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By Electronic Filing

Chief of Case Administration
Office of Chief Counsel
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 Chief of Case Administration:

Enclosed for e-filing by Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City and CPKC, and its U.S. rail carrier subsidiaries (collectively, "CPKC"),[1] in the above-referenced Finance Docket, is CPKC's Comments on Application and Requests for Conditions ("Comments"). CPKC is today filing under separate cover nine Responsive Applications in Sub-Dockets 42 through 50.

CPKC's Comments are submitted in nine volumes, each of which bears the designation CPKC-73. Volume I presents CPKC's arguments for why the Board should deny the merger as inconsistent with the public interest. Volume II sets out the minimum conditions the Board should impose in the event it concludes that the merger should be approved.

Volumes III and IV contain a total of ten verified statements of company and expert witnesses on the broad array of issues in this case, including why the UP-NS merger would present extraordinary risks of competitive and other harm, and why the benefits Applicants claim are overstated and in many cases achievable without a merger. Together they demonstrate that the merger is not in the public interest and should be rejected outright. Certain of the witnesses also provide support for CPKC's proposed conditions, should the Board approve the merger.

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[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.

Volume III contains the testimony of the following company witnesses:

- **Keith Creel (CPKC Chief Executive Officer)** explains why the merger would irreversibly weaken competition, increase systemic service risks, and trigger further consolidation. Drawing on CPKC's experience, he explains why sustainable growth requires reliable service and building customer trust, why interline collaboration can deliver growth without a merger, and why *CP/KCS* provides no justification for this transaction.

- **James Clements (CPKC Executive Vice President Strategic Planning & Corporate Services)** addresses the merger's long-term strategic consequences, including increased concentration, downstream consolidation, and the limits of regulation as a substitute for competition. He also examines integration risks, distinguishes Canada's rail system, and challenges Applicants' claimed merger-specific operating cost savings.

- **John Brooks (CPKC Executive Vice President and Chief Marketing Officer)** explains how the merger would harm competition by reducing shipper routing options and bargaining leverage. He challenges Applicants' growth and shipper-savings projections, describes opportunities for growth through interline collaboration, and explains the commercial need for CPKC's requested conditions in the event the Board were to approve the merger.

- **Mark Redd** (**CPKC Executive Vice President and Chief Operating Officer)** assesses the risks of integrating and operating a UP-NS network of unprecedented size and complexity. He explains why Applicants overstate the advantages of single-line service and identifies congestion and service risks at key gateways and shared corridors. He also addresses the operational feasibility of CPKC's proposed conditions and the protections needed to preserve network fluidity and reliable access in the event the Board approves the merger.

- **Adolph Gameiro** (**CPKC Managing Director, Interline & Network Strategy)** describes CPKC's dependence on UP- and NS-controlled infrastructure and their pattern of using contractual and operational control to impede competition. He explains how the merger would expand those risks. He also explains how the merger would lead to UP having inordinate influence at key Mid-Continent terminal railroads: KCT, BRC, IHB, and TRRA. Mr. Gameiro also describes conditions the Board should impose to preserve competition at key terminals, safeguard access rights, remove contractual restrictions, and restore competition

at CPKC's Wylie Intermodal Terminal in the event the Board approves the merger.

- **Michael Walczak (CPKC Vice President, Service Design)** explains the essential role of TTX and other railcar pools and how the merger would increase UP's ability to influence these pooling organizations while simultaneously reducing its interest in those pools functioning well in support of efficient interline railroading for the industry as a whole. He proposes various conditions that would limit UP's ability to disrupt the efficient functioning of these pools in the event the Board approves the merger.

Volume IV contains the testimony of the following expert witnesses:

- **Ray Elphick (retired CPKC Vice President Service Design & Capacity Management) and Brian Nelson (retired CPKC Managing Director Service Design)** draw upon their experience in Class I railroad operations planning, including their roles in developing the Operating Plan for the CP/KCS combination, to identify fundamental flaws that undermine the feasibility of Applicants' Operating Plan and Service Assurance Plan, including unrealistic schedules, omitted dwell time, and insufficient allowance for yard capacity constraints and operating variability. They also demonstrate that the Plan will not support the assumed service improvements upon which Applicants base their traffic diversion estimates.

- **Dr. W. Robert Majure (Senior Vice President, Cornerstone Research),** a former leading economist in the Department of Justice Antitrust Division and CPKC's competition expert in the *CP/KCS* proceeding, examines the competition issues related to the proposed merger. In Volume 1 of his Verified Statement, he explains why, in contrast to the CP-KCS transaction, the proposed UP-NS merger likely would lead to an array of anticompetitive harms—including the foreclosure of competition from interline services, the loss of gateway competition and shipper bargaining leverage, and the loss of competition between UP and NS for a greater portion of the interline movements in which they participate. He also demonstrates that downstream consolidation would magnify rather than overcome these effects. In Volume 2 of his Verified Statement, he addresses the extent to which CPKC's requested conditions would mitigate competitive harm.

