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CN-17

VIA ELECTRONIC MAILChief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001Re: **Docket No. FD 36873 - Union Pacific Corporation and Union Pacific Railroad Company – Control -- Norfolk Southern Corporation and Norfolk Southern Railway Company**

Dear Chief of Case Administration:

I write on behalf of Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively “CN”) to address Applicants’ erroneous claim on May 20 concerning a prior CN filing. I also write to express concern that Applicants, through their post-Application workpaper submissions, are attempting to make substantive changes to the Amended Application, without disclosing the extent of those changes to the Board or providing the relevant updated Appendices to the Amended Verified Statement of Mr. Hunt. In spite of Applicants’ assertion that they have finished responding to workpaper concerns,¹ the final set of materials underlying the Amended Application remains a moving target.

First, Applicants erroneously claimed that the deficiencies raised by CPKC regarding Mr. Hunt’s workpapers are “belied by the fact that” CN “has already submitted evidence addressing the substance of Mr. Hunt’s diversion study.”² Applicants give the misleading impression that CN’s expert analysis demonstrating fundamental errors in Mr. Hunt’s diversion analysis was in response to the Amended Application submitted on April 30.

¹ UP-61/NS-59, FD 36873 (filed May 21, 2026).

² UP-60/NS-58, FD 36873 (filed May 20, 2026) at 2. Applicants further contend: “CN argues (incorrectly) that Applicants understated the traffic that would be attracted to their new single-line service. As reflected in CN’s submission, CPKC’s ongoing audit does not prevent CPKC from addressing Mr. Hunt’s methodology or analyses....”

May 22, 2026

Applicants failed to cite the CN submission referenced, which would have made clear that they are actually referring to CN’s expert analysis of Mr. Hunt’s **Initial Verified Statement**, not Mr. Hunt’s **Amended Verified Statement**.³ That expert analysis was submitted on March 23 in CN-12, not in CN’s completeness comments on May 8. Thus, CN’s March 2026 expert analysis cannot somehow cure the workpaper deficiencies of the April 2026 Amended Application.⁴

Second, contrary to Applicants’ suggestion, CN has **not** been able to meaningfully analyze Mr. Hunt’s analysis in the Amended Application.⁵ Mr. Hunt has made extensive substantive changes and revised his methodology since the initial application. Indeed, each time Applicants upload new materials, CN’s experts must begin their analysis anew. Further, in certain areas, Applicants have submitted *less* information and backup material in the Amended Application’s workpapers, omitting key intermediate files that were previously provided with the initial application or giving insufficient direction to identify comparable files in the backup material.⁶ The absence of these materials has been fundamental. By omitting these materials, Applicants have undermined the ability to analyze Mr. Hunt’s Amended Verified Statement.

Finally, in some instances, it appears that Applicants are making substantive changes to their workpapers without properly disclosing the extent of those changes in compliance with Decision No. 8 or providing the required corresponding updates to the Appendices submitted with the Amended Application. Applicants have therefore misrepresented in their May 21 letter the extent of their compliance with the Board’s directives.⁷ As recently as May 19, Applicants submitted new and updated workpapers, and purported to provide a “brief description of differences” for each workpaper.⁸ These “brief” explanations provide almost

³ CN-12, FD 36873 (filed Mar. 23, 2026).

⁴ UP-60/NS-58, FD 36873 (filed May 20, 2026) at 2.

⁵ *See* CN-15, FD 36873 (filed May 8, 2026) at 13-15 (noting unsupported and unverifiable claims in Mr. Hunt’s Amended Verified Statement).

⁶ Notwithstanding Applicants’ attempts to minimize the importance of these materials by calling them “temporary files,” they are a key part of the supporting information for the types of analyses that Applicants rely on—which is presumably why Applicants included them with their initial application. *See* BNSF-26, FD 36873 (filed May 14, 2026) at 2 (noting also that Applicants already have the data that they are refusing to provide).

⁷ In Decision No. 8, following multiple supplementations to workpapers in the Initial Application, the Board ordered Applicants to disclose certain information regarding their workpaper supplementations for each replacement file or new file uploaded “[t]o ensure transparency and clarity.” Decision No. 8, FD 36873 (STB served Jan. 8, 2026).

