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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 Pac. Corp. – Control – Norfolk S. Corp.*

Dear Judge Soulikias:

CPKC[1] has (1) proposed a reasonable custodial search process modeled after Applicants' approach and (2) attempted to compromise with Applicants. Rather than explain their need for material beyond what CPKC offered during the meet-and-confer process, Applicants chose to truncate that process by filing this motion, going so far as to demand a search string they never even raised before filing their motion. Applicants' position is unreasonable, and Your Honor should deny their motion.

BACKGROUND

In Decision No. 31, Your Honor ruled on three issues relevant here. *First*, CPKC argued that UP's proposed search terms were too narrow. *See* CPKC-36 (filed July 30, 2026), at 2-4. Your Honor disagreed and approved UP's approach. Decision No. 31, at 4-9 (STB served Aug. 19, 2026). *Second*, Your Honor denied CPKC's request that UP be ordered to extend the date range of its custodial search to cover the pre-2022 time period, with one exception: Your Honor granted CPKC's request that pre-2022 materials be produced from the file of UP's former CEO Lance Fritz, who retired from UP in the summer of 2023. *Id.* at 9-10. *Third*, Your Honor ordered

[1] "CPKC" means, collectively, Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City on behalf of itself and its U.S. rail carrier subsidiaries, including 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.

CPKC to produce data comparable to what Applicants had agreed to produce, explaining that production would be "proportional" to what Applicants had produced. *Id.* at 3.

Turning to this Motion, Applicants served discovery requests on May 29 and June 1. CPKC responded by adopting positions informed by Applicants' own approach to discovery, consistent with Your Honor's rulings in Decision No. 31.

Date Range. For requests concerning prior Class I mergers and collaborations (Nos. 2, 4, 10, 16), CPKC offered a compromise based on prior negotiations, extending the start date back to 2019. UP-129/NS-123 (filed Nov. 5, 2026), Ex. A, at 17-18. For requests concerning the impact of the proposed transaction (Nos. 3, 12-14, 17), CPKC initially proposed a start date of July 29, 2025, but as a compromise agreed to extend that date back to July 29, 2024. *Id.* at 10, 12, 17-18.

For the remaining requests (Nos. 11, 24-29), CPKC offered a start date of July 29, 2024, one year prior to the announcement of the merger, which CPKC believed provided Applicants with a reasonable set of ordinary-course documents, without imposing an undue burden. *See id.* at 17-18. Applicants did not object to this during the parties' meet-and-confer on October 14, which led CPKC to offer other concessions surrounding its custodial search. *See id.* at 9, 12. On October 19, Applicants changed their position, demanding the time period for these requests be extended back through 2019. *Id.* at 8-10. When CPKC asked why an expanded time period was necessary, Applicants' only response was that these were "searches for 'ordinary course' documents." *Id.* at 8-9.

Custodians. Applicants initially proposed ten custodians: six from CPKC and four legacy KCS custodians. *Id.* at 26. CPKC responded by agreeing to include its CEO, head of marketing, head of strategy, and head of operations. *Id.* at 17-18. CPKC asked Applicants why KCS custodians should be included, given that KCS is no longer an independent railroad. *Id.* at 9. Rather than provide a reasoned explanation to which CPKC could respond, Applicants simply asserted that "all possess relevant 'ordinary course' materials," referring to their prior filing. *Id.* at 7. Although disagreeing about their relevance, as a compromise, CPKC agreed to include two additional custodians: (1) CPKC's CFO and (2) KCS's former CEO. *Id.* at 1-3, 12.

Search Terms. CPKC's proposed search terms were taken almost verbatim from Applicants. During the meet-and-confer process, CPKC agreed to accept all but one of Applicants' proposed revisions. *Id.* at 1-3, 10-12. The sole exception is Applicants' insistence that CPKC add twenty additional search terms to identify documents concerning the impact of the proposed transaction. CPKC explained Applicants' proposed additional terms were unnecessary, overly broad, and not proportionate when compared to Applicants' own search. *Id.* at 2. Instead of attempting to explain why their position had merit, Applicants filed the instant motion.

DISCUSSION

Date Range. As illustrated in Appendix A, expanding the date range for requests 11 and 24-29 as Applicants demand would impose a substantial and disproportionate burden on CPKC, especially when compared to Applicants' own custodial search process. Under CPKC's proposal, the hit count is more than three times the number of documents NS produced from comparable

custodians, and is roughly comparable to UP. This is particularly striking because Applicants were responding to many more requests than CPKC given the transcontinental scope of their proposed merger, meaning this comparison underestimates the comparative burden on CPKC. Were Applicants' expanded date proposal accepted, total hits would increase about 60%.

