scope and complexity of any supplemental production cannot be known until the materials are produced, and parties are already undertaking work to respond to the current amended and supplemented Application.

Because the MOU and related agreements are private or confidential, ASI urges the Board to require production under the existing protective order in this docket or, alternatively, to direct production for in camera or counsel-only review. The Board should set an appropriate review, discovery, and comment period after assessing the completeness and significance of the supplemental materials, rather than fixing that period in advance without knowledge of what will be produced.

IV. ASI'S RESERVATION OF RIGHTS AND SUPPORT FOR RELATED MOTIONS

ASI supports any Motion filed by other parties in this proceeding seeking an order compelling Applicants to submit supplemental operating, diversion, environmental, or related materials reflecting the UP–CN agreements. The arguments set forth in these Comments apply equally in support of such a Motion, and ASI respectfully urges the Board to grant any such relief sought by parties.

Additionally, ASI reserves the right to supplement these Comments after the Board's ruling on the prima facie sufficiency of the Application, or after Applicants produce any supplemental materials ordered by the Board or submitted voluntarily. The record gap identified here cannot be fully evaluated until the supplemental materials exist; these Comments preserve ASI's position and put the Board on notice of the deficiency in the interim.

V. CONCLUSION

The UP–CN MOU materially alters assumptions that are central to the UP–NS Control Application. Its terms appear to affect operating assumptions, competitive positioning, market access, and terminal-area arrangements that bear directly on the evidentiary record before the Board. Several publicly described elements demonstrate why supplemental disclosure and analysis are necessary:

- Union Pacific receives access to the EJ& E greatly improving its operations in Chicago now and enhancing the competitiveness of the UP-NS combination if the merger is accepted;
- Canadian National immediately receives access to Mexico via Eagle Pass. CN's Mexico connection will be with FerroMex which is partly owned by Union Pacific. If the merger is approved CN also gains access to Kansas City and several two-to-one and three-to-two points in Missouri and Illinois and Canadian National will take over NS's role in the TRRA and KCT terminal areas; these are the precise competitive overlap zones acknowledged by UP;
- Canadian National has withdrawn its opposition to the UP-NS merger.

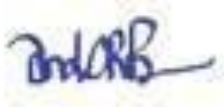
The UP-CN MOU was clearly designed to bolster UP's control application. Consequently, the STB must require a full accounting of how the EJ&E bypass factors into UP-NS operating and marketing plans, while rigorously testing whether CN can remain a genuine, independent competitor in the Midwest. Given UP-NS's prospective reliance on the EJ&E, CN's dependence on UP for Mexican market access and CN's withdrawal of its opposition to the merger, the appearance of a quid pro quo is understandable. The UP-CN MOU is inextricably tied to the instant proceeding. Indeed, CN's role may approach that of a co-applicant.

While merger opponents have demanded full disclosure of the MOU, Union Pacific has steadfastly refused to provide it—leaving the Board and the public to evaluate a transaction whose true terms remain deliberately obscured. What we know for certain about the UP-CN MOU is that we don't know enough.

VI. PRAYER FOR RELIEF

For the foregoing reasons, ASI respectfully urges the Board to require Applicants to submit supplemental operating, traffic diversion, public benefits, and environmental filings reflecting the UP-CN agreements, including any confidential materials subject to appropriate protective procedures. ASI further urges the Board to adjust the procedural schedule as necessary after those filings are submitted so that interested parties have a fair opportunity to review, test, and respond to the updated record.

ASI supports any Motion filed by other parties seeking the same supplemental production and reserves the right to supplement these Comments consistent with the Board's procedural orders. *Respectfully submitted,*

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Andrew C. Robertson

President

Atlantic Systems Inc.

P.O. Box 1984

New York NY 10163

917-751-1003

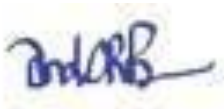
acr@transmatch.com

Date: August 17, 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 August 17, 2026.

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

Andrew C. Robertson

Atlantic Systems Inc.

New York, NY

917-751-1003

acr@transmatch.com