

LAW OFFICE OF DAVID L. MEYER

WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

June 8, 2026 **REDACTED PUBLIC VERSION**

BY ELECTRONIC FILING

311568

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
June 8, 2026
Part of
Public Record

Re: Finance Docket No. 36873, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp. et 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 call attention to a feature of Applicants’ “market share” evidence that was not apparent on the face of Applicants’ Revised Application. That evidence excluded [REDACTED] of the traffic diversions that Applicants have projected from the proposed Transaction. CPKC requests that the Board clarify that its supplemental requests in Decision No. 21 (*e.g.*, MS-1) require disclosure and analysis of the market share effects of the traffic diversions that have to date been excluded from Applicants’ market share evidence.

In the Revised Application, Applicant witness David Hunt states that UP’s acquisition of NS would result in more than \$4 billion in revenue gains to UP-NS from traffic diversions. *Rev. App.* at 2-409 (Hunt V.S.). Mr. Hunt also states that he provided, in his Appendices D, E, and F, information regarding UP’s post-merger market shares taking account of those diversions. *Id.* at 2-585 to -92. Mr. Hunt explains that these appendices “include all major commodity traffic flows that correspond to 80% of all current state UP and NS traffic” and that the “projected increases in UP-NS market shares reflect diversions from truck and other rail competitors.” *Id.* at 2-591.²

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.

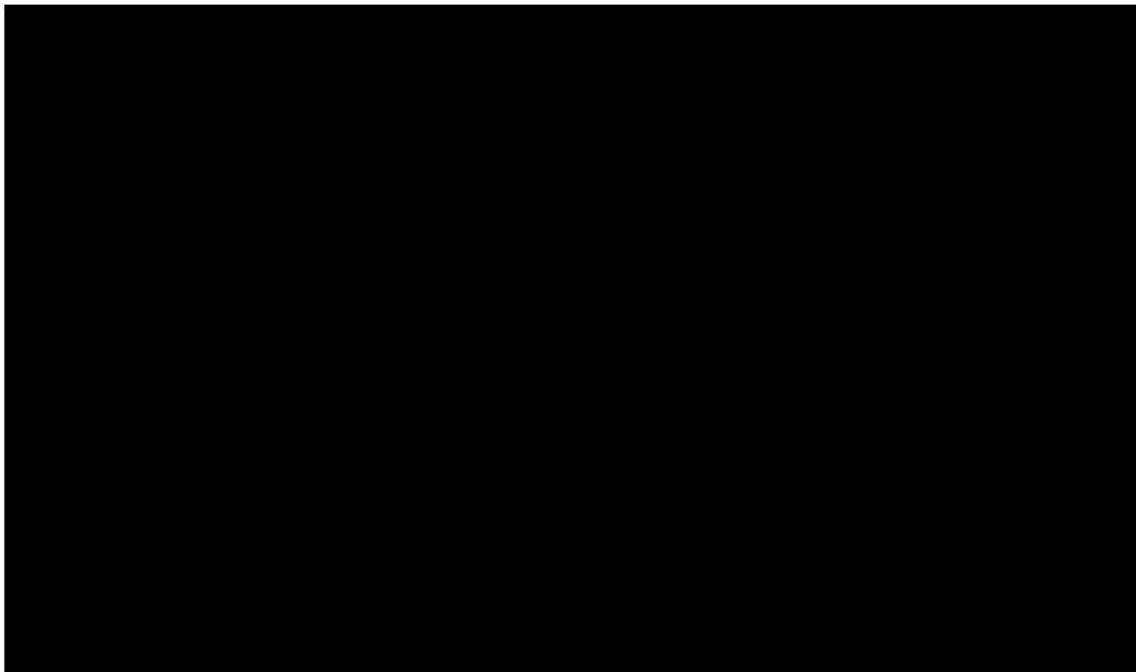
² Mr. Hunt appears to have imposed this 80% limitation in order to correspond to the data presented in Dr. Elizabeth Bailey’s verified statement accompanying the original Application. *See Rev. App.* at 2-89 to -90 (Bailey V.S.).

Chief of Case Administration
June 8, 2026
Page 2

What Mr. Hunt did not disclose, however, and which CPKC's consultants have discovered through time-consuming analysis, is that the limitation to the top 80% of UP-NS lanes based on pre-merger tonnage resulted in Mr. Hunt's Appendix E *excluding* [REDACTED] of diverted traffic, specifically [REDACTED] of all his forecasted tonnage gains and [REDACTED] of all of his forecasted revenue gains from traffic diversions. In other words, Mr. Hunt's Appendix E reports lanes accounting for *only* [REDACTED] of the merger-related traffic diversions (measured by tonnage) and only [REDACTED] of the merger-related traffic diversions (measured by revenue) that Mr. Hunt forecasts.³

The chart below (reproduced in Appendix A hereto) illustrates this disparity from the perspective of revenue diversions. The horizontal gray bars reflect the total UP-NS revenues from the traffic diversions Mr. Hunt forecasts, broken out by two-digit STCC commodity, whereas the black portions of those bars reflect the portion of the diversions reflected in Mr. Hunt's market share Appendix E. As the chart reveals, Mr. Hunt estimates that [REDACTED] of UP's projected revenue growth from merger-related diversions would occur on UP and NS routes that, pre-merger, are in the bottom 20% of UP-NS lanes by tonnage.

FIGURE 1
PORTION OF APPLICANT PROJECTED REVENUE FROM DIVERSIONS
REFLECTED IN HUNT MARKET SHARE APPENDIX E



³ Hunt's Appendix F was similarly affected by the approach of filtering to endpoints representing 80% of UP-NS current traffic.

Chief of Case Administration
June 8, 2026
Page 3

Respectfully, CPKC submits that the failure of Applicants' market share evidence to capture [REDACTED] of their projected diversions is, at a minimum, relevant to the Board's supplemental request MS-1, which directs Applicants "to elaborate on the potential impact on competing or alternative routes, including whether those competing or alternative routes' viability may be jeopardized due to insufficient post-Transaction traffic." Decision No. 21 at 30. The Board asked for that information "[f]or each route on which Applicants' combined market share will increase if the Transaction is approved." *Id.* The Board should clarify that its request applied to *all routes*, not only those reflected in Mr. Hunt's appendices

CPKC does not raise this issue to dispute the merits of Applicants' analyses at this stage. Rather, CPKC raises this issue now in order to avoid a situation in which Applicants' supplemental information continues to fail to set forth the projected shares of post-merger traffic, including projected traffic diversions not reflected in the current appendices and related analyses.

Respectfully submitted,



David L. Meyer
Attorney for CPKC

cc: Administrative Law Judge Soulikias
All Parties of Record
Joseph J. Matelis (Sullivan & Cromwell LLP)
Dylan M. Aluise (Sullivan & Cromwell LLP)

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of June 2026, I caused a 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/ Andrea L. R. Pillai
Andrea L. R. Pillai

APPENDIX A
LARGER SIZE VERSION OF FIGURE 1,
SHOWING PORTION OF APPLICANTS' FORECAST DIVERSIONS REFLECTED IN HUNT MARKET SHARE APPENDIX E