Applicants respond by asserting "[n]ot all of the hits will be responsive to Applicants' requests, and the volume of those hits therefore cannot reasonably be compared to the volume of an eventual production." UP-129/NS-123, at 3. The search terms CPKC intends to use were taken directly from those proposed and used by Applicants, and Your Honor upheld that choice in Decision No. 31. Applicants provide no grounds for revisiting that ruling. Moreover, Applicants could have provided a comparison of their custodian-level hit counts—information CPKC does not possess—but chose not to provide that information either in their motion or to CPKC during the meet-and-confer process. They have failed to provide any evidence that the date range CPKC is proposing is not "proportional" to what Applicants produced. Decision No. 31, at 3.

Custodians: other former KCS employees. Applicants' request for CPKC to add three additional KCS custodians—the former CFO, head of operations, and head of marketing—is disproportionate and unduly burdensome. Doing so would add approximately 26,500 additional documents under CPKC's proposal and almost 60,000 under Applicants' date range proposal to the review process. CPKC has already agreed to add KCS's former President and CEO, Patrick Ottensmeyer, whom Applicants themselves have emphasized "led KCS through the CP-KCS merger process" and had knowledge of "KCS's strategic direction, competitive positioning, and assessment of rail industry consolidation" as well as KCS's "commercial strategy, customer relationships, and financial operations." UP-110/NS-111 (filed Sept. 24, 2026), App'x A at 3.

The sufficiency of Mr. Ottensmeyer's documents is buttressed by Decision No. 31, in which Your Honor found that UP's former CEO's legacy files dating back to 2019 should be produced but denied CPKC's request to expand the search to the pre-2022 files of other UP custodians. Decision No. 31, at 10. In neither the meet-and-confer process nor their motion did Applicants explain why additional KCS employees' custodial files are not unnecessarily duplicative of other discovery they are already receiving.

Custodians: Larry Lloyd. Applicants' request to add Larry Lloyd, CPKC's Assistant Vice President of U.S. Government Affairs, as a custodian fails for similar reasons. Mr. Lloyd reports to James Clements, whose files CPKC has already agreed to search. As Applicants acknowledge, Mr. Clements "leads CPKC's strategic government relations, communications, and multi-year integration and change management efforts." UP-110/NS-111, App'x A at 2. Applicants also note that "[a]s the executive responsible for government relations and strategic planning, Clements has knowledge of CPKC's regulatory engagement strategies, communications with the STB and government officials regarding the proposed UP-NS merger, and CPKC's internal assessment of the merger's effects on rail industry structure and competitive dynamics." *Id.* Applicants speculate that Mr. Clements' files will not capture Mr. Lloyd's "day-to-day communications" with outside stakeholders, UP-129/NS-123, at 3, but they fail to identify why CPKC's communications with those stakeholders are relevant. CPKC has also agreed to conduct a targeted collection of documents responsive to requests 2-4, 6-10, 16, and 18-21, covering,

among other things, the impact of the proposed transaction, potential mergers and partnerships, and communications with third parties regarding the proposed transaction. *Id.* Ex. A at 3, 18.

Search Terms. CPKC proposed the following search terms to capture documents concerning the impact of the proposed transaction: *(((UP or "Union Pacific") AND ("Norfolk Southern" or NS)) w/5 (merger OR transaction OR aquisi* OR combination)) OR (CGP or "Committed Gateway Pricing" or transcon* OR duopoly)) w/10 (impact* OR harm* OR analys* OR evaluation* OR forecast*)*. In their motion, Applicants assert that CPKC's proposed terms are inadequate and ask that Your Honor order CPKC to employ twenty additional search terms that Applicants had not shared with CPKC previously. That is unreasonable for the following reasons.

First, Applicants cannot explain why CPKC's proposed terms are inadequate. *See* UP-129/NS-123, at 4. Applicants argue that CPKC has offered only a "single search" to address this topic. But in Decision No. 31 Your Honor approved of Applicants' similar approach of using a single search string to address multiple topics. *See, e.g.*, Decision No. 31, at 6-7 (approving search string "falcon w/5 premium" to address CPKC's request concerning "UP's 'Falcon' project in Mexico"). Applicants also ignore that CPKC has agreed to use a host of other terms—again, used by Applicants—related to topics such as Class I mergers, interline agreements, pricing strategies, growth strategies, bundling, service performance and new customer facilities. (*See* UP-129/NS-123, Ex. A at 10-11, 17-18.) For example, another search term CPKC includes would capture any document that discusses "Union Pacific" or "Norfolk Southern" within 10 words of the terms "merg*" or "acqui*", among other terms. *Id.* at 11, 17. Taken together, those terms provide more than adequate coverage.

