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October 13, 2026

Chief of Case Administration
Office of Chief 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.***

Dear Chief of Case Administration:

I write on behalf of Applicants regarding the petition for waiver and/or clarification of certain requirements with respect to eight anticipated responsive applications filed on October 5, 2026, by Canadian Pacific Kansas City ("CPKC").[1] Among CPKC's requests was that the Board "clarify" that four of the responsive applications would be classified as "minor" under the Board's rules at 49 C.F.R. § 1180.2(c). The Board should reject the request, which is inconsistent with the Board's rules and recent precedent.[2]

Under the Board's rules, a transaction is "not significant," and therefore should be classified as "minor," only if the Board finds that the transaction "clearly will not have any anticompetitive effects" or that "any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs." 49 C.F.R. § 1180.2(b). As a general practice, the Board determines whether to classify a transaction as minor or significant only after reviewing the filed application, because the application itself provides the information needed to make the required determination.[3] The Board should not depart from that practice here by prejudging the nature of

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[1] *See* CPKC-57.

[2] Applicants take no position on CPKC's other waiver requests. Notwithstanding the language of 49 C.F.R. § 1180.4(f)(3), the Board has previously accepted replies to requests to pre-classify transactions. *See CSX Corp., et al.—Control and Operating Leases/Agreements—Conrail Inc., et al.*, Decision No. 36, Docket No. FD 33388, at 3 (STB served Sept. 18, 1997) ("*Conrail Decision No. 36*").

[3] *See, e.g., Soo Line Corp.—Control—Central Maine & Quebec Ry. US Inc.*, Docket No. FD 36368 (STB served Jan. 16, 2020); *Norfolk S. Ry.—Acquisition and Operation—Certain Rail Lines of the Delaware & Hudson Ry.*, Docket No. FD 35873 (STB served Dec. 16, 2014).

the transactions described in CPKC's anticipated responsive applications based on the limited information CPKC has provided to date.

CPKC asks the Board to predetermine that four of its anticipated responsive applications involve transactions that should be classified as minor. The transactions involve trackage rights over UP lines in Kansas City; trackage rights over a UP line in Chicago; trackage rights over a UP line between Houston and Shreveport; and abrogation of NS's contract rights to a terminal in Dallas, Texas.[4] The summary information that CPKC provided regarding each of the proposed transactions is insufficient to allow the Board to make the statutory finding that they are "not significant." Moreover, CPKC has reserved "the right to revise and supplement the relief it may seek," CPKC-46 at 1 n.2, so the Board cannot evaluate the actual impacts until the responsive applications are formally filed.

The Board recently addressed this exact issue in the *CPKC* transaction. In that major transaction, BNSF asked the Board to predetermine that its anticipated responsive applications—which it described as "limited overhead trackage rights" intended to "preserve and maintain or increase competition"—would involve minor transactions. *See Canadian Pacific Ry. Ltd., et al.—Control—Kansas City Southern, et al.*, Decision No. 13, Docket No. FD 36500, at 3 (STB served Feb. 18, 2022) ("*CPKC Decision No. 13*"). The Board declined, noting several problems with BNSF's request, including that BNSF provided little information about operations on the subject rail lines or the markets implicated by its applications, no discussion of any trade-offs or potential negative effects of the rights requested, and no discussion of how any such effects could impact competition. *See id.* The Board recognized that without such information, it could not "make the requisite findings under 49 C.F.R. § 1180.2." *Id.* CPKC repeatedly invokes *CPKC Decision No. 13* in support of its requests for various other waivers in this proceeding, yet it never acknowledges that the Board denied the pre-classification request CPKC makes here.

CPKC's request here has the same defects as BNSF's did in *CPKC*. The only information CPKC provides here related to operations, relevant markets, or competitive impacts consists of unsupported summary assertions. And CPKC offers no information at all regarding the trade-offs or potential negative effects of the proposed transactions. The decisions CPKC cites do not help its case. Its principal authorities date to the mid-1990s. Even at that time, the Board refused to pre-classify anticipated transactions as minor absent a sufficient factual showing. For example, in *Canadian National Railway—Control—Illinois Central Corp.*, Decision No. 7, Docket No. FD 33556 (STB served Sept. 18, 1998) ("*CN/IC Decision No. 7*"), which CPKC invokes in support of its position, the Board rejected BNSF's request to pre-classify a set of anticipated responsive applications for trackage rights as minor because "[w]ithout additional evidence, BNSF's presentation [was] insufficient to support a minor transaction classification." *Id.* at 5. CPKC thus ignores not only the more recent precedent from its own merger, but also earlier decisions in which the Board declined to predetermine the classification of anticipated responsive transactions. *See also, e.g.*, *Conrail Decision No. 36*, at 3 ("Without additional evidence, CP's bare assertion that the transaction will have no anticompetitive effect is insufficient to support a minor transaction classification."). Taken together, this precedent

[4] *See* CPKC-46.

confirms that the Board should not predetermine that an anticipated responsive transaction would be minor where, as here, the applicant has not provided sufficient information regarding the scope and potential effects of the proposed relief.

If CPKC files the anticipated responsive applications, Applicants will address their merits at the appropriate time. However, the limited information CPKC has provided helps show why the Board should not prejudge the transactions' potential impacts. One of CPKC's anticipated responsive applications involves two segments of track used to access the Kansas City terminal. Yet, CPKC provides no information about the transaction's impacts on other carriers' or Applicants' access to Kansas City or the potential competitive consequences. Another one of CPKC's anticipated responsive applications involves trackage rights in the busy Chicago area. Again, CPKC provides no analysis of the potential operational or competitive consequences. Moreover, CPKC's acknowledgment that it "may seek modifications to its existing rights" on the Techny Line undermines its reliance on decisions involving limited rights intended to preserve existing competitive options.[5] Still another proposes abrogation of NS's contractual rights in a key terminal, without providing any evidence on the operational or competitive consequences of that action.

CPKC's request that the Board predetermine the classification of a transaction involving CPKC trackage rights between Houston and Shreveport is particularly inappropriate. CPKC has identified other anticipated responsive applications that would impact Houston-area operations,[6] and those applications should be considered in conjunction with any CPKC request for Houston-Shreveport rights. Moreover, although CPKC claims that Board precedent supports classifying as "minor" applications for trackage rights sought to bypass congestion (CPKC's stated rationale for seeking Houston-Shreveport rights), none of the decisions it cites treated congestion avoidance alone as sufficient to support a minor classification. Furthermore, the primary case on which CPKC relies, *CPKC—Acquisition & Operation—Certain Rail Lines of Meridian & Bigbee R.R.*, Docket No. FD 36732 (STB served Nov. 3, 2023), did not involve a request to pre-classify the transaction; rather, the Board classified the transaction after the application was submitted. That case reflects the Board's customary approach and provides the appropriate course here.

In summary, the information that CPKC has provided is inadequate for the Board to predetermine the classification of the transactions at issue in CPKC's anticipated responsive applications, and the limited information CPKC has provided suggests the transactions are not minor. The Board should deny CPKC's request and instead determine the classification of the transactions "after reviewing those applications." *CPKC Decision No. 13* at 3.

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[5] CPKC-57 at 9.

[6] *See* CPKC-46 at 3.

Sincerely,

/s/ Michael L. Rosenthal

Michael L. Rosenthal
*Attorney for Union Pacific Corporation and Union Pacific Railroad Company*

cc: All Parties of Record
ALJ Soulikias

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of October, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Caroline Harrison