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CN-23

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: **Docket No. FD 36873 - Union Pacific Corporation and Union Pacific Railroad Company – Control -- Norfolk Southern Corporation and Norfolk Southern Railway Company**

Dear Ms. Brown:

I write on behalf of Grand Trunk Corporation and its U.S. rail operating subsidiaries (collectively, “CN”) in response to Union Pacific Corporation, Union Pacific Railroad Company, Norfolk Southern Corporation, and Norfolk Southern Railway Company’s (collectively, the “Applicants”) July 7, 2026 submission in response to the Board’s Decision No. 21 (the “First Supplemental Submission”). Specifically, I write in opposition to Applicants’ proposed schedule (the “Proposed TRRA Schedule”) for the Board to evaluate five distinct proposed solutions (the “TRRA Commitment proposals”) for whether and how they propose avoiding control of the Terminal Railroad Association of St. Louis (“TRRA”) *in parallel with* the merits proceeding.¹ Applicants are, in essence, requesting the Board conduct a review of a “case within a case,” which would require the Board and interested parties to undertake significant additional obligations during what is expected to be an already intense and demanding procedural schedule on the merits.

Applicants’ unsolicited modification to their own proposed procedural schedule to establish a new TRRA Commitment proposals case-within-the-case would unnecessarily burden and prejudice the participating parties by having two simultaneous proceedings. There is no justification and no precedent for Applicants’ proposal. And this is the wrong matter to test such

¹ CN expressly reserves its comments on the merits of the Applicants’ proposed TRRA Commitment proposals—including which of them, if any, would avoid control—and the sufficiency of Applicants’ other supplemental information responses to Decision No. 21.

a novel approach.

Accordingly, the Board should reject the Proposed TRRA Schedule as contemplated by Applicants. In the alternative, should the Board determine that a separate analysis of Applicants' TRRA Commitment proposals is required prior to resolution of the ultimate merits of the Amended Application, CN respectfully asks that the Board continue to hold the broader merits analysis in abeyance until the TRRA Commitment proposals issues are resolved.

I. Background

A. Procedural Posture

One of the Board's independent reasons for rejecting the Initial Application was Applicants' failure to take seriously the proposed merger's impacts on TRRA. Indeed, the Board rejected the Applicants' initial related minor transaction application to control TRRA, noting that "[a]lthough Applicants state that they intend to divest NS's ownership interest in TRRA to reduce their post-merger ownership interest in TRRA below 50%, they do not offer to condition the Transaction on this divestiture, and their commitment is contingent on TRRA's other owners offering to pay fair market value."² The Board accordingly held that the proposed control of TRRA is a significant transaction. But Applicants did not submit an application for a significant transaction and simply deleted their minor application to control TRRA from the Amended Application. Now, they provide no application for control of TRRA at all and instead offer a "TRRA Commitment" with a vague promise "to divest[] NS's ownership interest in TRRA and redistribut[e] NS's shares equally to UP and TRRA's other current owners."³

Still finding the TRRA Commitment wanting, on May 28, 2026, the Board entered Decision No. 21, which deemed the Amended Application complete but held the proceedings in abeyance pending Applicants' responses to the Board's requests for supplemental information on numerous components of the Amended Application, including Applicants' TRRA Commitment to avoid controlling TRRA. Applicants were given until July 27, 2026—with the option to ask for more time—to respond to Decision No. 21.

Information request TRRA-1 asked Applicants to "[e]xplain [the] proposal for receiving Board review and confirmation that any divestiture has been sufficient to avoid legal control requiring Board authority, such that any express condition requiring divestiture before consummation has been satisfied."⁴ The Board did not ask Applicants to provide a modified or unique schedule for the Board's review of the TRRA Commitment, nor did it request that Applicants supplement the record with new proposals to avoid legal control of TRRA.

On July 7, 2026, Applicants made their First Supplemental Submission in response to Decision No. 21. In response to TRRA-1 and TRRA-2,⁵ Applicants provide *five* distinct TRRA

² Decision No. 9, FD 36873 et al., slip op. at 11 (STB served Jan. 16, 2026).

³ UP-39/NS-37, FD 36873 (filed Apr. 30, 2026) at 401.

⁴ See Decision No. 21, FD 36873 et al., slip op. at 28, TRRA-1 (STB served May 28, 2026).

⁵ "Provide additional details regarding TRRA-related corporate documents that may affect the implementation of Applicants' proposal to divest shares and Board seats sufficient to avoid majority control by Applicants. For each such document, explain what changes would be required,

Commitment proposals, including entirely new proposals referenced nowhere in the Amended Application, and propose a new procedural schedule specific to the review of the TRRA Commitment options:

Day 1 - Board seeks comments on proposals described in Applicants' response to Request TRRA-2.

Day 20 - Comments due.

Day 35 - Applicants' reply to comments due.

Day 90 - Board determination due.

