

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
January 13, 2026
Part of
Public Record

DOCKET NO. FD 36873

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

**CSX TRANSPORTATION INC.'S REPLY IN SUPPORT OF
GRAND TRUNK CORPORATION'S MOTION TO COMPEL**

CSX Transportation, Inc. ("CSXT") submits this reply in support of Grand Trunk Corporation's ("CN") January 8 Motion to Compel Schedule to Merger Agreement filed by Grand Trunk Corporation (the "Motion"). *See* CN-7.

CSXT joins and supports CN's motion to compel for all of the reasons expressed in the Motion. As explained in the Motion, the merger agreement, which is at the heart of this matter, is plainly relevant, as are any schedules, attachments, and exhibits to that merger agreement. Further, as explained in the Motion, there is no privilege that protects Schedule 5.8 or any other schedule, exhibit, or attachment from disclosure. First, Schedule 5.8 and all other schedules, exhibits, and attachments to the merger agreement reflect contractual terms negotiated between two adverse entities and are therefore not privileged. *See In re Grand Jury Subpoena*, 662 F.3d 65, 68-72 (1st Cir. 2011) (holding that closing statements, sales contracts, and records of payment were not privileged because they were revealed at the closing

of a transaction and were therefore not confidential); *see also In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982) (stating that information voluntarily disclosed to a third party waives any attached privilege). Second, Schedule 5.8 and any other schedules, exhibits, and attachments are not protected by the work product privilege, as they were exchanged between adverse parties. *See Niagara Mohawk Power Corp. v. Stone & Webster Eng'g Corp.*, 125 F.R.D. 578, 587 (N.D.N.Y. 1989) (“[W]ork product protection is waived when documents are voluntarily shared with an adversary” and were not created in anticipation of or for use during litigation); *see also In re Aftermarket Filters Antitrust Litig.*, 2010 U.S. Dist. LEXIS 117719, at *20 (N.D. Ill. Nov. 4, 2010) (stating that work product privilege only applies to documents created in anticipation of or for use during litigation and were not created for the purpose of communicating legal advice). Third, Schedule 5.8 and the other schedules, exhibits, and attachments are not protected by the common interest privilege, as the common interest between the parties was a *business* interest rather than a *legal* interest. *See Am. Bottling Co. v. Repole*, 2020 Del. Super. LEXIS 225, at *10 (Super. Ct. May 12, 2020). Finally, Schedule 5.8 and the other schedules, exhibits, and attachments are not protected by any settlement privilege, to the extent such a privilege exists, as Schedule 5.8 and the other schedules, exhibits, and attachments were not created for purposes of settling any dispute.

Additionally, and as explained in the Motion, to the extent Schedule 5.8 and the other schedules, exhibits, and attachments were ever privileged, such privilege was waived when they were shared with the Applicants’ banks who provided fairness

opinions. *See In re Sealed Case*, 676 F.2d at 809 (stating that information voluntarily disclosed to a third party waives any attached privilege)

CSXT respectfully submits this Reply without waiving its argument that Applicants' omission of Schedule 5.8 or any other schedule, exhibit, or attachment to the merger agreement renders the Application incomplete as a matter of law.

Respectfully submitted,

/s/ Eric P. Enson

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Dated: January 13, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of January, 2026, I have caused the foregoing CSX TRANSPORTATION INC.'S REPLY IN SUPPORT OF GRAND TRUNK CORPORATION'S MOTION TO COMPEL to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Eric P. Enson

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