- **Dr. Nicholas Powers (Principal, The Brattle Group)** identifies flaws in Applicants' traffic diversion analysis and explains why Applicants have not demonstrated that a merger between UP and NS would lead to the substantial traffic diversions they project, and, therefore, why Applicants cannot claim any public benefits that rely on those diversion estimates.

- **Andrew Fox (President, Overland Limited Associates, Inc.)** draws on his experience at railroads to explain how interline partnerships support growth and investment and how consolidation would diminish shipper options, innovation, and entrepreneurial initiative.

Volumes V through IX contain compilations of documentary, deposition, and other evidence relevant to the Board's assessment of the public interest consequences of the merger. They are organized by topic.

- Volume V addresses evidence bearing on the reasons Applicants have not achieved the full potential for rail traffic growth, including their emphasis on maximizing prices and margins at the expense of volume growth and resourcing to support service resiliency.

- Volume VI addresses evidence of the potential for successful interline collaboration without a merger, including across the watershed region and via two-interchange routes using the Meridian Speedway.

- Volume VII addresses evidence that the merger would lead to the foreclosure of competition through bundling and the elimination of interline options.

- Volume VIII addresses evidence relating to barriers to Applicants achieving their traffic diversion estimates, particularly the difficulty of winning traffic from truck.

- Volume IX addresses evidence relating to Applicants' prior consideration of Class I consolidation and the further consolidation likely to follow this merger.

CPKC is submitting its Comments and supporting materials in the versions and through the delivery methods identified in the table below. Public versions of this cover letter and all versions of Volumes I through IV have been submitted to the Board through its website, with the public versions available on the docket. Public versions of Volumes I through IV and the workpapers are also available on Sullivan & Cromwell LLP's Box site (https://sullcrom.ent.box.com/folder/438505681535), which has been shared with all parties of record.

The remaining volumes are too large to submit through the Board's website and contain confidential information, so they have been shared with the Board and Applicants through Sullivan & Cromwell LLP's Box site. Confidential, Highly Confidential with confidential Carload Waybill Sample ("CCWS") information redacted, and unredacted Highly Confidential versions containing CCWS information will, as applicable, be made available for all volumes

upon request to individuals who have signed the appropriate undertakings under the Protective Order. Access to versions containing CCWS information additionally requires authorization from the Board to access that information. Eligible individuals may contact Andrea Pillai at pillaia@sullcrom.com to obtain copies of the protected materials referenced above and below.

CPKC appreciates the Board's consideration of these Comments.

Respectfully submitted,



David L. Meyer
Attorney for CPKC

cc: Administrative Law Judge Soulikias
All Parties of Record

CPKC-73: Versions and Submission Methods

COMPONENT OF CPKC-73	VERSIONS FILED ON FD 36873	VERSIONS DELIVERED THROUGH BOX.COM
COVER LETTER	PUBLIC	PUBLIC
VOLUME I - THE BOARD SHOULD DENY THE APPLICATION	PUBLIC; C; HC; HC + WAYBILL	PUBLIC; C; HC; HC + WAYBILL
VOLUME II - REQUESTS FOR CONDITIONS	PUBLIC; C; HC; HC + WAYBILL	PUBLIC; C; HC; HC + WAYBILL
VOLUME III - COMPANY VERIFIED STATEMENTS	PUBLIC; C; HC	PUBLIC; C; HC
VOLUME IV - EXPERT VERIFIED STATEMENTS	PUBLIC; C; HC; HC + WAYBILL	PUBLIC; C; HC; HC + WAYBILL
VOLUME V - EVIDENTIARY HIGHLIGHTS SHOWING UP AND NS FAVORING MAXIMIZING PRICE AND MARGINS AT THE EXPENSE OF VOLUME GROWTH AND SERVICE STABILITY	—	HC
VOLUME VI - EVIDENTIARY HIGHLIGHTS SHOWING INTERLINE COLLABORATION WITHOUT A MERGER, INCLUDING ACROSS THE WATERSHED	—	HC
VOLUME VII - EVIDENTIARY HIGHLIGHTS SHOWING FORECLOSURE OF COMPETITION THROUGH BUNDLING, ELIMINATION OF INTERLINE SERVICES, AND OTHER STRATEGIES	—	HC
VOLUME VIII - EVIDENTIARY HIGHLIGHTS SHOWING BARRIERS TO APPLICANTS ACHIEVING THEIR FORECASTED TRAFFIC DIVERSIONS, INCLUDING THE DIFFICULTY OF WINNING NEW BUSINESS FROM TRUCK	—	HC
VOLUME IX - EVIDENTIARY HIGHLIGHTS SHOWING APPLICANTS' PRIOR CONSIDERATIONS OF CLASS I CONSOLIDATION, INCLUDING THE INEVITABILITY OF A TRANSCONTINENTAL DUOPOLY	—	HC