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By Electronic Filing

February 6, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

**Re: Docket No. FD 36873, *Union Pacific Corp., et al.* –
*Control – Norfolk Southern Corp. at al.***

Dear Chief of Case Administration:

On February 2, 2026, CPKC submitted a letter in response to Applicants'¹ January 29, 2026, Reply (UP-24/NS-23) to BNSF Railway's January 9, 2026, Motion to Compel (BNSF-12). CPKC's letter is plainly an improper reply to a reply, and it should be struck from the record pursuant to 49 C.F.R. § 1140.13(c). If not struck, CPKC's Reply to Reply only reinforces Applicants' argument that discovery must proceed in the context of specific requests not sweeping demands for vague categories of documents.

1. The Board Should Strike CPKC's Reply to a Reply

The Board's rules firmly establish that "[a] reply to a reply is not permitted."² Although the Board sometimes found good cause to accept such filings in the past, it has made clear in the last year that it will now "more strictly" enforce this rule to ensure "the orderly and efficient administration of cases."³ This rule applies to filings regardless of whether they are styled "replies

¹ "Applicants" are Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP") (collectively, "Union Pacific") and Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NS") (collectively, "Norfolk Southern").

² 49 C.F.R. § 1104.13(c).

³ *Sunflower State Indus. Ry.—Pet. for Declaratory Order*, FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served March 28, 2025); *see also Norfolk S. Corp., et al.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R.*, FD 36836, slip op. at 10 (STB served Mar. 14, 2025) (Board Member Fuchs, concurring) ("While I acknowledge that the Board has liberally accepted replies to replies over the years, going forward I plan to ask the Board to more strictly enforce this rule."); *US Rail Corp.—Construction & Operation Exemption—Brookhaven Rail Terminal*, FD 35141, slip op. at 5 n.11 (STB served Sept. 22, 2025) (striking improper replies to replies from the record because (continued...))

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to replies” or function as the equivalent.⁴ Where a party improperly files a reply to a reply, the proper remedy is to strike the filing from the record.⁵

Although it is not styled a “reply to a reply,” CPKC’s Reply to Reply functions as one. It responds to the specific arguments made by Union Pacific in its reply to BNSF’s motion to compel, and asks the Court to grant relief consistent with BNSF’s motion. If the Board permits routine replies to replies in this proceeding, it will be impossible to ensure “the orderly and efficient administration” of this proceeding. Nothing would stop the parties of record from attempting to get the last word on every dispute regardless of whether they are even a party to the dispute. And with numerous parties of record, it is likely any motion would devolve into multiple parallel threads of briefing. The parties would have little incentive to reduce the burden on the Board, other parties, and the public by fully addressing issues in initial filings.⁶ To prevent this chaos, Applicants urge the Board to continue to enforce its prohibition on replies to replies by striking CPKC’s Reply to Reply from the record.

2. CPKC’s Reply to Reply Reinforces Applicants’ Argument that Discovery Must Proceed Within the Context of Specific Requests.

Should the Board consider it, CPKC’s Reply to Reply underscores—rather than undermines—Applicants’ core argument that discovery disputes must be evaluated within the context of specific discovery requests. CPKC criticizes Applicants for allegedly failing to produce undefined categories of “ordinary course documents,”⁷ echoing BNSF’s similarly amorphous demand for sweeping email collections. But CPKC—like BNSF—skips over any assessment of whether the underlying discovery requests are narrowly tailored to obtain relevant documents and proportional to the needs of this proceeding. And instead asks the Board to order broad discovery in the abstract. This approach of demanding sweeping productions of materials without

“the Board is more strictly enforcing 49 C.F.R. § 1140.13(c), the rule prohibiting replies to replies”).

⁴ *Sunflower State Indus. Ry.—Pet. for Declaratory Order*, FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025) (denying leave to file amended petition because “[a]lthough styled as an ‘amended petition,’ ... [the] filing is a reply to a reply” and “such filings are prohibited under the Board’s regulations”) (citing *Norfolk S. Corp., et al.*, FD 36836, slip op. at 10);

⁵ See, e.g., *US Rail Corp.—Construction & Operation Exemption—Brookhaven Rail Terminal*, FD 35141, slip op. at 5 n.11 (STB served Sept. 22, 2025).

⁶ See *Sunflower State Indus. Ry.—Pet. for Declaratory Order*, FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025) (“[T]he Board notes that information provided in a reply to a reply often could have been included in an initial filing.”).

⁷ Although it is unclear what CPKC would consider an “ordinary course document,” Applicants have produced numerous documents and data that they keep in the ordinary course. Applicants’ Reply to Union Pacific Railroad Company’s Motion to Compel at 6-7, *Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500 (served Feb. 7, 2022).

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justifying those productions with specific relevant and reasonable discovery requests is not conducive to a reasonable and efficient discovery process. The only practical way to resolve discovery disputes is to have the parties confer regarding individual requests, address objections and negotiate the scope of reasonable searches in light of the relevance of the materials sought and the burden of collection, and only raise any remaining disputes through motions to compel after attempts at compromise have failed.

CPKC's Reply to Reply also misstates Applicants' position. Applicants have not issued a blanket refusal to produce "ordinary course documents." Instead, Applicants have committed to conferring with parties regarding their specific discovery requests in order to identify an appropriately narrow set of materials that can be reasonably searched consistent with the Board's merger review process. This is the customary process in Board proceedings as illustrated in the Board decisions on discovery cited by both Applicants and CPKC. Applicants have produced and will continue to produce documents created in the ordinary course of their businesses where appropriate.

The Board's merger rules do not require Applicants to conduct wholesale collections and productions of emails and other internal materials without regard to the relevance of the materials sought or the burden of their collection. This is particularly true where the requesting party has failed to offer any explanation why appropriately targeted collections and productions are not sufficient and proportional to the needs of this proceeding.

This approach is consistent with how CPKC engaged with discovery in the Canadian Pacific/Kansas City Southern merger proceeding (STB Docket No. FD 36500). In that case, Union Pacific issued discovery requests and then negotiated the scope of collection and searches that CPKC would perform in response. When disputes arose, Union Pacific addressed those disputes in the context of specific requests. Union Pacific did not seek and CPKC did not conduct wholesale email collections or produce broad swaths of "ordinary course documents" outside the context of specific discovery requests. The result of that process was that CPKC produced a fraction of the material that Applicants have already produced in this proceeding, and at a far slower pace.⁸

For the foregoing reasons, Applicants respectfully request that the Board strike CPKC's Reply to Reply.

⁸ Applicants' Reply to Union Pacific Railroad Company's Motion to Compel at 13, *Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500 (served Feb. 7, 2022).

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Sincerely,

/s/ Michael L. Rosenthal

Michael L. Rosenthal
*Attorney for Union Pacific
Corporation and Union Pacific
Railroad Company*

cc: ALJ Soulikias
All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Molly Brown