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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

— CONTROL —

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

Pursuant to Decision No. 30 issued on August 18, 2026, Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries[1] (collectively, "CN"), respectfully submits this notice of CN's intent to submit a responsive application in this docket on November 18, 2026, and a description of that anticipated responsive application.

EXECUTIVE SUMMARY

CN's responsive application will seek conditions to remedy the loss of competition from the Proposed Transaction[2] between Union Pacific and Norfolk Southern in key watershed geographies where the Applicants' networks overlap. On July 22, 2026, CN entered into a binding

[1] Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

[2] Union Pacific refers collectively to Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP"). Norfolk Southern refers collectively to Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NS"). Union Pacific and Norfolk Southern are collectively referred to as Applicants. Proposed Transaction refers to the proposed acquisition by Union Pacific of Norfolk Southern detailed in the amended application. *See* UP-39/NS-37, FD 36873 (filed Apr. 30, 2026) (the "Amended Application" or "Am. Appl.").

Memorandum of Understanding with Union Pacific related to the Applicants' Proposed Transaction ("CN MOU").[3] The conditions detailed in the CN MOU, if / when implemented,[4] will remediate several potential competitive harms from the Proposed Transaction, including by:

(1) **Preventing Loss of Competition for 2-to-1 Customers**: granting CN rail access to customer facilities in Illinois and Iowa where Class I railroad options would be reduced from 2-to-1;

(2) **Preserving Competition for 3-to-2 Customers**: granting CN rail access to customer facilities in Illinois and Iowa where Class I railroad options would be reduced from 3-to-2;

(3) **Accessing Kansas City**: granting CN new access remedying the loss of Class I access in areas where Applicants' networks overlap between Kansas City and St. Louis through (i) divestiture of UP's line between St. Louis, Missouri and Kansas City, Missouri; (ii) alternatively, if divestiture is not granted, (a) overhead trackage rights or overhead haulage rights and (b) local haulage rights to access customers on the line between St. Louis, Missouri, and Kansas City, Missouri; and (iii) access to UP's Neff Yard, including Neff intermodal terminal, in Kansas City;

(4) **Improving Access to East St. Louis and St. Louis**: granting CN new and improved access to St. Louis, Missouri and East St. Louis, Illinois through (i) overhead trackage rights between Tuscola and East St. Louis, Illinois; (ii) overhead trackage rights with The Alton & Southern Railway Company ("A&S") between Lenox/Mitchell, Illinois

[3] *See* UP-80/NS-78, FD 36873 at 203-211 (filed July 27, 2026) (the "Second Supplemental Submission").

[4] CN continues to cooperate with Union Pacific to finalize the numerous, complex definitive agreements required to give effect to the CN MOU.

and Valley Junction in East St. Louis; (iii) access to a location for handling CN's intermodal traffic; and (iv) access to a location for handling CN's automotive traffic; and

(5) **Resolving Control Issues of Terminal Railroads**: The CN MOU also seeks to resolve control issues relating to the Kansas City Terminal Railway Company ("KCT"), the Terminal Railroad Association of St. Louis ("TRRA"), and the Peoria & Pekin Union Railway ("P&PU").

CN's responsive application will ask the Board to condition any approval of the Proposed Transaction, pursuant to the Board's statutory authority to impose conditions,[5] on conditions detailed in the CN MOU. Specifically, CN's responsive application will ask the Board to condition approval of the Proposed Transaction on the following:

- **CN's Kansas City Access**:
  - the divestiture of UP's line between St. Louis, Missouri and Kansas City, Missouri (the "Kansas City Line") to CN,
  - in the alternative to divestiture the grant of overhead trackage rights or overhead haulage and local haulage to access customers on the Kansas City Line;
  - the lease of Neff Yard, including Neff intermodal terminal, in Kansas City in whole or in part with the option to purchase,
  - the grant of terminal trackage rights over BNSF Railway Company ("BNSF") between Eton, Missouri and Congo, Missouri, and
  - the grant of trackage rights between Lydia Avenue and Broadway in Kansas City, Missouri;

- **CN's Improved Access to East St. Louis / St. Louis**:
  - the grant of overhead trackage rights over UP's line between Tuscola, Illinois and East St. Louis, Illinois (the "Tuscola Line"),
  - the grant of overhead trackage rights over the lines of Union Pacific's wholly-owned subsidiary A&S between Lenox/Mitchell, Illinois and Valley Junction in East St. Louis, Illinois for connection to TRRA;

[5] 49 U.S.C. § 11324(c).

