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September 22, 2026

BY ELECTRONIC FILING

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

ENTERED
 Office of Chief Counsel
 September 22, 2026
 Part of
 Public Record

Re: Finance Docket No. 36873, *Union Pac. Corp.* – *Control* – *Norfolk S. Corp.*

Dear Judge Soulikias:

Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC, on behalf of itself and its U.S. rail carrier subsidiaries (“CPKC”) submits this filing in response to Your Honor’s request at the September 18, 2026 conference for additional briefing on the question of whether a subpoena is required to compel the deposition of Lance Fritz as a non-party. For the reasons set forth below, a party to a proceeding before the Surface Transportation Board (the “Board” or “STB”) may compel the deposition of a non-party natural person without first obtaining a subpoena. If Your Honor either concludes that a subpoena is required or decides to avoid ruling on this issue, CPKC requests that Your Honor issue a subpoena for the deposition of Mr. Fritz in substantially the same form as attached hereto as Exhibit A.

I. Rule 1114.22(a) authorizes the deposition of Mr. Fritz without the issuance of a subpoena.

a. The plain text of 49 C.F.R. § 1114.22(a) authorizes depositions of “any person,” not merely parties.

The plain text of Section 1114.22(a) authorizes the deposition of “any person, including a party,” without any threshold subpoena requirement. 49 C.F.R. § 1114.22(a). Two features of the text make clear that non-parties are included in the scope of Section 1114.22(a).

First, the use of the phrase “any person”—without any qualification—sweeps beyond individuals who are parties to the proceeding. Under 49 U.S.C. § 10102(4), the Board’s organic statute notes that the term “person” will have the meaning ascribed to it by “section 1 of title 1” of the U.S. Code, which itself defines “person” to include “corporations, companies,

associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” 1 U.S.C. § 1. No relevant statute or Board regulation otherwise limits the meaning of “person” to only include parties to a proceeding before the Board.

Second, Rule 1114.22(a) states that “[t]he testimony of any person, including a party, may be taken by deposition upon oral examination.” 49 C.F.R. § 1114.22(a). Inclusion of the clause, “including a party,” makes clear that the term “any person” is not limited to parties. *See, e.g., Burgess v. U.S.*, 553 U.S. 124, 131 n. 3 (2008) (“[T]he word ‘includes’ is usually a term of enlargement, and not of limitation.”) (quoting 2A N. Singer & J. Singer, *Sutherland on Statutory Construction* § 47.7, p. 305 (7th ed. 2007)). If only a party can count as a person under Section 1114.22(a), the phrase “any person, including a party” would possess the superfluity that courts seek to avoid in interpreting statutory and regulatory text. *See, e.g., Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 562 (1995) (“[T]his Court will avoid a reading which renders some words altogether redundant.”). Applicants’ proposed construction would effectively replace the phrase “any person” with “a party,” which is simply not what the rule says.

Board precedent endorses this reading of Section 1114.22: *Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)—Springfield Terminal Ry. Co., Bos. & Maine Corp., & Portland Terminal Co.*, FD 33381, 1997 WL 222240 (STB served May 6, 1997). In that case, Northern New England Passenger Rail Authority (“NNEPRA”) sought to intervene in ongoing proceedings involving Boston and Maine Corporation (“B&M”) and Amtrak. *Id.* at *1 & n.4. NNEPRA was an agency of the State of Maine and was a successor in interest to the Maine Department of Transportation (“MDOT”). *Id.* B&M took the position that it did “not oppose NNEPRA’s intervention as long as its participation does not shield MDOT or the State of Maine from the evidentiary obligations of a party.” *Id.* The Board granted the request to intervene “without B&M’s condition.” *Id.* The Board explained B&M’s conditions were unnecessary because “[i]f B&M wishes to depose State or MDOT employees not under NNEPRA’s control”—in other words, depose the employees of non-parties—our rules provide the means for it to do so.” *Id.* The authority the Board cited was Section 1114.22. *Id.*

b. The plain-text reading is confirmed by the surrounding regulatory structure.

Applicants’ position that only a party can be deposed without a subpoena, when combined with the Board’s other regulations, creates a number of incoherent results.

First, the use of the phrase “any person” in the deposition rule is particularly noteworthy when contrasted with the language of the other discovery devices authorized by this Part of the Board’s regulations, which all explicitly state that they may only be served by a party upon another party. *See* 49 C.F.R. §§ 1114.26 (“any party may serve upon any other party written interrogatories”), 1114.27 (“a party may serve upon any other party a written request for the admission”), 1114.30 (“Any party may serve on any other party a request” for documents).

