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ENTERED  
Office of Chief Counsel  
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**By E-Filing**

May 15, 2026

Chief of Case Administration  
Office of Chief Counsel  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

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

Dear Chief of Case Administration:

Applicants write in response to BNSF Railway's letter of May 14, 2026, and CPKC's letter of May 15, 2026, regarding Applicants' workpapers. Applicants submitted more than 3,750 files, totaling approximately 500 gigabytes of electronic workpapers to support the Amended Application. Since filing the Amended Application, Applicants have worked diligently to respond to questions from BNSF, CPKC, and other Class I railroads about the workpapers. They have promptly addressed the relatively small number of legitimate issues by producing additional or replacement files. Applicants have followed the procedures that the Board established in Decision No. 8 and reiterated in Decision No. 9, which recognized "the technical complexity" introduced by the "very large datasets underpin[ning] the Application" and provided a procedure by which to correct workpaper submissions. Decision No. 9 at 15 & n.13.

BNSF's complaint primarily involves a list of 181 files, which it claims were missing workpapers. BNSF provided the list to Applicants on May 5, and Applicants provided detailed responses just two days later, on May 7. Applicants explained that most of the listed files were not workpapers. Instead, BNSF was asking about references to temporary files created by the computer code ("scripts") used to produce workpapers from initial data. Applicants explained that several of the files were, in fact, not missing and directed BNSF to their locations within the workpaper collection. Applicants acknowledged that still other files might have appeared to be missing because they were not placed in the correct folder and because certain scripts that they produced referenced files using an older naming convention. Applicants also determined that they had inadvertently listed a few files in their workpaper index that did not actually support any analysis in the Amended Application. Applicants ultimately identified 19 files that they needed to add or replace.

Applicants uploaded those 19 files late on May 8 to make them available to BNSF and other parties as promptly as possible. Applicants filed a notice with the Board on Monday, May

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11—the next business day—providing the Board and all parties with a list of the material that had been added or replaced, as required by Decision No. 8. *See* UP-50/NS-48.

That same Monday, BNSF sent Applicants another spreadsheet, claiming there were “still 73 missing workpapers, files, and intermediate data sets.” Applicants diligently reviewed BNSF’s list. Applicants now recognize that a few scripts they intended to replace in the May 8 upload were mistakenly re-uploaded rather than replaced, but that the correct files were included in an upload they made on May 13.<sup>1</sup> In a few instances, Applicants also noted that their May 7 responses had incorrectly referenced certain file names, but that the correct files had been produced. However, in most cases, BNSF’s new list just repeated its prior requests for files that are not workpapers—sometimes without acknowledging that Applicants had already provided that response—or asked for more files that were not workpapers. Applicants provided their written response earlier today.

BNSF’s specific allegations in its May 14 letter have no merit.

*First*, BNSF complains that Applicants are not producing the voluminous, temporary files created by computer programs in the process of producing workpapers. However, as BNSF recognizes, those temporary files are neither the initial data nor the workpapers referenced in the Amended Application. Moreover, Applicants provided BNSF with the computer programs used to process the initial data into workpapers—programs that create the temporary files. Thus, if BNSF’s experts did have any use for the temporary files—and despite BNSF’s claims, they have no use for them—they could re-create the files by running the provided programs. Nor, contrary to BNSF’s claim, would recreating those temporary files create a risk of introducing errors—running the same programs using the same initial data will produce the same outputs. Thus, if BNSF’s experts want to audit Applicants’ workpapers by recreating them, they can start with the initial data, run the provided programs, and compare the final results. They do not need to compare each one of the many, voluminous temporary files. Applicants have repeatedly offered to assist BNSF’s experts if they have difficulties running the provided programs.

*Second*, BNSF claims that Applicants’ initial production of scripts with an older naming convention “expands the scope of these problems.” Applicants regret the relatively few errors that occurred. However, Applicants have now produced corrected scripts. BNSF claims that it is uncertain whether the scripts have been corrected, but it can readily confirm that the scripts have been corrected in the same way it determined the original scripts contained errors—by confirming that the scripts correctly reference other files in the workpaper production.

*Third*, BNSF claims that one workpaper from Dr. Bailey’s workpaper collection is missing. BNSF is incorrect. Applicants and Dr. Bailey’s team have now checked and double-checked, and they have confirmed the data exist in the file on Applicants’ Kiteworks site. If BNSF continues to experience downloading issues, BNSF should contact Applicants for assistance.

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<sup>1</sup> Applicants were not aware of the May 8 upload error when they made their May 13 update, so their May 13 notice (UP-55/NS-53) did not indicate that the files had been replaced on May 13 rather than in the prior update.

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CPKC's complaint relates to a smaller number of files, and some of the issues overlap with those raised by BNSF. CPKC raised these issues with Applicants on May 7. Applicants promptly investigated them and intended to address the few files that required action through their May 8 upload. CPKC sent Applicants a follow-up letter on May 13 noting issues with some of the files contained in the May 8 workpaper update. Applicants promptly investigated CPKC's concerns and, as explained above, determined that a few scripts they intended to replace in the May 8 upload were mistakenly re-uploaded rather than replaced, but that the correct files were included in a file upload they made on May 13. Therefore, CPKC's statement that "Applicants have not produced a complete and usable set of workpapers necessary to evaluate the claims and analyses presented in the Amended Application" is incorrect, for at least two reasons. First, parties have had a near-complete set of workpapers and files since Applicants filed their Amended Application on April 30, save for issues with a few files that were promptly remedied. Second, as to the specific files CPKC complains about, they were corrected in the May 13 upload.

Applicants believe they have resolved all legitimate issues that have been identified by BNSF and CPKC in the letters referenced above. Applicants will continue to respond promptly to any additional issues raised by BNSF, CPKC, or other parties in accordance with the procedures established by the Board.

Sincerely,

/s/ Michael L. Rosenthal

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

cc: All Parties of Record  
ALJ Soulikias

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of May, 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