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Office of Chief Counsel
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CSXT-41

November 2, 2026

By E-Filing

Chief of Case Administration
Office of General Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: ***Docket No. FD 36873 – Union Pacific Corp. et al.—Control—Norfolk Southern Corp. et al.*—CSXT Letter Brief Opposing UP-124 & UP-125**

Dear Chief of Case Administration:

CSXT submits this letter brief in opposition to UP's untimely appeal of the ALJ's order redesignating the video of UP CEO Jim Vena's March 2026 address at SWARS, as well as its procedurally improper "emergency" motion for a stay of the ALJ's order. CSXT also writes in full support of CPKC's Motion to Enforce Decision No. 43. *See* CPKC-66. The Board should promptly deny UP's appeal and motion to avoid (i) prolonging further the retaliatory and dilatory impacts of shielding the SWARS video from review; and (ii) further distraction of stakeholders who are working to finalize their comments by November 18.

If the Board ultimately elects to reach the merits of UP's untimely appeal, it will surely confirm that the ALJ did not clearly err in her decision. *See* CPKC-66 at 6-7. But the Board has no need to review the ALJ's decision to dispose of this issue. UP's purported appeal was inexcusably late, filed two days after the October 28 appeal deadline had lapsed. *See* Decision No. 30 at 11 (setting expedited deadlines of five calendar days in this proceeding for appeals from decisions of the ALJ). UP makes no attempt to address Decision No. 30's five-day appeal deadline.[1]

As a result, UP has violated the ALJ's order that it produce a public copy of the video by October 30. Decision No. 43 at 6. UP chose to file its late appeal accompanied by an "emergency" motion for stay after business hours on Friday. UP thus effectively granted itself a stay of the ALJ's order.

[1] Consistent with the Board's goal of expediting briefing, CSXT is filing this letter today, the date on which its response to a timely UP request for appeal would have been due.

UP's approach can only be explained as an effort to run out the clock, so shippers will have little or no time to view the public video and consider its implications before the November 18 public comments deadline. *See* ACC-8/ACD-8/AFPM-8/NITL-5/TFI-8 at 2-3. Given the time sensitivity of the matter, it is particularly important that the Board act as swiftly as possible to mitigate the continuing harm and deny UP's purported appeal and motion for stay.[2] The Board could do so, for example, by ordering production by a date certain and affirmatively stating that its decision is effective upon service and the matter is not stayed pending any further appeal or motion for reconsideration. CSXT ultimately defers to the Board's discretion but reiterates that time is of the essence for resolution of this matter.

Sincerely,



Kent A. Gardiner

Counsel for CSX Transportation, Inc.

[2] The Board should also decline to entertain UP's new suggestion, never presented to the ALJ, that dissemination of the redesignated video be limited to UP's promotional website for the merger, where UP could control and track such viewings. *See* UP-124 at 4. The redesignated video should be treated no differently than other non-confidential material.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2026, I have caused the foregoing document to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ *Kent A. Gardiner*

Counsel for CSX Transportation, Inc.