CN-32

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Office of Chief Counsel
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STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY
— CONTROL —
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

CN'S REPLY TO APPLICANTS' MOTION TO PERMIT BOARD-INITIATED EX PARTE COMMUNICATIONS AND TECHNICAL CONFERENCES

On October 6, 2026, Union Pacific Corporation, Union Pacific Railroad Company, Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively, "Applicants") filed a Motion to Permit Board-Initiated Ex Parte Communications and Technical Conferences (UP-114/NS-116) (the "Motion"). Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries[1] (collectively, "CN"), submits this reply in support of the Motion.[2]

[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] In *Decision No. 30*, the Board ordered that "any reply to any motion filed with the Board itself in the first instance must be filed within five calendar days of the date of the filing of the motion." *Decision No. 30*, FD 36873, slip op. at 11 (STB served Aug. 18, 2026). The Board's regulations provide that any deadline that falls on a weekend or legal holiday in the District of Columbia is moved to the next day that is not a weekend day or holiday. *See* 49 C.F.R. § 1104.7(a). *Decision No. 30* does not expressly state that section 1104.7 does not apply to the new expedited deadlines and therefore CN's understanding is that the calculation of deadlines remains subject to section 1104.7. If that understanding is incorrect, good cause exists to accept this filing

CN has consistently supported the use of ex parte communications in this proceeding. In its September 17, 2025 reply to Applicants' earlier motion,[3] CN urged the Board to waive the prohibition on ex parte communications established in *Petition of Fieldston Co. to Establish Procedures Regarding Ex Parte Communications in Railroad Merger Proceedings*, EP 619 (STB served Jan. 8, 1997) ("*Fieldston*"), so that the parties could fully discuss the record and answer any questions Board members or staff may have. CN explained that ex parte meetings would make the process more efficient for the Board and the parties in a proceeding with a complex and technical record and would support more timely and informed decision-making. CN also explained that the concerns the Board identified in *Fieldston* are addressed by the procedures adopted in *Ex Parte Communications in Informal Rulemaking Proceedings*, EP 739 (STB served Feb. 28, 2018), and codified at 49 C.F.R. § 1102.2(g)(4).[4] Those procedures make parties, rather than Board Members or staff, responsible for documenting oral communications, and require public disclosure of meeting summaries and handouts. Those views still apply, and CN incorporates them by reference here.

CN's support for ex parte communications remains unchanged. CN's support is informed, in part, by the safeguards that would govern any ex parte communications. As described in the Applicants' current Motion, any individual Board Member could request a meeting with any party, would identify in writing in advance the issues to be discussed in writing in advance, and would have those issues made public. Each meeting would then be summarized on the public docket. Given the complexity of this proceeding—as reflected by revised applications, as well as multiple,

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into the record based on a reasonable misunderstanding of how the new expedited deadlines are to be calculated, and CN explicitly requests that the Board do so here.

[3] CN-3, FD 36873 (filed Sep. 17, 2025).

[4] *Id.* at 2.

revised backup documentation, and a settlement agreement, against the backdrop of the first major merger proceeding under the new rules and the first proposed transcontinental merger—transparent conversations will foster a better outcome for all parties.

If the Board grants Applicants' request, CN respectfully encourages each Board Member to request a meeting with CN. CN's perspective, including on the competitive issues and proposed conditions that CN and Applicants have identified as the subject of their Settlement MOU, will help the Board develop a more complete understanding of the record. CN stands ready to meet with any Board Member, on any issues the Member identifies, under whatever transparency safeguards the Board considers appropriate. CN also respectfully encourages the Board to request meetings with other governmental stakeholders, such as the U.S. Department of Justice and the U.S. Department of Agriculture, to draw on their subject-matter expertise. Waiving the *Fieldston* prohibition would also allow other agencies to request such meetings as well.

Given the complexity of this proceeding, CN also supports the Motion's request for technical conferences and suggests that such conferences be available to non-Applicants as well. In particular, permitting non-Applicants to meet with Board staff in a technical conference in October would facilitate uniform resolution of common questions about the process and format of responsive applications. Alternatively, the Board could clarify that the Board Staff Liaison, who has already been designated to provide non-binding, informal opinions and interpretations to Applicants, *see Decision No. 3*, FD 36873, slip op. at 2 (STB served Aug. 28, 2025), is also available to any party intending to submit a responsive application. Several parties, including CN, have since submitted descriptions of anticipated responsive applications and are likely to have similar questions. These measures would promote a more efficient use of Board and party resources, because common issues could be addressed through communications made public for

all to see, rather than each party individually seeking the same information from Applicants or other parties.

Conclusion

For these reasons, CN respectfully urges the Board to grant the Motion, include CN among the parties with which Board Members request ex parte meetings, and make technical conferences or the Board Staff Liaison available to parties intending to file responsive applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2026, a copy of the foregoing Reply was served by email or first-class mail on all parties designated as Parties of Record on the service list of this docket.

/s/ Andrew Bernstein
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