- CN also anticipates acquiring connecting trackage rights over the TRRA, which will be the subject of a separate filing with the Board[6];

- **CN Access to Foresight Energy Customer Locations**: the grant of haulage, or in the alternative, trackage rights over UP's line between Tuscola, Illinois and Hillsboro, Illinois to access the 2-to-1 customer facility there (Hillsboro Energy LLC) and between Springfield, Illinois and Monterey Mine 1 / Carlinville, Illinois to access the 2-to-1 customer facility there (Macoupin Energy LLC);[7] and

- **CN Access to Customers in Des Moines and Avon, Iowa**: the grant of haulage or, in the alternative, trackage rights over UP's line between Manly and/or Iowa Falls, Iowa and Des Moines and Avon, Iowa, including 2-to-1 and 3-to-2 customer facilities in and around Des Moines.[8]

CN's anticipated conditions are necessary to preserve competition in these areas if the Board approves the Proposed Transaction. CN's conditions will preserve Class I access to customers and help establish a stronger presence for CN in the Midwest, restoring competition in areas most impacted by the Proposed Transaction.

I. The CN MOU Conditions Will Resolve Competitive Impacts of the Proposed Transaction in Key Watershed Geographies Where the Applicants' Networks Overlap.

Applicants acknowledge in public statements that the CN MOU resolves certain competitive harms from the Proposed Transaction, including where Union Pacific's and Norfolk

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[6] By virtue of its existing ownership interest in TRRA, CN is entitled to such trackage rights over TRRA. CN plans to submit a petition for waiver or clarification that such trackage rights may be obtained without filing a responsive application.

[7] Foresight's website describes Macoupin as idled. *See* Foresight Energy, *Operations*, https://www.foresight.com/operations/. CN plans to seek a petition for waiver or clarification in connection with this location.

[8] In addition, CN will also request that the Board condition its approval of the Proposed Transaction on the grant of CN access to additional 3-to-2 and 2-to-1 customer locations in Illinois (Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal, Alton, and Danville). Because CN does not anticipate seeking trackage rights to access those locations, they are not discussed in this description of anticipated responsive application.

Southern's networks overlap in Kansas City and St. Louis.[9] However, Applicants did not identify or address in their Amended Application or Second Supplemental Submission the competitive impacts of the Proposed Transaction that the CN MOU terms would resolve if the Board approves the Proposed Transaction with these conditions. Instead, Applicants asserted that "the proposed transaction would have no significant potential horizontal competitive effects and does not raise any meaningful geographic competition concerns."[10]