Applicants ask that participating parties comment on their five TRRA Commitment proposals within the expedited Proposed TRRA Schedule, all while the broader merits case proceeds. As proposed by Applicants, the Board would issue an interim decision "address[ing] the sufficiency of the proposals."⁶ Applicants further suggest that they would "notify the Board of their selected approach at least 30 days before the scheduled due date for the Board's decision on the merits of the primary application."⁷

B. CN's Position as TRRA Shareholder and Director

As a TRRA shareholder and board member through Illinois Central Railroad Company, CN has fiduciary duties and must make decisions with the best interests of the future viability of TRRA in mind. Far from acting to "thwart resolution of TRRA ownership,"⁸ CN has at all times reviewed the issues and made decisions consistent with its obligations as a Director and shareholder.⁹ Applicants' First Supplemental Submission unreasonably requires evaluation of the five distinct TRRA Commitment proposals in the middle of the merits proceeding while interested parties are preparing comments and assessing the broader implications of Applicants' unprecedented merger proposal, including financial implications on TRRA.

II. Applicants' Case-Within-the-Case Proposal Should be Rejected

Applicants did not meaningfully address the Board's targeted questions about how they expect to effectuate their proposed TRRA Commitment while simultaneously avoiding legal control. Instead, Applicants present five scenarios (including two brand-new ones) and seek to place the burden on the Board and interested parties to evaluate the feasibility of their proposals before Applicants commit to a resolution.

and whether in Applicants' view such changes must be pursued under state law or whether preemption under 49 U.S.C. 11321(a) may apply." See Decision No. 21, slip op. at 28, TRRA-2.

⁶ First Supplemental Submission at 11.

⁷ *Id.* at 12.

⁸ *Id.* at 3.

⁹ CN has repeatedly informed Applicants that it cannot adequately evaluate the impacts of the proposed merger on TRRA without reviewing a significant transaction application, or at the very least receiving more information on how Applicants propose to divest shares that, by the terms of the share certificate and the Operating Agreement, cannot be divested to anyone but TRRA. See CN-15, FD 36873 (filed May 8, 2026) at 35; Letter from K. Gainey to M. Schmidt (Mar. 16, 2026).

Applicants’ proposed schedule and interim deadlines to evaluate the TRRA Commitment proposals are unworkable and should be rejected. Unsolicited, Applicants suggest that the Board entertain a case-within-the-case. But the Board has not yet even set forth the procedural schedule for the proceeding itself.

The Proposed TRRA Schedule contemplates all participating parties evaluating and commenting on their five different proposals for TRRA within 20 days of the Board decision establishing a procedural schedule, which is *five days* after notices of intent to participate in the proceedings may be due. That is unacceptable, particularly because Applicants have now supplemented the record with two additional proposals not referenced in their Amended Application. It is unclear how many more times the Applicants’ proposals may change.¹⁰

Further, vis-à-vis the Board’s proposed schedule for the proceeding,¹¹ Applicants’ proposed TRRA Procedural Schedule sets forth a deadline for the Board’s decision on the TRRA Commitment proposals that directly conflicts with parties’ deadlines for filing comments and responsive applications on the Amended Application writ large. If the Board adopted Applicants’ Proposed TRRA Schedule and the proposed procedural schedule for the proceeding as a whole, and if it considered “the date the Board establishes a schedule for consideration of the primary application”¹² as Day F+30 in the proposed procedural schedule, this could result in a timeline like the below:

	Primary Application	TRRA
D	Procedural schedule commences.	Board seeks comments on proposals described in Applicants’ responses to Requests TRRA-1 and TRRA-2.
D + 15	Notices of intent to participate due.	
D + 20		Comments due on TRRA-1 and TRRA-2.
D + 30	Proposed Safety Integration Plan (SIP) due.	
D + 35		Applicants’ reply to comments due on TRRA-1 and TRRA-2.
D + 45	Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due.	

¹⁰ It is also untenable given Applicants’ consistent delays in discovery, making it unlikely that participating parties will receive the information they need in time (or ever) to make informed comments on the various TRRA Commitment options.

¹¹ Decision No. 5, FD 36873 et al. (STB served Sept. 26, 2025).

¹² First Supplemental Submission at 12.

D + 85	Responsive environmental information and environmental verified statements for responsive, including inconsistent, applicants due.	
D + 90	Comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or any related application(s) due (except filings from DOJ and DOT). Responsive, including inconsistent, applications due.	Board determination due on TRRA-1 and TRRA-2.
D + 105	Preliminary comments from DOJ and DOT, if any, due.	
D + 120	Notice of acceptance of responsive, including inconsistent, applications, if any, published in the Federal Register.	
D + 180	Responses to comments (including those of DOJ and DOT, if any), protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application and any related application(s) due. Responses to responsive, including inconsistent, applications due.	
D + 210	Rebuttals in support of responsive, including inconsistent, applications due.	
D + 240	Final briefs due.	
	Public hearing if necessary.	
		Applicants notify the Board of their selected TRRA approach at least 30 days before merits decision.
	Service date of final decision.	
	Effective date of final decision.	

Having the Board's determination on the TRRA Commitment due on the same day as parties' comments and any responsive applications on the proposed merger is inefficient and prejudicial. Interested parties would have to prepare their merits comments without knowing how these TRRA-related issues will be resolved. Yet Applicants would prepare their rebuttal with the benefit of a Board determination on the TRRA Commitment proposals.