⁸ On May 19, among other items, Applicants provided “Additional tables to support execution of scripts,” including file names referencing market shares for automotive,

May 22, 2026

no insight into the actual substantive changes that Applicants have made, and fail to disclose that Applicants should have updated the Appendices E1 and E3 to the Hunt Amended Verified Statement, but have not. These are not simply workpaper “Replacement Files,” as Applicants have led the Board to believe.

For example, for more than 40 “replacement” files, Applicants described the differences as “**Updated market share tables for projections.**”⁹ As the “Explanation of reasons for differences,” Applicants stated they were “providing updated version of [Oliver Wyman] market share database tables to **ensure alignment** between database tables and market share appendices D, E, and F.”¹⁰ Applicants have not indicated what “alignment” changes were made or why workpapers are apparently being aligned with their expert verified statements after the Amended Application was filed, and not the other way around.

Upon close examination of the newly uploaded files on May 19, it appears that Applicants made substantive changes to the code generating Appendix E in the Hunt workpapers,¹¹ but they did not make those changes to Appendices E1 and E3 to Mr. Hunt’s Verified Statement in the Amended Application.¹² In other words, there is now an inconsistency between the May 19 updated Hunt workpapers and the Amended Application as filed. Specifically, the updated code Applicants submitted on May 19 suggests that Mr. Hunt made several additions to that code underlying his Appendices E1 and E3 (the Appendices that provide Mr. Hunt’s projected UP-NS traffic volumes and revenues by corridor and commodity), which add *new columns* purportedly showing projected post-merger “traffic shares” by mode of transportation (rail, truck, water, pipeline, air, and other). However, Applicants fail to disclose the replacement of this code or the addition of new columns in the May 19 code in their submission, which purports to detail the changes made in the supplemental file pursuant to Decision No. 8.¹³ Further, and most troubling, Applicants have not submitted updated Appendices E1 or E3 to Mr. Hunt’s Verified Statement to the Amended Application reflecting these substantive changes to their materials. These changes are not reflected in Mr. Hunt’s Appendix E, nor are they reflected in the replacement Hunt

intermodal, and merchandise for all diversions. Table at Column M accompanying UP-57/NS-55, FD 36873 (filed May 19, 2026). They described these files as “Six net-new tables provided.” *Id.* at Column N.

⁹ Table at Column M accompanying UP-57/NS-55, FD 36873 (filed May 19, 2026) (emphasis added).

¹⁰ *See* Table at Column N accompanying UP-57/NS-55, FD 36873 (filed May 19, 2026) (emphasis added).

¹¹ The referenced code is market_shares_enhanced_transearch_full_vF.sql.

¹² Amended Verified Statement of Mr. Hunt, UP-40/NS-38, Vol. 2 at 592, (filed Apr. 30, 2026).

¹³ *See* Table accompanying UP-57/NS-55, FD 36873 (filed May 19, 2026).

May 22, 2026

Appendix E Applicants uploaded on May 12.¹⁴

Thus, while Applicants stated on May 21 that they have complied with the Board's process for providing complete and accurate workpapers,¹⁵ their submissions remain a moving target, rife with inconsistencies. Moreover, it is too late for Applicants to substantively change their case for approval of the application by making changes to the Appendices to their experts' Verified Statements. The application filing date, which started the Board's timelines and the time-limited review of application materials by the Board and interested parties,¹⁶ was on April 30.

Respectfully submitted,

/s/ Sara Razi

Sara Y. Razi

Attachments

cc: Parties of Record

¹⁴ See Replacement Files Table accompanying UP-55/NS-53, FD 36873 (filed May 13, 2026). Furthermore, the new Structured Query Language table containing these columns has not been produced by the Applicants.

¹⁵ UP-61/NS-59, FD 36873 (filed May 21, 2026).

¹⁶ See Decision No. 5, FD 36873, slip op. at 2-3 (STB served Sept. 26, 2025).

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of May 2026, I caused a true and correct copy of the foregoing to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew Bernstein

Andrew Bernstein

Sr. Paralegal Manager

Simpson Thacher & Bartlett LLP