Second, the definition of a “party” in the Board’s regulations does not include the employees or agents of a party. *See* 49 C.F.R. § 1101.2(d) (defining party as “a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding”). If Applicants’

interpretation of Section 1114.22 were accepted, and it only authorized the deposition of parties, that would mean not even the employees or agents of parties would be subject to deposition absent subpoena, a result that cannot be correct.

Third, the portion of the Board’s discovery rules authorizing the issuance of protective conditions limiting discovery, Rule 1114.21(c), states that a protective order may be sought by a party or “by the person from whom discovery is sought,” and it authorizes a protective order “to protect a party *or person* from annoyance, embarrassment, oppression, or undue burden or expense.” 49 C.F.R. § 1114.21(c) (emphasis added). As noted, other discovery devices authorized by this Part of the Board’s rules—written interrogatories, requests for admission, and requests for production of documents—may only be served upon other parties to the proceeding. *See id.* §§ 1114.26, 1114.27, 1114.30. Therefore, there would have been no reason for the Board to state that a party *or person* may seek a protective order if, as Applicants suggest, a deposition may only be taken of someone who is a party. Notably, the same section later confirms that “[i]f the motion for a protective order is denied in whole or in part, the Board may, on such terms and conditions as it deems just, enter an order requiring any party *or person* to provide or permit discovery,” confirming the authority to order the deposition of persons who are not parties. *Id.* § 1114.21(c) (emphasis added).

c. Applicants’ cited authority does not support their position.

In support of their contention that “[n]on-parties may be compelled to provide testimony only by subpoena,” UP-104/NS-104, Applicants cite to 49 C.F.R. § 1113.2. Section 1113.2 sets out the process by which subpoenas may be requested or issued to compel either the production of documents or the appearance of a witness at a hearing. Nothing in the Rule states, or even hints, that a subpoena is a condition-precedent to the purely oral deposition of a non-party.

Nor does the only case cited by Applicants support their position. *See Lake Providence Port Comm’n—Feeder Line Application—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La.*, FD 36447, at 3 (STB served Jan. 16, 2026). That case involved a motion to compel not solely the depositions of non-party witnesses (as is the case here) but also the non-parties’ responses to interrogatories and document requests. *Id.* at 1. The decision was therefore entirely correct to hold a subpoena was required because, as noted, the rules governing interrogatories and document requests are expressly limited to parties. 49 C.F.R. §§ 1114.26, 1114.30. In that case, Your Honor was not asked to address the distinct argument, presented here, that a request exclusively for the oral deposition of a non-party does not require a subpoena.

II. CPKC requests, in the alternative, a subpoena to depose Lance Fritz

If Your Honor believes a subpoena were required or would prefer not reach the issue, CPKC respectfully requests that Your Honor issue the proposed subpoena for the deposition of Lance Fritz, attached hereto as Exhibit A. Your Honor has been delegated the authority to issue this subpoena by the Board. *See* Decision No. 3, at 2. The importance of obtaining Mr. Fritz’s testimony is set forth in non-applicant railroads’ prior briefing. *See* BNSF-52 / CPKC-45 / CSXT-24, at 5. We have noted a specific time and date in the subpoena, but will work in good faith with UP and Mr. Fritz’s counsel to find a time and place convenient to Mr. Fritz once UP has completed

its production of Mr. Fritz's documents. We have been discussing Mr. Fritz's deposition for weeks with lawyers from the law firm representing both UP and Mr. Fritz himself. The issue is ripe for decision, especially in view of the upcoming deadline for comments.

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 22nd day of September 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

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

SUBPOENA TO LANCE FRITZ FOR DEPOSITION TESTIMONY

To: Lance Fritz
c/o Laura Flahive Wu
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001

Pursuant to the rules of the Surface Transportation Board governing discovery, 49 C.F.R.

§ 1114, *et seq.*; 49 C.F.R. § 1113.2, and by Order of the Board:

YOU ARE HEREBY COMMANDED to appear, unless otherwise agreed by the parties, at the offices of Kutak Rock LLP, 1650 Farnam Street, Omaha, NE 68102 at 8:00 AM prevailing Central Time October 22, 2026, to provide testimony by oral deposition at the request of Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC, on behalf of itself and its U.S. rail carrier subsidiaries, in the above-captioned proceeding. The deposition will be in person and recorded by stenographic means and videotape. The deposition will be taken before a Notary Public or other officer authorized by law to administer oaths. The deposition is anticipated to be completed within seven hours. To the extent 49 C.F.R. § 1114.22(b)(2) is applicable, the cause or reason why the deposition will be taken is set forth in

the Motion to Compel UP Depositions filed by non-applicant railroads in the above-captioned proceeding on September 3, 2026, *see* BNSF-52 / CPKC-45 / CSXT-24, at 5, which was concurrently served on counsel for the deponent.

DATED:

Administrative Law Judge Jenifer J. Soulikias: _____