

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-202-956-7500
 FACSIMILE: 1-202-956-7676
 WWW.SULLCROM.COM

*1700 New York Avenue, N.W.
 Suite 700
 Washington, D.C. 20006-5215*

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July 21, 2026

BY ELECTRONIC FILING

Hon. Jenifer J. Soulikias
 Administrative Law Judge
 Surface Transportation Board
 395 E Street S.W.
 Washington, D.C. 20423-0001

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

Dear Judge Soulikias:

In accordance with Section F.1.c of the Discovery Guidelines, Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City and CPKC, on behalf of itself and its U.S. rail carrier subsidiaries (collectively “CPKC”),¹ respectfully submits that Applicants’ Motion to Compel the production of system-wide car and train event data, reciprocal switching data, and interchange data (UP-75/NS-73) should be denied as premature.

Applicants chose to file their Motion before the parties completed the meet-and-confer process and before responding to CPKC’s reasonable questions concerning the scope and relevance of the requests and whether there is a more targeted set of data CPKC could provide that would satisfy Applicants’ needs, while lessening the substantial burden that Requests 18–21 would otherwise impose on CPKC.

Even if this issue were ripe, Applicants have not demonstrated that Requests 18–21, as currently drafted, are proportional to the needs of this proceeding at this juncture. Applicants submitted their pending application containing the evidence they chose for the Board to consider in support of their Proposed Transaction without relying on CPKC’s system-wide car and train

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.

event data, reciprocal switching data, and interchange data. CPKC has not yet filed any comment or responsive application putting that data at issue. Moreover, CPKC, consistent with 49 C.F.R. § 1180.4(b)(4)(iii), has already produced to Applicants its 100% traffic tapes. Compelling CPKC to comply with Requests 18–21 would cause substantial burden disproportionate to the current needs of the proceeding. CPKC, accordingly, respectfully requests that Your Honor deny Applicants’ Motion.

BACKGROUND

Applicants served the requests at issue seeking CPKC’s data on June 1, 2026. CPKC timely filed its responses and objections to these requests on June 16, 2026, asserting that it had complied with its obligation to produce 100% traffic tapes and objecting to the four requests on the grounds that they were, *inter alia*, overbroad, unduly burdensome, disproportionate to the needs of the case, and sought information about CPKC operations that CPKC has not put at issue in the proceeding.

During a meet and confer with Applicants regarding these requests on July 8, 2026, Applicants instructed CPKC and the other Class I railroads to treat Requests 18–21 as among their “priority requests.” CPKC reiterated its positions but offered to engage constructively with Applicants on a middle-ground solution that would allow Applicants to achieve their objectives while minimizing the burden on CPKC. To this end, CPKC raised a number of questions regarding why the six years of requested data were relevant or necessary; whether a smaller subset of any data would suffice for Applicants’ purposes; and why data related to CPKC’s Canada and Mexico operations was relevant. Counsel for Applicants did not make any attempt to engage with the complications CPKC raised. Rather, they reiterated their requests for data in an email on July 14, 2026, without any mention of CPKC’s questions, and asserted that Applicants need this data “to assess any claims that might be made by non-applicant railroads about the impact of the proposed transaction on their service and operations or any conditions they may propose,” *i.e.*, to evaluate hypothetical claims that have not yet been made. (Ex. A.)

Having received no answers to the questions it raised at the meet and confer, CPKC memorialized its questions in a response email sent on July 16, 2026, and again indicated a willingness to continue to discuss ways to narrow the requests to a more manageable set of relevant data. (Ex. B.) CPKC also noted that, during the CP/KCS merger, the applicants in that proceeding had asked UP for its data only after UP submitted a comment arguing that CP/KCS were proposing a route between Laredo and Chicago that would be “far less efficient than UP’s and BNSF’s route.” (*Id.*) CPKC emphasized that it has not yet made any comparable argument relying on its own internal data, nor has it determined that it will. CPKC accordingly explained that Applicants’ requests were, at best, premature. (*Id.*)

Instead of responding to the issues CPKC raised at the meet and confer and memorialized in its email, Applicants cut short the meet-and-confer process by filing the instant Motion.

ANALYSIS

I. The Motion is Premature Because the Parties Have Not Reached an Impasse.

Applicants' Motion is premature. As Applicants acknowledge, the parties have met and conferred about Requests 18–21. (Mot. at 2.) Section F.1 of Your Honor's Discovery Guidelines requires that the parties attempt to resolve discovery disputes voluntarily, or to significantly narrow the disputed issues, whenever possible, and that the parties meet and confer regarding any disputes before seeking a ruling. *See* Discovery Guidelines § F.1. Applicants' filing of their Motion without first addressing CPKC's legitimate questions and concerns about the requests at issue prematurely cut off that meet-and-confer process. Those unanswered questions go directly to whether any production can be appropriately limited. Specifically, CPKC asked Applicants:

- why six years of data—from 2019 through 2025—are necessary, particularly given the burdens associated with reconstructing historical data from legacy-KCS and legacy-CP systems covering the period prior to CP's consummation of control of KCS in April 2023 and its integration of legacy CP and KCS systems in May 2025;
- why data relating to CPKC's Canadian and Mexican operations are relevant to this proceeding, and whether a more targeted production limited to CPKC's U.S. routes would suffice; and
- whether all requested data fields are actually necessary for whatever analysis Applicants intend to perform or whether a narrower subset would accomplish Applicants' stated objectives. (Ex. B.)

