

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36873

310843

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UNION PACIFIC CORPORATION AND NORFOLK SOUTHERN CORPORATION

CONTROL AND MERGER

SUPPLEMENTAL VERIFIED COMMENTS OF ANDREW C. ROBERTSON

I am Andrew C. Robertson, President of Atlantic Systems. I have previously submitted comments regarding the incompleteness of the UPNS Control Application. STB's January 18 rejection noted that the Applicants failed to provide forward-looking market share calculations. As identified in my January 13 comments, the Applicants have failed to account for the multibillion-dollar equipment and capital expenditures required by TTX, shippers, and IMCs. Without the equipment accounting identified in my previous filing, the market share calculations requested by the Board on January 18 remain a mathematical impossibility

On January 18, the Surface Transportation Board (STB) rejected the original Application as incomplete thus validating my earlier concerns. The Board directed UP to provide detailed calculations of the market shares they expect to obtain through the projected traffic diversions. Producing accurate market share calculations requires, as a threshold matter, a clear definition of the relevant market(s) for this transaction. The deficiencies in the original application are not

procedural or isolated oversights. They can be corrected. In these comments, I will address the need for market impact analyses (i.e. market share changes) for:

Intramodal rail carload competition

Intermodal rail:truck competition

Procompetitive measures viz. bridging the Watershed and Committed Gateway Pricing

I. Importance of Defining the Relevant Market

Although Union Pacific Norfolk Southern (UPNS) did not explicitly define the relevant market, the Applicants rely on the concept of a “Seamless Transcontinental Network,” which they often describe in extremely broad terms to encompass all rail and truck traffic moving between the East and West. This expansive framing has the effect of trivializing the local and regional impacts on competition. In contrast, UPNS provides highly specific estimates of traffic diversions from other railroads and motor carriers. Logically, the relevant market should only comprise the origin–destination–commodity flows in which UPNS believes it can realistically capture new traffic. Because market share calculations are only meaningful within properly defined markets, the STB cannot evaluate UPNS’s competitive impact without segmenting the traffic flows into distinct, economically coherent markets.

The UPNS Oliver Wyman traffic diversion studies (Exhibit 2-3) produced **gains** and **losses** that can be summarized as:

	UPNS	UPNS IMC	OtherRR/IMC	Truck
Carload to Carload	237,000		-237,000	
Truck to Carload	188,000			-804,000
Intermodal to Intermodal	204,000	204,000	-204,000	
Truck to Intermodal	1,233,000	1,233,000		-1,233,000
Total	1,862,000	1,437,000	-441,000	-2,037,000

UPNS **gains** carload and intermodal (linehaul) traffic from other railroads and truckers. Other railroads **lose** carload and intermodal (linehaul) traffic to UPNS. UPNS/IMC partners **gain** dray traffic from IMCs partnered with UPNS's rail competitors as well as from truckers. IMCs partnered with UPNS competitors **lose** drays to UPNS/IMCs. Finally, truckers **lose** loads to UPNS carload and UPNS/IMC intermodal. As the chart above shows, the principal beneficiaries of UPNS diversions are UPNS and its allied IMCs. **By these calculations, these 'friendly' IMCs will take a commanding position in the intermodal drayage market.**

These diversions can be segmented by factors such as the likelihood of diversion, potential constraints to UPNS market power, actual operating capacity of aligned IMCs and the competitive response of harmed rail and IMCs.

II. Relevant Market Segments

A. Intramodal Rail Diversions

i. These movements (237,000 carloads) involve shippers with existing rail sidings and established commercial relationships with the Applicants. Diversion to UPNS carload service is therefore feasible and, in many cases, likely. The absence of meaningful truck competition for these shippers suggests they cannot rely on highway alternatives to constrain potential UPNS market power.

ii. UPNS anticipates diverting 204,000 intermodal units from other railroads, primarily CSX and BNSF. These diversions imply that a new IMC (e.g. Hub replacing JB Hunt) will enter the equation. As this traffic is by its nature competitive with trucks and other intermodal services, the potential for the abuse of market power by UPNS is small.