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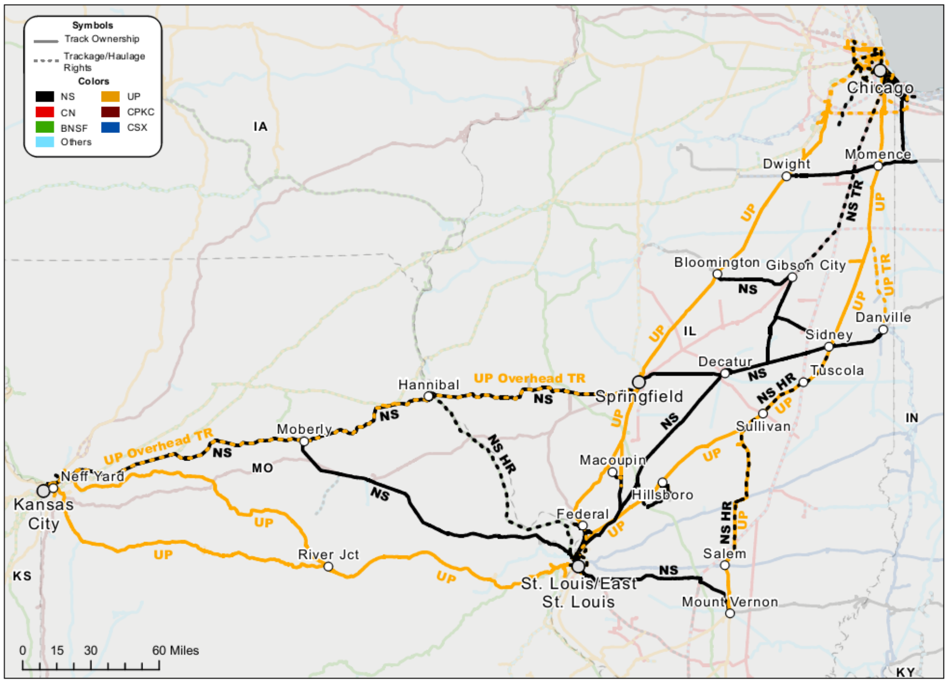
[9] *See* Jim Vena, Union Pacific Q2 2026 Earnings Call (July 23, 2026) (stating that the Memorandum of Understanding will provide CN with additional access to St. Louis and access to Kansas City, which prevents Union Pacific from being "too concentrated" post-merger and "takes care of" this part "of the company where [they] have a significant overlap"); *see also* David Lassen, TrainsPro, *CEOs of UP, NS, say latest additions to merger application further enhance competitive aspects* (July 28, 2026), available at https://www.trains.com/pro/freight/class-i/ceos-of-up-ns-say-latest-additions-to-merger-application-further-enhance-competitive-aspects/ (noting that NS's CEO Mark George acknowledged that the agreement with CN "resolves Kansas City for us," and "create[s] more competition in that market"); *see also* Remarks of Jim Vena, Virtual Fireside Chat Hosted by Bernstein Research (Sept. 1, 2026) ("This is an end-to-end merger with a small piece that we knew we had to take care of, which we have with the Canadian National Railway access between St. Louis and Kansas City…we knew that we had some concentration happening because of the additional line that we were going to take over from Norfolk Southern between St. Louis and Kansas City. Right from the very start, we knew we needed to fix that, and that's what we've done.").

[10] *See* Second Supplemental Submission at 184.

Figure 1



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

As the above map demonstrates, Union Pacific's and Norfolk Southern's networks overlap between Kansas City and St. Louis, and rail customers would lose a competitive Class I option as a result of the Proposed Transaction, absent the CN MOU conditions.

Applicants have since publicly acknowledged these concentration concerns between Kansas City and St. Louis, recognizing a remedy is needed.[11] A condition granting CN access to Kansas City and expanded access to St. Louis is critical to preserving rail competition in the Kansas City and St. Louis areas.

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[11] *See supra* note 9; *see also* Am. Appl. Vol. 4 at 75, 182 (divestment of any one line between Kansas City and St. Louis excluded from list of Non-Required Restrictions Union Pacific is not required to accept to under the Merger Agreement).

II. The CN MOU Conditions Will Also Preserve Competition for 2-to-1 and 3-to-2 Customers.

The CN MOU conditions will also restore competitive access for many customer facilities that would lose access to a Class I railroad after the Proposed Transaction. CN will request access to preserve competition for any 2-to-1 or 3-to-2 customer for which it is commercially and operationally viable for CN to do so, including by seeking trackage rights where necessary to preserve competition. CN currently anticipates it may file a responsive application seeking trackage rights to access 2-to-1 and 3-to-2 customer facilities in Hillsboro, Illinois, Monterey Mine 1 / Carlinville, Illinois, and Des Moines and Avon, Iowa. For the remaining 2-to-1 and 3-to-2 customers in Illinois (Chicago, Bloomington, Mt. Vernon, Granite City, Momence, Federal, Alton, and Danville), CN plans to negotiate haulage and/or switching agreements with Union Pacific.