Second, Applicants' proposed terms are overbroad. For example, Applicants' proposed terms 1, 6 and 9 would collectively capture any document if (a) the document refers to *"Union Pacific" OR UNP OR UPRR OR "Norfolk Southern" OR NS OR NSC OR norfolksouthern OR Crimson*[2] and (b) any of the following terms are used anywhere in the document: *merg* OR transaction OR combination OR acqui* OR control OR debt OR revenue OR earning* OR EBITDA OR leverage OR (operating w/2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth OR (single w/2 (carrier OR line)) OR "parallel route*" OR defens* OR Amtrak OR "partnership agreement" OR (transition* w/2 service) OR freight OR port* OR trade OR "vertical effect*" OR (negot* w/20 contract*) OR (traffic w/2 (manifest OR level*)) OR "principal route*" OR (truck w/2 rail) OR IT OR tech* OR (service* w/2 disrupt*)*. UP-129/NS-123, App'x A at 11-12. When combined with the other 17 additional search strings Applicants demand CPKC use, the result is that any document that contains *any* reference to UP or NS would be captured. There are only five Class I railroads other than CPKC; there are obviously going to be many references to all five in CPKC's files. Many, if not most, of the references to UP or NS by CPKC employees have limited probative value on the impact of the proposed transaction. Applicants' proposed search terms are therefore not reasonably tailored and Applicants' motion should be denied for

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[2] Applicants suggest that CPKC should have included the phrase "Project Crimson" in the search string it used. Project Crimson is the internal project name used by CPKC's legal department to refer to CPKC's involvement in these merger proceedings. The overwhelming majority of documents captured by the phrase would be privileged.

that reason alone. *See* Decision No. 31, at 6-8 (rejecting argument that Applicants' proposed search terms were excessively narrow because "CPKC has not proposed a search term that is reasonably calculated and not overly broad").

To confirm the overbreadth of Applicants' proposed terms, CPKC reviewed a sample of 324 documents that hit on an example term Applicants proposed (No. 6) but did not hit on any of CPKC's agreed terms, in a manner similar to the sample conducted by Applicants in opposing CPKC's motion to compel. *See* UP-86/NS-84 (filed Aug. 4, 2026), at 2 & n.1. Only 12 of those documents (approximately 4%) were responsive and not privileged. Requiring CPKC to review the documents captured by Applicants' proposed terms would therefore impose a disproportionate burden on CPKC for at most a marginal benefit to Applicants.

Third, Applicants' proposed additional search terms are unduly burdensome. As illustrated in Appendix A, Applicants' demand—which they chose not to raise during the meet-and-confer process—results in CPKC hit counts (when combined with the date-range demands) that are almost double the number of documents produced from comparable UP custodians, and over seven times the number of documents NS produced from comparable custodians. Imposing such a disproportionate burden on CPKC, a non-applicant, is unjustified.

CONCLUSION

For the reasons outlined above, CPKC respectfully requests that Your Honor deny Applicants' motion.

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 10th day of November 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

APPENDIX A

UP/NS Custodian	UP Estimated Custodial Documents	NS Estimated Custodial Documents	CPKC Custodian	CPKC Hits with Families – CPKC's Nov. 2 Proposal	CPKC Hits with Families – Applicants' Date Range Proposal	CPKC Hits with Families – Applicants' Date Range & Search Term Proposal
Vena/George	10,202	6,314	**Creel**	22,747	37,243	55,103
Rocker/Elkins	30,229	6,594	**Brooks**	21,925	35,860	43,096
Rynaski/McClellan	26,180	13,341	**Clements**	17,929	29,515	37,398
Gehringer/Orr	26,316	853	**Redd**	25,144	30,791	70,609
Hamann/Zampi	30,222	3,404	**Velani**	5,750	7,308	14,284
Fritz/Shaw/Squires	4,893	2,786	**Ottensmeyer**	9,915	25,087	25,087
TOTAL	**128,042**	**33,292**		**103,410**	**165,804**	**245,577**