Furthermore, Applicants propose to reserve the right to make any decision about which

TRRA Commitment option to pursue until *30 days before the Board's decision ultimately approving or disapproving the merger*.¹³ But the Board's instructions explain that the information requested in Decision No. 21 is intended to inform its assessment of the Amended Application (which may include an evaluation as to whether Applicants have presented a *prima facie* case).¹⁴ Applicants seek to withhold their proposed course of action—foundational information that should be included in their Amended Application—until the very end of the proceeding, after the record is completed, after anyone else has a chance to participate, and deep into the Board's limited time to formulate and draft a merits decision.

The Board should not adopt a proposal that only advantages Applicants to the detriment of the participating parties and the performance of a broader application analysis. This is Applicants' application, and it should contain the case in chief before others are expected to begin their analyses for their comments, requests for conditions, and any responsive applications. Applicants should answer the questions the Board directed them to answer rather than trying to add unnecessary procedural steps.

III. Any Separate TRRA Procedural Schedule Must be Sequenced Ahead of, Rather than Parallel to, the Board's Review of the Merits of the Proposed Merger

For avoidance of doubt, CN's position is that the Board should not establish a separate TRRA procedural schedule that isolates the TRRA control issues from the merits issues related to the proposed merger's impacts on TRRA. However, in the event the Board agrees with Applicants that a separate procedural schedule is necessary for analyzing which of the proposed options should become the final TRRA Commitment, CN urges the Board to sequence it in *advance* of the procedural schedule for the broader merits proceeding.

Resolving the TRRA Commitment prior to the remainder of the proceeding would be much fairer and more efficient than having dual-track proceedings. It would facilitate a more efficient review of the proposed merger with one set of information, rather than letting Applicants continuously change course on what they intend to do and surprise participating parties and the Board near the end of the proceeding right before the Board's decision.¹⁵ It would avoid wasting the Board's and participating parties' resources by (i) determining if there is a viable solution before expending substantial time and resources on the remainder of the case and (ii) avoiding the need for parties to expend resources to prepare comments that must contemplate various alternative potential scenarios for TRRA when Applicants will implement only one of those scenarios.

¹³ No due date will be scheduled for the Board's merits decision until near the end of the proceeding, when the evidentiary record (including a public hearing, if necessary) is completed. The Board declined Applicants' proposal to include issuance of the merits decision in the proposed procedural schedule. Decision No. 5, FD 36873 et al., slip op. at 4 n.8 (STB served Sept. 26, 2025). Instead, the Board stated that it will issue its final decision in accordance with 49 U.S.C. § 11325(b)(3) (requiring a final decision to be issued within 90 days of the close of the evidentiary record). *Id.*

¹⁴ See Decision No. 21, slip op. at 19.

¹⁵ For the reasons stated above, a TRRA Schedule (if any) should include Applicants' commitment to select one of the TRRA Commitment proposals before the merits schedule commences.

This sequencing would also avoid prejudicing the participating parties. Unlike Applicants' proposal to run the two schedules simultaneously with a TRRA surprise at the end of the case, finalizing the TRRA Commitment in advance of the broader case would put Applicants and interested parties on equal footing, as each would be able to prepare merits pleadings with the same knowledge of what the ultimate TRRA Commitment is.

Finally, this sequencing would maintain the current procedural posture, as the merits of the case are currently in abeyance pending resolution of Decision No. 21. The Board could easily keep the case in abeyance until the TRRA Commitment is resolved, avoiding any complications or interactions with the broader procedural schedule. In the face of a deficient record, the Board is well within its authority to pause proceedings where fundamental issues need to be resolved before the Amended Application can be properly reviewed.¹⁶ To the extent Applicants object to holding the case in abeyance further, this is only the repercussion of their own actions. Despite being afforded multiple opportunities to address their potential control of TRRA, Applicants have only made their position more obscure with each successive submission by deleting the minor application, declining to submit a significant application, and adding two new TRRA proposals in their First Supplemental Submission that appear nowhere in the Amended Application.

* * *

For the reasons above, CN respectfully asks that the Board reject the Proposed TRRA Schedule. To the extent the Board provides for a separate procedural schedule to analyze the TRRA Commitment proposals, the Board should continue to hold the broader merits of the case in abeyance while the TRRA Commitment is finalized. In all events, the Board should not grant Applicants' request for an inefficient and prejudicial dual-track, case-within-a-case proceeding.

Respectfully submitted,

/s/ Sara Razi

Sara Y. Razi

¹⁶ See Decision No. 21, slip op. at 1; Decision No. 16, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 et al., slip op. at 3-4 (STB served Mar. 16, 2022) (suspending procedural schedule and ordering applicants to explain traffic inconsistencies within merger application); Decision No. 17, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 et al., slip op. at 5-7 (STB served Apr. 27, 2022) (continuing suspension of procedural schedule and ordering applicants to resolve noted deficiencies relating to their operating plan).

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of July 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