Applicants have acknowledged that, as a result of the Proposed Transaction, two Foresight Energy facilities – Hillsboro Energy LLC and Macoupin Energy LLC – would have their Class I access reduced from two Class Is to one. Applicants therefore have agreed to grant trackage rights access to another Class I carrier.[12] Granting CN haulage rights, or in the alternative, trackage rights to the Foresight Energy facilities as a condition to the Proposed Transaction will ensure that competition for Foresight Energy is preserved following the Proposed Transaction.[13]

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[12] Am. Appl. Vol. 1 at 395; Second Supplemental Submission at 58.

[13] CN understands that Foresight Energy, which operates Hillsboro Energy LLC and Macoupin Energy LLC, has requested that Applicants grant access to BNSF to serve their facilities via trackage rights post-merger. *See* Am. Appl. Vol. 1 at 395. CN, however, is willing to serve the Foresight Energy facilities via trackage rights, and would be able to serve the Hillsboro, Illinois facility via the Tuscola Line (if approved by the STB) post-merger, in the event that: (i) no agreement between Union Pacific and BNSF is reached for such rights; (ii) BNSF does not submit a responsive application for trackage rights; (iii) the customer requests CN be granted access; or (iv) the Board determines that CN is a superior remedy carrier to resolve the loss of Class I access.

Additionally, as Applicants further acknowledge, the Proposed Transaction, unremedied, would also reduce competitive rail options for many customer facilities in and around Des Moines, Iowa (including Avon, Iowa) from three Class I carriers to two or from two Class I carriers to one.[14] Moreover, the Des Moines, Iowa area would generally experience a loss of Class I access from three to two, as the Des Moines area is currently accessed by only three Class Is – Union Pacific, Norfolk Southern, and BNSF. Granting CN haulage rights, or in the alternative, trackage rights to Des Moines and Avon, Iowa as a condition to the Proposed Transaction will ensure that there is no loss of competition as a result of the Proposed Transaction for customers in the Des Moines, Iowa area.[15]

III. CN's Conditions Are Necessary to Preserve Competition and Will Generate Substantial Public Benefits.

The Board has specific statutory authority under 49 U.S.C. § 11324(c) to impose conditions on any approval of the Proposed Transaction, including "requiring the granting of trackage rights and access to other facilities." The Board is required to consider, among other factors, "the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction" and "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system."[16] The competitive harms identified above – particularly in the Kansas City, St. Louis, and Des Moines

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[14] *See* Second Supplemental Submission at 59-62.

[15] CN understands that Applicants have proposed granting haulage rights for CN to access Des Moines, Iowa on BNSF's line between St. Louis, Missouri and Des Moines, Iowa. *See* Second Supplemental Submission at 60-61. However, CN currently anticipates requesting trackage rights or, in the alternative, haulage over the UP line between Manly and/or Iowa Falls, Iowa and Des Moines and Avon, Iowa.

[16] 49 U.S.C. § 11324(b).

areas, and at 2-to-1 and 3-to-2 customer facilities across these regions – require the imposition of meaningful conditions to preserve rail-to-rail competition.

Granting CN trackage rights and other access rights as detailed herein is necessary to ensure the Proposed Transaction is in the public interest. The CN MOU conditions will strengthen CN's existing presence in the Midwest by providing enhanced connectivity between CN's existing network and critical gateway regions. Trackage rights over the Tuscola Line will connect CN's existing lines in central Illinois to the St. Louis gateway, and trackage rights over the Kansas City Line will extend CN's reach across Missouri, restoring competition where the Applicants' lines directly overlap. CN's entry into Kansas City will create a new competitive option for customers in a region where the Proposed Transaction would otherwise increase concentration and will help offset the potential competitive harms from combining Union Pacific's and Norfolk Southern's parallel routes between Kansas City and St. Louis. The lease of capacity at Neff Yard, including Neff intermodal terminal, with an option to purchase, will allow CN to effectively access customers in Kansas City that will lose a Class I alternative after the Proposed Transaction. These conditions will ensure that CN can function as an effective and sustainable competitor in the region, preventing the erosion of competition that the Proposed Transaction would otherwise bring about.

