

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

312661

DOCKET NO. FD 36873

ENTERED
Office of Chief Counsel
October 5, 2026
Part of
Public Record**UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY**

— CONTROL —

**NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY**

PETITION FOR WAIVER AND/OR CLARIFICATION

INTRODUCTION

Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries¹ (collectively, “CN”), respectfully submits this Petition for Waiver and/or Clarification (“Petition”) in the above-captioned proceeding. CN seeks three discrete waivers or clarifications from the Surface Transportation Board (“Board” or “STB”) in connection with CN’s anticipated responsive applications in this major rail control proceeding involving the proposed acquisition by Union Pacific² of Norfolk Southern (the “Proposed Transaction”).

¹ Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

² Union Pacific refers collectively to Union Pacific Corporation (“UPC”) and Union Pacific Railroad Company (“UP”). Norfolk Southern refers collectively to Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NS”). Union Pacific and Norfolk Southern are collectively referred to as Applicants. Proposed Transaction refers to the proposed acquisition by Union Pacific of Norfolk Southern detailed in the amended application. See UP-39/NS-37, FD 36873 (filed Apr. 30, 2026) (the “Amended Application” or “Am. Appl.”).

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October 5, 2026

SURFACE**TRANSPORTATION BOARD****FILED**

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On September 9, 2026, CN filed its Description of Anticipated Responsive Application, CN-30 (“Responsive Application Description”), which outlined the principal elements of CN’s anticipated responsive applications. The Responsive Application Description noted that CN had entered into a binding Memorandum of Understanding with Union Pacific on July 22, 2026 (the “CN MOU”),³ and described the conditions CN intends to seek to remedy competitive harms arising from the Proposed Transaction. On September 17, 2026, the Board assigned CN the following sub-dockets related to its responsive applications:

Sub-No. 2 - Illinois Central Railroad Company – Divestiture – Line of Union Pacific Railroad Company Between St. Louis, Mo. and Kansas City, Mo.;

Sub-No. 3 - Illinois Central Railroad Company – Overhead Trackage Rights – Line of Union Pacific Railroad Company Between St. Louis, Mo. and Kansas City, Mo.;

Sub-No. 4 - Illinois Central Railroad Company – Overhead Trackage Rights – Line of Union Pacific Railroad Company Between Lydia Street and Broadway in Kansas City, Mo.;

Sub-No. 5 - Illinois Central Railroad Company – Terminal Trackage Rights – Over Line of BNSF Railway Company Between Eton, Mo. and Congo, Mo.;

Sub-No. 6 - Illinois Central Railroad Company – Lease and Purchase – Union Pacific Railroad Company Neff Yard in Kansas City, Mo.;

Sub-No. 7 - Illinois Central Railroad Company – Overhead Trackage Rights – Line of Union Pacific Railroad Company Between Tuscola, Ill. and East St. Louis, Ill.;

Sub-No. 8 - Illinois Central Railroad Company – Overhead Trackage Rights – Over Line of The Alton & Southern Railway Company Between Lenox/Mitchell, Ill. and East St. Louis, Ill.;

Sub-No. 9 - Illinois Central Railroad Company – Local Trackage Rights – Line of Union Pacific Railroad Company to serve Hillsboro, Ill.; and

Sub-No. 10 - Iowa Northern Railway Company and Chicago, Central & Pacific Railroad Company – Trackage Rights – Line of Union Pacific Railroad Company Between Manly, Iowa / Iowa Falls, Iowa and Des Moines, Iowa.

³ See UP-80/NS-78, FD 36873 at 203-211 (filed July 27, 2026) (the “Second Supplemental Submission”).

CN's Responsive Application Description identified two matters with respect to which CN planned to seek waivers or clarifications from the Board. Specifically, CN requests:

- (1) A waiver or clarification that CN need not include a responsive application requesting trackage rights to the Macoupin Energy LLC Shay Mine #1 facility near Carlinville, Illinois, because the mine is currently idled, with CN reserving the right to seek such trackage rights in the future if the mine resumes operations; and
- (2) A waiver or clarification that CN's anticipated connecting trackage rights over the Terminal Railroad Association of St. Louis ("TRRA"), a non-applicant, need not be included in CN's responsive applications. CN is entitled to such trackage rights by virtue of its existing ownership interest in TRRA and will obtain those rights directly from TRRA, subject to separately seeking STB approval for such trackage rights as described below under 49 C.F.R. § 1180.2(d)(7) rather than through an STB-imposed condition as part of this merger proceeding.

CN also seeks clarification from the Board that its proposal to file four responsive applications, which will collectively cover all nine sub-dockets assigned to CN, is consistent with Board procedure. These requests are narrowly tailored and consistent with the Board's precedent granting waivers and clarifications in prior major rail control proceedings.