Applicants have not answered those questions. Instead, Applicants ask the Court to compel production of the broadest possible version of Requests 18–21 without first explaining why that scope is necessary or engaging with CPKC's efforts to narrow the requests. Indeed, CPKC stated that it is willing to continue meeting and conferring regarding these requests. Applicants should not be permitted to bypass that process while simultaneously acknowledging that discussions remain ongoing.

II. Applicants Have Not Demonstrated That Their Data Requests Are Relevant or Proportional.

Applicants' Motion also fails to demonstrate that Requests 18–21, as drafted, seek discovery that is proportional to the needs of this proceeding, especially relative to the burdens that would be imposed on CPKC. The requests seek, in substance, nearly every category of operational data maintained by CPKC across its entire system—including across Canada and Mexico, where neither UP nor NS operate—for a six-year period. As CPKC explained in its written responses, those requests seek extensive operational information well beyond what CPKC has placed at issue in this proceeding and far beyond what is necessary for Applicants' existing application.

Applicants principally rely on an assertion that discovery ought to be completely reciprocal, arguing that because Applicants produced similar data, CPKC must do the same. Applicants invoke 49 C.F.R. § 1180.4(b)(4)(iii) to support their requests. (Mot. at 3.) That reliance is misplaced. That regulation allows for Applicants to seek from non-Applicant railroads 100% traffic tapes on a reciprocal basis. CPKC has already produced its 100% traffic tapes and thus complied with that provision. The requests at issue seek data far beyond what is contemplated by 49 C.F.R. § 1180.4(b)(4)(iii). There is thus no basis under that regulation to compel CPKC to produce this additional data.

Applicants further contend that “this data is critical for Applicants to respond to any criticisms or alternative analyses that Non-Applicant Railroads may present.” (Mot. at 3.) But CPKC has not filed any criticisms or alternative analyses relying on CPKC’s data. To the extent that the data might become relevant based on a comment or responsive application CPKC may file in the future, CPKC is willing to consider such a request at that time. But, at this stage, Applicants have not put this data at issue in their pending Revised Application and, unless or until CPKC files a comment or responsive filing putting this data at issue, Applicants’ request for such data is not relevant and proportional to the needs of the case. Indeed, that timeline is consistent with the approach taken in *CP/KCS*—the last merger proceeding involving two Class I railroads—in which UP, a non-applicant railroad, did not make available its operational data until after it filed comments putting that data at issue. CPKC has significant concerns that the real reason Applicants want this data now is not because they believe they need it to respond to comments by CPKC, but because they want to begin using it to develop and present entirely new analyses for submission with their rebuttal in response to comments and requests for conditions. If that is what Applicants are planning, that would be wholly improper, as Board precedent makes clear Applicants are to present their case up-front, not sandbag commenters by submitting significant new evidence and argumentation on rebuttal when other parties would have no opportunity to respond. *See R.R. Consolid. Procs. Exp’d Proc’g*, 363 I.C.C. 767, 769 (1980) (“The regulations now require applicants to file with their application all their statements and other materials on which they intend to rely in proving the proposal consistent with the public interest.”).

Finally, Applicants have not addressed the substantial burden imposed by the requests. CP and KCS combined to become CPKC in 2023, and their IT systems were integrated in May 2025. To comply with this request, CPKC would need to work back through systems for two railroads that were separately maintained, including a legacy-KCS system that has since been retired. Obtaining data from these disparate systems and producing it in the manner contemplated by the requests would require significant time and effort. Applicants have likewise failed to explain why every requested data field is necessary or why a narrower production focused on relevant U.S. operations would not satisfy their stated objectives. Those are precisely the questions CPKC posed during the meet-and-confer process. Applicants declined to answer them. Without that showing, Applicants cannot establish that Requests 18–21, as drafted, are proportional to the needs of this proceeding.

CONCLUSION

For the reasons above, CPKC respectfully requests that Your Honor issue an order denying Applicants' Motion to Compel production of car and train event, reciprocal switching, and interchange data.

Respectfully submitted,

/s/ Joseph J. Matelis

Joseph J. Matelis

Attorney for CPKC

cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of July 2026, a true and correct copy of the foregoing was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer J. Soulikias.

/s/ Noah P.M. Stern
Noah P.M. Stern

EXHIBIT A

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Tuesday, July 14, 2026 7:01 PM

To: Magcale, Jamie Dominique U <JMagcale@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Lindsey.Bohl@stblaw.com; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Vaidya, Tushar <tushar.vaidya@kirkland.com>
Cc: Flahive Wu, Laura <lflahivewu@cov.com>; zzExt-dludwin <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Applicants' 2nd Set of Discovery Requests - Data Requests

Counsel,

At a recent meet and confer, certain non-applicant railroads asked Applicants to explain the relevance of the reciprocal traffic data requests that Applicants have served on the non-applicant railroads (which are numbered 18-21 in each set of requests). In particular, non-applicant railroads asked for an explanation of the relevance of event data requests, which Applicants provide below.