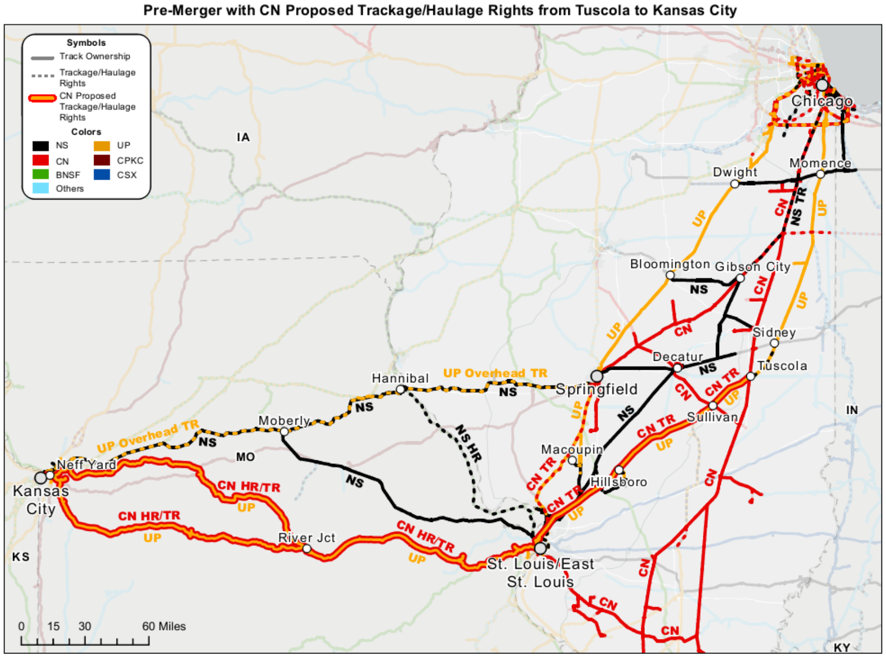
Moreover, granting CN access to customers in Hillsboro, Illinois, Monterey Mine 1 / Carlinville, Illinois and Des Moines and Avon, Iowa will preserve and enhance competitive rail service by ensuring that customers at affected 2-to-1 and 3-to-2 locations retain meaningful competitive options. By designating CN as the remedy carrier at these facilities, the Board can prevent the loss of competitive alternatives from the combination of Union Pacific's and Norfolk Southern's overlapping networks. CN is committed to investing substantial resources to preserve competitive routing options for customers in Kansas City, St. Louis, and Des Moines and to increase rail service options. Approval of the responsive application will foster competition in the watershed region, provide customers with improved service options, and generate significant public benefits.

IV. CN's Anticipated Responsive Application.

Below, CN outlines the key elements of its anticipated responsive application. CN's responsive application will ask the Board to impose conditions requiring Union Pacific and Norfolk Southern to grant CN trackage rights and related operating authority to preserve competitive rail options at locations affected by the Proposed Transaction. The principal elements of the responsive application are as follows:

<u>Kansas City, Missouri and St. Louis, Missouri/East St. Louis, Illinois</u>

Pre-Merger with CN Proposed Trackage/Haulage Rights from Tuscola to Kansas City



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Trackage Rights over the Tuscola Line. CN will seek overhead trackage rights on Union Pacific's line between Tuscola, Illinois and East St. Louis, Illinois (the "Tuscola Line"). The Tuscola Line extends between Tuscola, Illinois at MP 153.49, and Sullivan, Illinois at MP 176.2, to Lenox, Illinois at MP 275.4 and MP 269.70, and between Lenox, Illinois and Q Tower TRRA, Illinois at MP 281.00.

