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BY ELECTRONIC FILING

Hon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

[Email: alj.soulikias.inbox@stb.gov]

Re: Finance Docket No. 36873, *Union Pacific Corp. – Control – Norfolk Southern Corp.*

Dear Judge Soulikias:

I write on behalf of Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City and CPKC, and its U.S. rail carrier subsidiaries (collectively “CPKC”)¹ to address Applicants’ letter of February 6 (UP-26/NS-25), which moved to strike CPKC’s February 2 letter (CPKC-12). Applicants’ motion to strike should be denied, and Your Honor should address the underlying lack of merit in Applicants’ strident positions on discovery at a hearing (whether on BNSF’s pending Motion to Compel or otherwise), at which counsel for CPKC should be permitted to participate to protect CPKC’s interests in prompt and meaningful access to discovery in this proceeding.

1. The thrust of CPKC’s February 2 Letter was not to present a “reply to reply” in support of BNSF’s Motion to Compel, but instead to seek affirmative relief on behalf of CPKC in light of UP’s strident assertions regarding the appropriate scope of discovery in its January 29 reply to BNSF’s motion (UP-24/NS-23). CPKC was urging Your Honor to schedule a hearing to address UP’s discovery resistance, at which CPKC anticipated making several key points regarding the importance of allowing discovery into Applicants’ ordinary course documents as the best, and perhaps only, way to test the veracity of the claims Applicants made in their Application (and no doubt will re-assert soon when they refile that Application).

¹ CPKC’s U.S. rail carrier subsidiaries include Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware & Hudson Railway Company, Inc.; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company.

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Applicants' reply to CPKC's letter does not question CPKC's participation in any discovery hearing (whether on BNSF's Motion to Compel or otherwise) or the importance of Your Honor's consideration of the issues raised by CPKC's letter when it addresses BNSF's motion. Accordingly, CPKC submits that Applicants' desire to "strike" CPKC's letter is misguided. Applicants have now replied to CPKC's request for relief and, while they obviously disagree with CPKC's position on the issues, they have not opposed the relief CPKC sought therein.

2. CPKC has no desire to further engage with Applicants' wrongheaded view of the discovery process in this reply. However, CPKC does take issue with Applicants' misleading contention that in the *CP/KCS* proceeding CP and KCS produced only "a fraction of the material" that Applicants have already produced here. That is nonsense on multiple levels.

First and foremost, Applicants are misrepresenting the nature of their production to date. They have produced voluminous data and various agreements with other railroads, but they have still—*nearly five months* after receiving the first discovery requests in this proceeding last September—produced zero internal documents prepared by UP or NS personnel in the ordinary course of their business reflecting how those railroads think about, analyze, and communicate about the issues raised by the Application when they are doing so in more candid contexts outside of Board advocacy. Zero is a number infinitely smaller than the large number of ordinary course documents (including in the form of emails, memos, Excel spreadsheets, PowerPoint presentations, and others) that CP and KCS produced in *CP/KCS* on such topics as their pre-merger traffic forecasts, their marketing strategies, consideration of merger issues by their boards of directors, their efforts to improve service and grow traffic through interline collaborations, and their approach to and analysis of rail pricing, among many others. In contrast, Applicants have produced no such documents: no board materials, no strategic plans, no growth forecasts, no business documents explaining their pre-existing standalone plans, none of their employees' communications about actual integration plans, and no email whatsoever (other than about 50 cover emails to which agreements were attached).

Second, there ought to be no question that discovery in this proceeding *should and will* entail production of many times the volume of documents and data than in any previous rail merger proceeding, especially the *CP/KCS* transaction, which involved the combination of the two smallest Class 1 railroads and resulted in a Class 1 railroad that remained the smallest. By contrast, the proposed combination of UP and NS is orders of magnitude larger, blankets the entire country, and as Applicants themselves exclaim will fundamentally transform U.S. railroading for centuries to come. Of course the discovery needs will be broader and more extensive.

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On top of the sheer size and scope of the UP-NS proposal, and the resulting extent and complexity of the issues it raises, is the fact that this proceeding involves the first-ever application of the 2001 Major Merger Rules, which expanded the scope of the Board's public interest inquiry and significantly increased Applicants' burden of demonstrating that their proposal serves the public interest and enhances competition. Discovery in such a proceeding will inevitably and commensurately be broader and more expansive, not less.

CPKC looks forward to discussing these issues further with Your Honor at a hearing on discovery issues in this proceeding, whether that hearing is scheduled specifically to address BNSF's Motion to Compel or discovery matters generally.

Respectfully submitted,



David L. Meyer
Attorney for CPKC

cc: All Parties of Record
Joseph J. Matelis (Sullivan & Cromwell LLP)
Dylan M. Aluise (Sullivan & Cromwell LLP)
Nizam Hasham (CPKC)

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of February 2026, a true and correct copy of the foregoing was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Kiera S. Judge
Kiera S. Judge