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May 19, 2026

311408

BY ELECTRONIC FILING

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

ENTERED
 Office of Chief Counsel
 May 19, 2026
 Part of
 Public Record

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

Dear Chief of Case Administration:

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 update the Board on Applicants’ continued failure to produce workpapers necessary to recreate their experts’ analysis.²

Applicants’ experts’ views are the principal evidence upon which Applicants are relying to prove that their proposed merger is in the public interest. CPKC’s need to understand those views, and the myriad assumptions underlying them, is critical.

But Applicants failed to provide with their Amended Application the workpapers that would allow recreation of their experts’ analysis. To date, Applicants have made three supplemental submissions with 85 new or replacement workpapers. And they are

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.

² In our Comments on the Completeness of the Amended Application, CPKC explained why the Amended Application is incomplete for failure to include the workpapers necessary to recreate Applicants’ experts’ analyses. See CPKC-19 at 12-13.

promising new workpapers later today without making clear whether that production will be complete.

The omissions in Applicants' filings remain significant. For example, gaps in Mr. Hunt's workpapers prevent CPKC from reproducing his estimated rail-to-rail diversions or tracing how Mr. Hunt uses those diversions in constructing estimated post-merger UP volume and revenue. Or, put another way, it is not possible to replicate the volume and revenue data that Applicants provided in their Amended Application—let alone to create shares for the participants in the markets at issue.³ The omissions in the workpapers likewise impair CPKC's ability to replicate Mr. Hunt's revenue projections or assess the sensitivity of Mr. Hunt's results to alternative modeling assumptions.

Attached is CPKC's May 15 letter to Applicants identifying 14 unresolved issues with the workpapers. *See* Exhibit A. As of the filing of this letter, Applicants have responded to only one of those issues (the one described in Item 13 of our letter). In correspondence from yesterday with counsel for Canadian National, Applicants suggested that the missing material could be replicated by "edit[ing]" Applicants' previously produced workpapers and then using those files in conjunction with material they intend to make available today. Specifically, Applicants wrote:

{ { [REDACTED] } }

(Exhibit B at 6, Row 21 (emphasis added). Row 21 responds to a CN request similar to Item 13 in CPKC's letter.)

Applicants provide no justification for failing to supply replacement workpapers that do not require other participants in this proceeding to correct errors in their previously submitted workpapers. Even assuming (1) it were appropriate to make interested parties correct mistakes in Applicants' previously submitted workpapers and (2) Applicants make the promised production today, the process of confirming that

³ In our Comments on the Completeness of the Amended Application, CPKC explained why actual calculations of the shares of market participants (as opposed to volume and revenue estimates for specific routes) are required under 49 C.F.R. § 1180.7(b) and Decision No. 9. *See* CPKC-19 at 5-6. The deficiencies in Applicants' workpapers underscore the importance of clear pre- and post-merger estimates of the shares of each market participant in each market.

Applicants' workpapers are complete would begin again given the enormous complexity and fragility of their experts' theoretical constructs. All of this takes time and prevents interested parties from preparing responses to the Amended Application. This approach is not tenable under the Board's rules and precedent. *See, e.g., Canadian Pac. Ry. – Control – Kansas City Southern*, Finance Docket 36500, Decision No. 17 (STB served Apr. 27, 2022) at 6 (requiring Canadian Pacific to resubmit workpapers because “[i]t is critical that parties and the Board know precisely which file contains the relevant data.”).

Respectfully submitted,

/s/ Joseph J. Matelis
Joseph J. Matelis
Attorney for CPKC

cc: All Parties of Record
David L. Meyer (Law Office of David L. Meyer)
Dylan M. Aluisse (Sullivan & Cromwell LLP)

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of May 2026, I caused a redacted, public copy of the foregoing letter to be served by email or by first-class mail, postage prepaid, on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Judge Jenifer Soulikias.

/s/ Dylan M. Aluisse
Dylan M. Aluisse

EXHIBIT A

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CONTAINS HIGHLY CONFIDENTIAL INFORMATION

May 15, 2026

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

Dear Counsel:

I write on behalf of CPKC regarding the workpapers underlying Applicants' Amended Application filed April 30, 2026 (UP-39/NS-37) and Workpaper Replacement File Upload (UP-50/NS-48) that was the subject of your May 11, 2026 letter. Although our review remains ongoing, we have identified additional discrepancies in the workpapers underlying David Hunt's Verified Statement, specifically Mr. Hunt's Appendix E, rail-to-rail analysis, and truck-to-rail analysis. As with the prior issues we have identified for you, these deficiencies continue to impede our ability to replicate and assess the claims and analyses you advance in the Amended Application.

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Michael L. Rosenthal
Laura F. Wu
Kevin M. Kelly
Matthew J. Warren

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(14)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The descriptions above are intended to clarify the location and availability of the relevant materials and to ensure that the workpapers are sufficiently complete to permit independent replication and analysis.

Please rectify these deficiencies promptly so that all parties can meaningfully examine Applicants' evidence and assess its implications for the completeness of the Application and the public interest. CPKC's review is ongoing and additional questions may follow.