Divestiture of the Kansas City Line. CN will seek authority to acquire the Kansas City Line between Rock Creek Junction in Kansas City, Missouri and Twelfth Street in St. Louis, Missouri (the "Kansas City Line") in the event the Board determines that trackage or haulage rights do not constitute a sufficiently effective remedy and orders divestiture of the Kansas City Line, or in the event Union Pacific decides to sell the line. The Kansas City Line extends between Twelfth Street, Missouri at MP 0.36, and River Junction, Missouri at MP 128, to Eton, Missouri at MP 276 and between Congo, Missouri at MP 444.25 and Rock Creek Junction, Missouri at MP 445.01 to Neff Yard and between River Junction, Missouri at MP 128, and Rock Creek Junction, Missouri at MP 455.01.

Alternative Trackage Rights over the Kansas City Line. CN will seek overhead trackage rights on the Kansas City Line. CN will also seek local haulage rights on the Kansas City Line to serve affected customers, as well as overhead haulage.

Requests to Effectuate Kansas City Access. In connection with the Kansas City Access, CN will also seek the following as part of a comprehensive condition to fully restore the loss of competition in Kansas City:

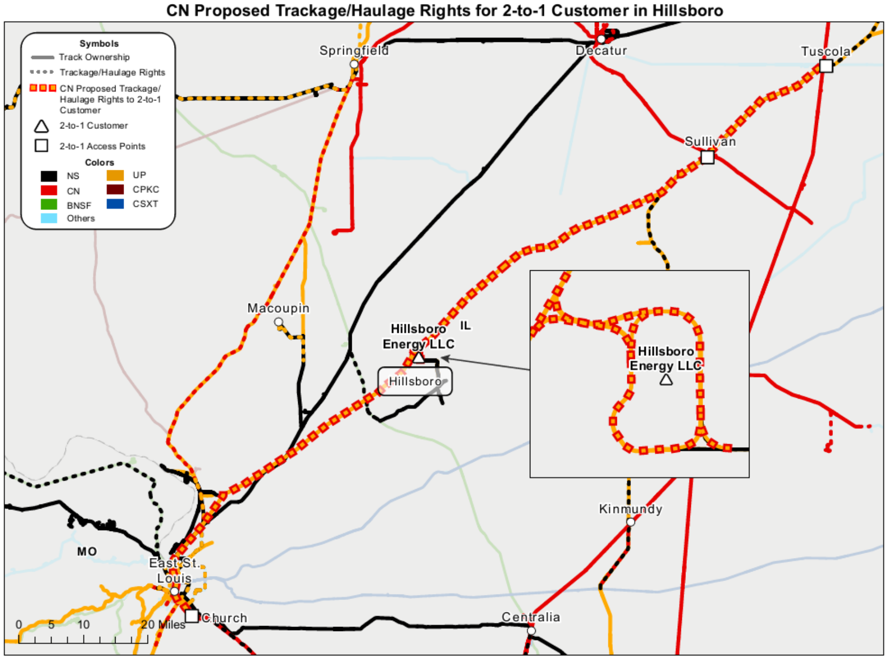
- Lease or acquisition of Union Pacific's Neff Yard, including Neff intermodal terminal, in Kansas City, Missouri, in whole or in part, to support CN's operating plan;
- Terminal trackage rights pursuant to 49 U.S.C. § 11102 over 7.8 miles of track owned by BNSF between Eton, Missouri at MP 436.5 and Congo, Missouri at MP 444.3;
- Trackage rights between Lydia Avenue in Kansas City, Missouri at MP 281.7 and Broadway in Kansas City, Missouri at MP 283.1;

Requests to Effectuate St. Louis Access. In connection with the St. Louis / East St. Louis Access, CN will also seek the following as part of a comprehensive condition to fully restore the loss of competition in St. Louis:

- Trackage rights over A&S between Lenox/Mitchell, Illinois and Valley Junction in East St. Louis, Illinois; and
- Trackage rights from TRRA for CN operations between East St. Louis, Illinois and St. Louis, Missouri.[17]

<u>Hillsboro, Illinois</u>

CN Proposed Trackage/Haulage Rights for 2-to-1 Customer in Hillsboro



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Trackage Rights over Union Pacific to Reach Hillsboro. CN will seek overhead trackage rights on Union Pacific's line between East St. Louis, Illinois and Hillsboro, Illinois, to serve the affected 2-to-1 customer in Hillsboro.