B. Truck-to-Carload Diversions

Truck diversions to UPNS carload service imply that the Applicants have, or could reasonably develop, a direct commercial relationship with the shipper. Only because these shippers now have access to and are using truck transportation, competitive constraints on UPNS's potential market power are inherent. However, the willingness of these shippers to invest in rail sidings and private railcars is speculative.

C. Truck-to-Intermodal Diversions

The Oliver Wyman (OW) study's projections of truck-to-intermodal diversions are most problematic. UPNS **does not have commercial relationships** with these shippers; the IMCs—who are the customer-facing entities—do. Further the UPNS assumes that IMCs will voluntarily

shift business to the merged railroad despite possible capacity and contractual constraints. The disruption to the motor carriers in the affected markets will be substantial. Even more consequential would be the enormous increase in the volumes for the IMCs aligned with UPNS. While the market impact of these diversions is very large, it rests on assumptions about market dynamics which are clearly hypothetical.

D. Watershed Markets

UPNS claims that the new combined system will offer shippers in the Watershed Market (250 miles East and West of the Mississippi River) new more efficient single line carload service. For example, this would mean that Iowa shippers on UP could reach the East with faster, lower cost service. Intuitively this should benefit carload shippers. However, UPNS has not quantified the benefit to Watershed shippers nor put those benefits in a larger context.

E. Committed Gateway Pricing

UPNS is aware of the STB's dictum that the merger must "enhance competition". In response, UPNS offered Committed Gateway Pricing (CGP) a formulaic pricing algorithm that will allow CSX and BNSF to independently quote rates to/from exclusive points on UP and NS respectively. This should be a benefit to carload shippers; however again this claim is conjectural and must be placed in context. How much traffic is potentially open to CGP? How large is this potential CGP traffic compared to all traffic for these exclusively served shippers?

III. Definition of Relevant Markets

A. Intramodal Diversions

The OW diversion study identified specific origin–destination–commodity flows. Their studies used different levels of geographic detail (SPLC, county, state, BEA, region). Commodity detail also ranges from FAK to 5-digit STCC. While differing levels of detail may have been appropriate for their diversion model, a single consistent apples-to-apples definition should be used for market share calculations. Without a single, consistent geographic and commodity definition, market share calculations will be arbitrary and potentially misleading.

With the waybill sample and Transearch data at hand, market share changes can be determined for both rail-to-rail and truck-to-rail diversions. In my experience, **BEA to BEA at 2digit STCC by mode** would provide a useful measure of market impact while maintaining carrier and shipper confidentiality. Properly, diversions of carload traffic from other railroads and conversion of truck traffic to carload service can be aggregated when determining market shares; with the understanding that shippers now using trucks have optionality that most current rail shippers do not have.

B. Intermodal Diversions

Truck-to-intermodal diversions present a significantly more complex situation. Because UPNS sells linehaul service and IMCs control customer relationships, pricing, and capacity, the competitive effects of the merger occur in the IMC–railroad interface, not in actual shipper O-D markets. Shipper identity, precise origin and destination, and commodity type are therefore not relevant to UPNS’s competitive position or the merger’s market impact.

UPNS will serve the small number of IMCs (e.g., J.B. Hunt, Hub Group, Schneider, STG) at a limited number of terminals (e.g. Detroit (Livernois), North Jersey (Croxtan), Los Angeles (LATC)). Logically the relevant market should therefore be defined as:

the set of IMCs operating in each UPNS terminal market area and the railroads that serve them.

However, calculating market share changes for these intermodal diversions is not possible using the first OW study. OW made assumptions about the attractiveness of UPNS's linehaul service to shippers with whom UPNS has no commercial relationship. As noted, UPNS appears to assume that "if we build it, they will come," even though the economic interests of UPNS, IMCs, and shippers are not always aligned.

The claim that the merger will remove two million trucks from the highway is central to the Applicants' pro-competitive narrative. Yet UPNS has not demonstrated that the UPNS-aligned IMCs—who will be responsible for handling 1,437,000 diversions from trucks and other IMCs—have been consulted, have the necessary operational capacity, or even support the Applicants' assumptions. General statements of support by Hub, Knight-Swift and ONE must be complemented by detailed marketing, operating, facility construction and equipment financing plans comparable to those offered by UPNS in their December 17 Application.