Car and train event data is produced as a matter of course in a range of STB proceedings, including prior merger proceedings. For example, in the CP-KCS proceeding the applicants requested that other railroads produce “system-wide car and container event data,” and this data was produced. See, e.g., Request No. 54, Applicants’ First Set of Interrogatories and Second Set of Discovery Requests, STB Fin. Docket 36500 (served Mar. 16, 2022). While waybill data may include basic transportation characteristics like origin and destination, only event data provides operational information on how traffic moves over the network, which is necessary to assess any claims that might be made by nonapplicant railroads about the impact of the proposed transaction on their service and operations or any conditions they may propose. Moreover, event data is maintained and used in the ordinary course of business, and production of those data files is not unduly burdensome, particularly for sophisticated Class I railroads.

Indeed, the STB’s merger rules reflect an expectation of reciprocal traffic data discovery for railroads who choose to participate in the proceeding. Under 49 § 1180.4(b)(4)(iii), applicants are permitted to condition their disclosure of their 100% traffic tapes to other railroads on those railroads’ commitment to do the same. Here, Applicants responded to non-applicant railroads’ request for event data without objection, and non-applicants have no basis to resist production of the exact same forms of traffic data that they have requested and have received.

There was also a question about whether Request 21 asks for information duplicative of previously produced waybill data. This request was directed at information “sufficient to show” the requested information on interchange volumes and associated payments between carriers, and non-applicant railroads are free to point to their waybill data if that data provides a sufficient answer to some or all of the information requested by Request 21. As we discussed on the call, some of the requested information like haulage or switching payments between railroads may not be reflected in waybills. But that is a question that each nonapplicant railroad should answer based on its own data.

As it stands, none of the non-applicant railroads have agreed to produce the reciprocal data that was requested. Please let us know promptly, and by no later than Thursday at 12 PM ET, if that has changed.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
www.cov.com [cov.com]

COVINGTON

EXHIBIT B

From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Thursday, July 16, 2026 12:31 PM

To: Kelly, Kevin <Kkelly@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Lindsey.Bohl@stblaw.com; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Vaidya, Tushar <tushar.vaidya@kirkland.com>

Cc: Flahive Wu, Laura <lflahivewu@cov.com>; zzExt-dludwin <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 2nd Set of Discovery Requests - Data Requests

Kevin – before following up on our unanswered questions from our meet and confer last week about Union Pacific’s Requests 18 through 21 (which in essence seek all CPKC system-wide data from the beginning of 2019 through the end of 2025), a point of clarification about the CP/KCS merger is helpful in framing our concerns. In that proceeding, CP asked UP for UP data only after UP submitted a comment arguing that CP/KCS were proposing a route between Laredo and Chicago that would be “far less efficient than UP’s and BNSF’s route.” (Comment at 7-8.) Only then did CP ask for the relevant UP data to test UP’s argument with UP’s own data. In this proceeding, CPKC has not made any argument yet relying on its own internal data, and we do not yet know whether we will. For that reason, we continue to believe UP’s request is, at best, premature. We are particularly of this view because any additional data analysis UP may want to pursue would need to be part of a reply to comments and not a wholly new analysis to support the Amended Application. Indeed, the fact that UP is seeking these data now gives us significant concern that UP is planning a new analysis for the reply stage, with the result being a significant new piece of argumentation to which no one would have the opportunity to comment.

That said, I want to memorialize questions that we raised during our meet and confer on this topic last week and remain unanswered. The reason answers to these questions are relevant is to see whether, notwithstanding our view that these broad data requests are at best premature, there is a set of data that we might consider providing and would allow you to perform whatever analysis you are considering, while lessening the substantial burden that Requests 18 through 21 would impose on CPKC.

1. Because CP and KCS merged in 2023, pulling data for two legacy railroads back through 2019 is particularly burdensome for CPKC. We reiterate our request that you explain why six years of data is necessary and whether a smaller subset would allow you to do whatever analysis it is you are considering.

2. CPKC has extensive operations in Canada and Mexico. We reiterate our request that you explain why those data are relevant so we can assess whether a smaller set of data focused on particular U.S. routes would be able to meet your needs.

3. Similarly, we asked whether, with respect to CPKC operations (which primarily run north-south in the United States), all the fields that you have requested from other railroads are equally relevant to CPKC or whether some subset would be sufficient for whatever purpose you articulate.

Finally, I also note again, as we did in our objection, that CPKC has already produced 100% traffic tapes, consistent with 49 CFR 1180.4(b)(4)(iii). We think our compliance with a rule specifically addressing data productions justifies a detailed explanation of why UP needs these data now, when CPKC has yet to file a comment relying on its data.

Sincerely – Joe