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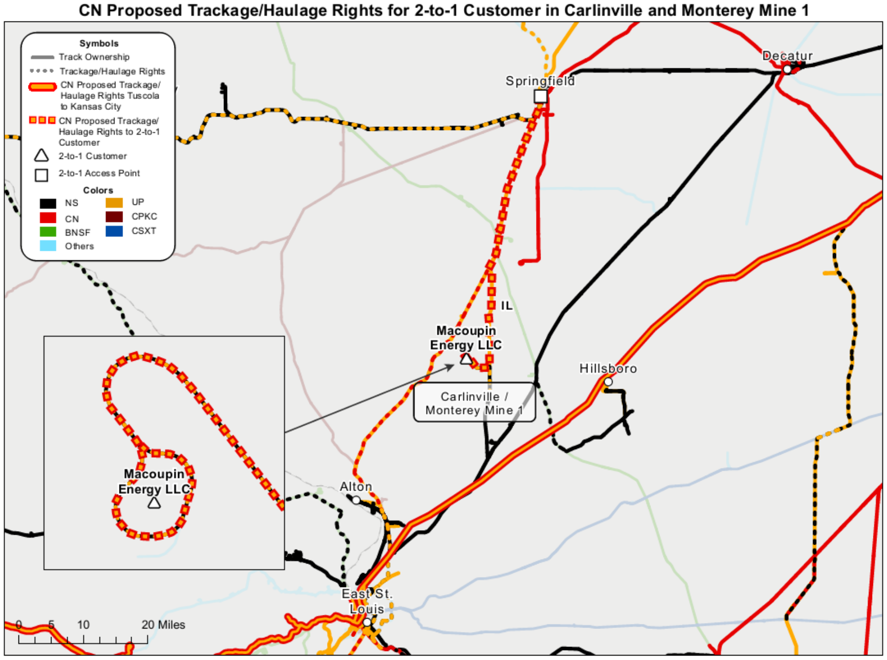
[17] CN plans to file a petition for waiver or clarification with respect to this trackage rights exemption.

<u>Monterey Mine 1 / Carlinville, Illinois</u>

CN Proposed Trackage/Haulage Rights for 2-to-1 Customer in Carlinville and Monterey Mine 1



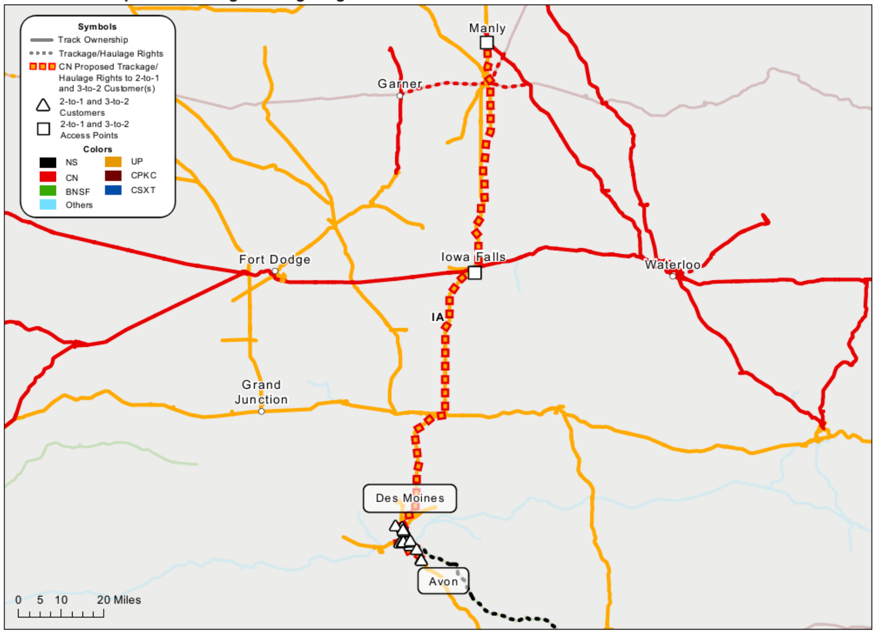
Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Trackage Rights over Union Pacific to Reach Monterey Mine 1 / Carlinville. CN will seek overhead trackage rights on Union Pacific's line between Springfield, Illinois and Monterey Mine 1 / Carlinville, Illinois, to serve the affected 2-to-1 customer in Monterey Mine 1 / Carlinville.[18]