A useful analogy is the following: General Motors could conduct a market study showing that a new low-emissions hybrid engine would double its market share in California. It could begin producing and shipping vehicles equipped with that engine. However, if GM had failed to inform its dealers, those dealers would lack the showrooms, staffing, service infrastructure and financing necessary to handle a doubling of sales volume. Properly, GM should conduct in-depth

market studies to have the input of auto dealers who understand the California marketplace and their own capabilities. Similarly, UPNS has planned for massive intermodal growth without securing the full participation of the IMCs who would be required to execute it.

C. Watershed and CGP Markets

Unlike the relevant markets for intermodal and intramodal diversions, which are defined by O-D flows, the benefits of Watershed access and CGP are localized at the origin or destination. Market share changes must therefore be calculated at the BEA level to determine whether these measures meaningfully offset the loss of optionality for captive shippers. Diverted traffic at Origin and Destination BEA and 2-digit STCC should be displayed in a way that they can answer questions like:

How much Fort Wayne carload traffic was diverted to a UPNS routing? How much Fort Wayne carload traffic now moves to UP territory? Does the Watershed now constitute a substantial barrier for Fort Wayne shippers? Would such a barrier disappear after the merger?

How much traffic in Little Rock at exclusive UP stations moves to/from CSX exclusive stations? How much does this potential CGP traffic in Little Rock compare to all UPNS diversions? How does it compare to all UP carload traffic in Little Rock?

IV. Net Diversions - Questions

UPNS would be the largest railroad in the United States with much increased market power. To evaluate whether the merger enhances or harms competition, the STB must determine whether:

- UPNS's increased scale translates into dominance in specific O-D commodity markets

- Watershed and CGP access meaningfully offset the loss of optionality for carload shippers
- Diversion of two million trucks justifies the competitive harm to carload shippers
- UPNS-aligned IMCs have the capacity to execute the projected diversions
- Post-merger market shares demonstrate enhanced competition, as required by statute.

Prayer for Relief

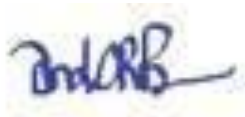
Because the STB has already determined that the Application is incomplete and lacks required market share calculations, we respectfully request that the Board provide guidance on the appropriate definition of the relevant markets necessary to complete the filing. To ensure that market share calculations are meaningful, consistent, and aligned with the Applicants' own diversion studies, we propose the following relevant market definitions:

1. **Rail traffic currently moving in the origin–destination–commodity flows identified in the Applicants' intramodal diversion study**, with a uniform level of geographic and commodity detail. Additionally, for Watershed and CGP carload traffic, base level and post-merger market shares should be calculated for BEAs at origin, destination and 2STCC commodity.
2. **Truck traffic diverted to rail carload service** that shares the same geographic and commodity characteristics as the intramodal carload diversions.
3. As for **Truck traffic potentially diverted to UPNS intermodal service**, the Applicants have not yet conducted a useful diversion study. As discussed above, the relevant market consists of the IMCs operating between UP and NS territories who could utilize the proposed "Seamless Transcontinental Network". We further request that **a new diversion**

study for intermodal traffic be conducted with the full participation of the IMCs in this relevant market. Such a study could be completed expeditiously, given the small number of IMCs and O-D pairs. The methodology is at the Applicants' discretion, but it should meaningfully consider the operating capacity, financial strength, and strategic interests of the IMC community. This study must prove that these third-party entities have the intent and the financial liquidity to procure the containers, chassis, tractors, drivers and facilities required. Market share projections that rely on third-party investments that have not been committed should be questioned.

The result of such an exercise will allow the STB to map a realistic picture of UPNS's projected diversions on to specific relevant markets that have unique characteristics regarding sensitivity to potential UPNS market power.

Respectfully submitted,

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

Andrew Robertson

President

Atlantic Systems Inc

POBox 1984

New York NY 10163 917-751-1003

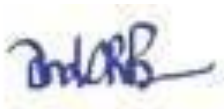
acr@transmatch.com

February 3, 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 February 3, 2026.



Andrew C. Robertson

Atlantic Systems Inc.

New York, NY 917-751-1003

acr@transmatch.com