LEGAL STANDARD

The Board has broad authority under its regulations to grant waivers of filing requirements in control proceedings. The Board's merger regulations provide that "[t]he Board, upon good cause shown, may waive or modify the requirements of any of the provisions of this part." 49 C.F.R. § 1180.4(f). The Board has exercised this authority in prior major control proceedings to grant

waivers and clarifications of the requirements for responsive applications where the requesting party demonstrated good cause.⁴

ARGUMENT

I. Request for Waiver or Clarification Regarding Trackage Rights to Macoupin Energy LLC (Idled Mine)

CN's description of its anticipated responsive applications included, among other things, seeking trackage rights to preserve competition for 2-to-1 customer facilities in Illinois. One such facility is the Macoupin Energy LLC Shay #1 coal mine (formerly Monterey Mine #1), currently owned by Foresight Energy, located near Carlinville, Illinois. CN-30 indicated that CN may seek trackage rights over UP's line between Springfield, Illinois and Carlinville to access this 2-to-1 customer facility.⁵

However, the Macoupin Energy mine is currently idled.⁶ Foresight Energy's website describes Macoupin as idled.⁷ The mine is not currently producing coal or receiving rail service, and there is no current competitive harm to remedy at an inactive facility. Applicants have acknowledged that the Macoupin Energy mine is a 2-to-1 customer location and have agreed to grant trackage rights access to another Class I carrier,⁸ but given the idled status of the mine, the need for such trackage rights is not presently ripe.

⁴ See, e.g., *Canadian Nat'l Ry.—Control—Illinois Cent. Corp.* (Decision No. 7), FD 33556 (STB served Sep. 18, 1998); *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.* (Decision No. 30), FD 33388 (STB served Sep. 11, 1997); *Union Pac. R.R.—Control & Merger—S. Pac. R.R.* (Decision No. 13), FD 32760 (STB served Feb. 15, 1996).

⁵ CN-30, Description of Anticipated Responsive Application, FD 36873 (filed Sept. 9, 2026), at 3, 12.

⁶ Am. Appl. Vol. 1 at 395.

⁷ See Foresight Energy, *Operations*, <https://www.foresight.com/operations/>.

⁸ Second Supplemental Submission at 58.

CN therefore requests that the Board grant a waiver or clarification that CN need not include a request for trackage rights to the Macoupin Energy facility at Carlinville, Illinois in its responsive applications at this time. The Board’s authorization of trackage rights conditions in a merger proceeding is intended to preserve competitive rail service options for shippers.⁹ But where a facility is idled and no shipper is currently being served, there is no immediate competitive harm that a trackage rights condition would address and no contemplated operations that could be described or modeled. Requiring CN to prepare a responsive application requesting trackage rights to an inactive facility would impose unnecessary costs and burdens on the parties and the Board without any corresponding benefit to competition or the public interest.

CN respectfully submits, however, that if the Macoupin Energy mine resumes operations in the future, CN should be permitted to seek trackage rights over UP’s line between Springfield, Illinois and Carlinville at that time. This approach is analogous to situations in which the Board granted trackage rights under a class exemption to effectuate service to a 2-to-1 customer years after the initial merger.¹⁰ Granting this waiver or clarification would conserve the resources of all parties and the Board while ensuring that competitive rail service can be restored to this location if and when the mine becomes active again.

II. Request for Waiver or Clarification Regarding TRRA Trackage Rights

⁹ See 49 U.S.C. § 11324(b)(2), (5), (c) (requiring the Board to consider, among other factors, whether the transaction would adversely affect competition, and authorizing the Board to impose conditions including “requiring the granting of trackage rights and access to other facilities”).

¹⁰ See, e.g., *BNSF Ry. Co.—Trackage Rights Exemption—Union Pac. R.R. Co.*, FD 36547, slip op. (STB served Oct. 22, 2021) (granting BNSF access to a 2-to-1 shipper in 2001 pursuant to a trackage rights agreement between BNSF and UP from the 1996 merger between UP and Southern Pacific); 49 U.S.C. § 11324(c) (authorizing the Board to impose conditions on approval of a transaction, including “requiring the granting of trackage rights and access to other facilities”).

In CN-30, CN also described that it anticipates acquiring additional connecting trackage rights over the Terminal Railroad Association of St. Louis (“TRRA”) to support CN’s operations between East St. Louis, Illinois and St. Louis, Missouri.¹¹ TRRA is not an Applicant in this proceeding, nor is it controlled by any Applicant, and CN does not ask the Board to impose the TRRA trackage rights as a condition of approval of the proposed Union Pacific-Norfolk Southern control transaction. Instead, CN is entitled to obtain those trackage rights pursuant to its existing ownership interest in TRRA, not contingent on the proposed control transaction, and the trackage rights will be the subject of consensual agreement between CN and TRRA. CN thus believes that its anticipated trackage rights over TRRA are appropriately the subject of a class exemption notice under 49 C.F.R. § 1180.2(d)(7) in a docket separate from the merger, and do not need to be presented here in a responsive application.

The trackage rights class exemption specifically excludes trackage rights that are “filed or sought in responsive applications in rail consolidation proceedings.” 49 C.F.R. § 1180.2(d)(7)(ii). Responsive applications, in turn, are defined as requests “in response to a primary application seeking affirmative relief either as a condition to or in lieu of the approval of the primary application.” 49 C.F.R. § 1180.3(h). Here, CN’s proposed acquisition of consensual trackage rights over a non-applicant third party does not itself seek such “affirmative relief” and is not the type of transaction that itself requires a responsive application.¹² The Board would not have jurisdiction to impose such trackage rights on TRRA as a condition of approval of the proposed Union Pacific-Norfolk Southern transaction, and subject to the Board’s approval of this waiver request CN does

¹¹ CN-30 at 3 & n.6.