[18] Foresight's website describes Macoupin as idled. *See* Foresight Energy, *Operations*, https://www.foresight.com/operations/. CN plans to seek a petition for waiver or clarification in connection with this location.

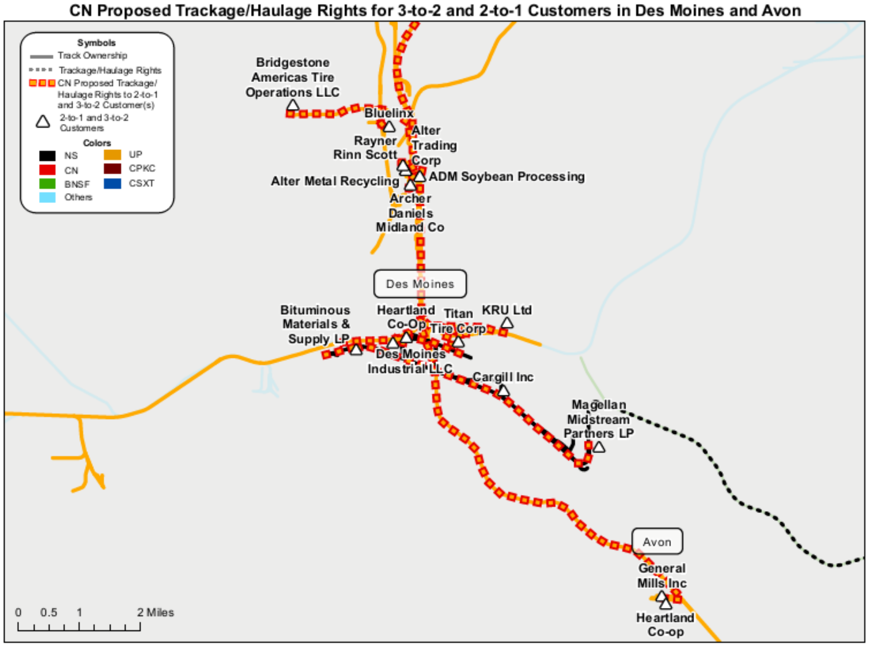
<u>Des Moines, Iowa</u>

CN Proposed Trackage/Haulage Rights for 3-to-2 and 2-to-1 Customers in Des Moines and Avon



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

CN Proposed Trackage/Haulage Rights for 3-to-2 and 2-to-1 Customers in Des Moines and Avon



Source: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database; Railinc Centralized Station Master.

Trackage Rights over Union Pacific between Manly and/or Iowa Falls and Des Moines and Avon, Iowa. As noted above, CN currently anticipates seeking trackage rights on Union Pacific's line between Manly and/or Iowa Falls, Iowa and Des Moines and Avon, Iowa.

Respectfully submitted,

/s/ Sara Y. Razi

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CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of September 2026, I caused a true and correct copy of the foregoing to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew Bernstein
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Sr. Paralegal Manager
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