Michael L. Rosenthal
Laura F. Wu
Kevin M. Kelly
Matthew J. Warren

-7-

Respectfully submitted,

/s/ Joseph J. Matelis
Joseph J. Matelis
Attorney for CPKC

cc: David L. Meyer (Law Office of David L. Meyer)
Dylan M. Aluisse (Sullivan & Cromwell LLP)

EXHIBIT B

From: Harrison, Caroline <CHarrison@cov.com>
Sent: Monday, May 18, 2026 4:38 PM
To: Bohl, Lindsey C.
Cc: Rosenthal, Michael; Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; David Meyer; Matelis, Joseph J.; *pdenton@steptoe.com; *tstrafford@steptoe.com; Reilly, Matt; Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Fanchiang, Eric; Gardiner, Kent; van Houwelingen, Luke; Gridi, Avia; Aluise, Dylan M.; Hynes, Samantha F.; Golden, Nathan H.; Enson, Eric; Warren, Matthew J.; William Mullins; zzExt-dludwin; Korman, Marc; ratkins; Krovoza, Charlotte; Thompson, McClain; Davido, Allison; Kelly, Kevin
Subject: [EXTERNAL] RE: FD 36873 - Additional Missing Workpapers and GIS Issues
Attachments: Applicants' Response to 2026.05.11 - Missing Workpapers and GIS Discrepancies.xlsx

Lindsey,

Attached is the completed chart in response to your request. As indicated in the chart, we plan to include the requested materials not already provided in an upload tomorrow.

Best,
Caroline

Caroline Harrison

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From: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>
Sent: Sunday, May 17, 2026 4:38 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com

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Subject: RE: FD 36873 - Additional Missing Workpapers and GIS Issues

[EXTERNAL]

Mike,

We are writing to check-in for an update on the status of the still missing workpapers underlying the Hunt analysis identified in our spreadsheet last Wednesday and below. On Friday evening, you shared the update with us that you did not expect the files to be ready until over the weekend or on Monday. Do you have any updates on expected timing to provide the missing files, and can you explain the reason for the delay?

We also continue to await your more formal response to the issues we identified last week.

Best,
Lindsey

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From: Rosenthal, Michael <mrosenthal@cov.com>
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To: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Davido, Allison <Allison.Davido@stblaw.com>; Kelly, Kevin <Kkelly@cov.com>
Subject: RE: FD 36873 - Additional Missing Workpapers and GIS Issues

*** External Email ***

Lindsey,

We have reviewed the spreadsheet you provided on Wednesday evening. We will provide a more formal response to your spreadsheet later today or Monday. Briefly, the first 17 items on the “Missing Workpapers” tab of your spreadsheet were addressed in Applicants’ workpapers upload on Wednesday, May 13. The next six items will be addressed by an upload planned for later today. We will also produce shapefiles underlying the density charts, and we are looking into your question about GIS files underlying certain maps in the Hunt verified statement.

With regard to the NS-related issues identified on the “Map vs GIS Discrepancies” tab of your spreadsheet, we understand that the CN spreadsheet lists various NS rights that CN believes were omitted from the Exhibit 1 system map. The basis for this belief appears to be that said rights appear in public maps maintained by other entities (specifically, the STB Railroad Depot Map referenced on pages 16, 20, and 27, as well as the North American Rail Network hosted by DOT/BTS). Applicants cannot speak to the accuracy or completeness of either of those maps, which are not maintained by Applicants. We have reviewed the lines you’ve listed in Rows 21-32 that you’ve described as allegedly missing from Exhibit 1. All but one of the referenced lines are owned and/or operated by short line carriers and for that reason are reflected on the Exhibit 1 system map as shortlines (colored blue). You also list NS rights over a CN line between Osgood, PA and Conneaut, OH (Row 24), which appears as a CN line on the Exhibit 1 system map. NS has been unable to locate an agreement covering this line. As this is a CN-owned line, please provide us with the agreement that you believe provides NS with rights over this line.

With regard to the UP-related issues, the map and GIS files included as Exhibit 1 show the Lake Charles joint facility agreement identified in Row 11. Regarding the other segments, the map and GIS files included as Exhibit 1 are intended to reflect routes used for UP's regular commercial operations, not every joint facilities agreement that provides unused, contingent, or other special rights (e.g., emergency rights, rights for certain non-revenue track materials, etc.). Therefore, there are certain segments, including the other segments identified in your request, that were not reflected in the public map (Exhibit 1) as it would not accurately represent the routes normally operated by UP. As reflected by your request, UP did identify all the rights and provide GIS mapping data in this proceeding in response to a specific Board request to identify all joint facilities.

Regards,
Mike

Michael L. Rosenthal

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From: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>

Sent: Wednesday, May 13, 2026 8:03 PM

To: Rosenthal, Michael <mrosenthal@cov.com>; Kelly, Kevin <Kkelly@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Davido, Allison <Allison.Davido@stblaw.com>

Subject: FD 36873 - Additional Missing Workpapers and GIS Issues

[EXTERNAL]

Counsel,

Our review remains ongoing, but we have identified certain missing files and GIS discrepancies in Applicants' backup files, summarized in the attached chart. Could you please review and let us know your position on these files by Friday at 12 pm ET?

Best,
Lindsey

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