¹² See, e.g., *Indiana Rail Road Company – Trackage Rights – Indiana Hi-Rail Corporation*, FD 31737, slip op. at 2 (ICC served May 9, 1991) (“The controlling fact [as to whether a responsive application is required] . . . is that the trackage rights are not sought as a condition to or in lieu of the relief sought in the [primary application].”).

not seek any such condition.¹³ The Board should thus provide an appropriate clarification or waiver that CN's proposed TRRA trackage rights do not need to be submitted in a responsive application in this proceeding.

III. Request for Clarification Regarding Sub-Dockets

As previewed in CN-30, CN will be filing multiple responsive applications in connection with the remedies outlined in the binding settlement MOU between Union Pacific and CN. The Board has assigned CN several sub-dockets related to the proposed applications. Given the overlapping nature of the substance of many of these requests, CN currently anticipates filing four responsive applications in total. They will correspond with the following conditions:

- **Responsive Application 1: Access to Kansas City and Expanded Access to St. Louis**
 - **Sub-No. 2** - Illinois Central Railroad Company – Divestiture – Line of Union Pacific Railroad Company Between St. Louis, Mo. and Kansas City, Mo.
 - **Sub-No. 3** - Illinois Central Railroad Company – Overhead Trackage Rights – Line of Union Pacific Railroad Company Between St. Louis, Mo. and Kansas City, Mo.
 - **Sub-No. 4** - Illinois Central Railroad Company – Overhead Trackage Rights – Line of Union Pacific Railroad Company Between Lydia Street and Broadway in Kansas City, Mo.
 - **Sub-No. 6** - Illinois Central Railroad Company – Lease and Purchase – Union Pacific Railroad Company Neff Yard in Kansas City, Mo.

¹³ CN's responsive application in the Sub-No. 5 docket, seeking terminal trackage rights in Kansas City over a third-party non-applicant (BNSF Railway Company) will be filed pursuant to 49 U.S.C. § 11102(a). Its responsive application in the Sub-No. 8 docket will seek trackage rights over The Alton & Southern Railway Company, a wholly-owned Union Pacific subsidiary. Neither scenario is applicable to CN's contemplated consensual trackage rights over non-applicant TRRA.

- **Sub-No. 7** - Illinois Central Railroad Company – Overhead Trackage Rights – Line of Union Pacific Railroad Company Between Tuscola, Ill. and East St. Louis, Ill.
- **Sub-No. 8** - Illinois Central Railroad Company – Overhead Trackage Rights – Over Line of The Alton & Southern Railway Company Between Lenox/Mitchell, Ill. and East St. Louis, Ill.
- **Responsive Application 2: Terminal Trackage Rights Over BNSF**
 - **Sub-No. 5** - Illinois Central Railroad Company – Terminal Trackage Rights – Over Line of BNSF Railway Company Between Eton, Mo. and Congo, Mo.
- **Responsive Application 3: Trackage Rights in Hillsboro, IL**
 - **Sub-No. 9** - Illinois Central Railroad Company – Local Trackage Rights – Line of Union Pacific Railroad Company to serve Hillsboro, Ill.
- **Responsive Application 4: Trackage Rights from Manly / Iowa Falls to Des Moines, IA**
 - **Sub-No. 10** - Iowa Northern Railway Company and Chicago, Central & Pacific Railroad Company – Trackage Rights – Line of Union Pacific Railroad Company Between Manly, Iowa / Iowa Falls, Iowa and Des Moines, Iowa

To the extent that certain information in the four responsive applications would be identical, CN would plan (absent contrary instruction from the Board) to include such information in the first responsive application and cross-refer to such information in the other responsive applications.

CN previews its intention so that the Board may clarify whether CN must file individual responsive applications to address each of the assigned sub-dockets.

CONCLUSION

For the reasons set forth above, CN respectfully requests that the Board grant the following waivers and/or clarifications:

- (1) That CN need not include a request for trackage rights to the Macoupin Energy LLC facility at Carlinville, Illinois in its responsive applications at this time because the mine is currently idled, with CN's right to seek such trackage rights preserved and available should the mine resume operations;
- (2) That CN's anticipated request for connecting trackage rights over the TRRA need not be included in its responsive applications because CN is entitled to such trackage rights by virtue of its existing ownership interest in TRRA and can obtain such rights directly from TRRA, a non-applicant third party, and seek approval from the Board for such rights outside of this Proposed Transaction; and
- (3) That CN be permitted to submit four responsive applications to cover the nine assigned sub-dockets.

Granting these narrowly tailored waivers and clarifications will promote the efficient administration of this proceeding by focusing the responsive application process on those matters that genuinely require Board adjudication, while preserving CN's rights with respect to both the idled Macoupin mine and the TRRA trackage rights.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of October, 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

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