

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
October 5, 2026
Part of
Public Record

Finance Docket No. 36873

**UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
– CONTROL –**

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY**

CPKC’S PETITION FOR WAIVER AND/OR CLARIFICATION

Pursuant to Decision No. 30 served August 18, 2026, and 49 C.F.R. § 1180.4(f), Canadian Pacific Railway Company, d/b/a Canadian Pacific Kansas City and CPKC, on behalf of itself and its U.S. rail carrier subsidiaries (collectively “CPKC”),¹ submits this Petition for Waiver and/or Clarification of certain Surface Transportation Board (“STB” or “Board”) requirements with respect to the responsive applications that CPKC may file in this proceeding, as described in CPKC’s Description of Anticipated Responsive Applications (CPKC-46).

I. THE BOARD CONSISTENTLY WAIVES A SERIES OF REQUIREMENTS IN THE RESPONSIVE APPLICATION CONTEXT AND SHOULD DO SO HERE

CPKC respectfully requests, pursuant to 49 C.F.R. § 1180.4(f), three waivers that the Board has consistently granted with respect to proposed responsive applications in analogous

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.

Class I control proceedings. The Board should again waive these requirements with respect to the responsive applications CPKC proposes to file in this proceeding.

Definition of “Applicant.” *First*, the term “applicant” “means the parties initiating a transaction, but does not include a wholly owned direct or indirect subsidiary of an applicant if that subsidiary is not a rail carrier.” 49 C.F.R. § 1180.3(a). In prior proceedings, the Board has excluded non-carrier parents and rail carrier affiliates not involved in responsive applications from the definition of “applicant.” *See Canadian National Ry. – Control – Illinois Central Corp.*, Finance Docket No. 33556 (Decision No. 7, STB served Sep. 18, 1998) (“*CN/IC Decision No. 7*”) at 5 (granting request to clarify that “rail carrier affiliates not involved in the proposed transaction” and “noncarrier parents” need not be considered applicants); *CSX Corp. & CSX Transportation, Inc., Norfolk Southern Corp. & Norfolk Southern Ry. – Control & Operating Leases/Agreements – Conrail Inc. & Consolidated Rail Corp.*, Finance Docket No. 33388 (Decision No. 33, STB served Sept. 17, 1997) (“*CSX/NS/Conrail Decision No. 33*”) at 4 (noting that “[p]etitioners maintain that requiring information from [entities not involved in responsive applications] would not materially enhance our ability to evaluate the proposed transactions” and finding that “the relief sought by petitioners is reasonable”); *Canadian Pacific Railway Ltd. – Control – Kansas City Southern*, Finance Docket No. 36500 (Decision No. 13, STB served Feb. 18, 2022) (“*CP/KCS Decision No. 13*”), at 5 (finding reasonable BNSF’s request to clarify that its non-carrier parent corporation and “rail carrier affiliates not involved in any responsive applications need not be considered ‘applicants’”).

CPKC requests that, consistent with the Board’s longstanding practice, the Board clarify that the “applicants” with respect to each of CPKC’s proposed responsive applications need include only the rail carrier affiliates “involved” in the contemplated transaction, and need not

include any noncarrier parent or affiliates that are not so involved. Alternatively, if the Board believes that any uninvolved carrier affiliate or noncarrier parent may meet the definition of “applicant,” CPKC requests that the Board waive that aspect of the definition.

Thus, the CPKC carrier affiliates that would be “involved” in the transactions and thus appropriately treated as Applicants for purposes of the contemplated responsive applications are as follows:

- **Trackage Rights on UP and Houston Belt & Terminal Railway Between Robstown, TX and Beaumont, TX (including between Victoria, TX and Bloomington, TX) (CPKC-46 Part I):**
The Kansas City Southern Railway Company
- **Trackage Rights on UP in Vicinity of Baton Rouge, LA (CPKC-46 Part II):**
The Kansas City Southern Railway Company
- **Trackage Rights on UP’s Lufkin Subdivision Between Shreveport, LA and Houston, TX (CPKC-46 Part III):**
The Kansas City Southern Railway Company
- **Trackage Rights on NS between Mexico, MO and St. Louis, MO and Terminal Trackage Rights on TRRA between St. Louis, MO and East St. Louis, IL (CPKC-46 Part V):**
The Kansas City Southern Railway Company
- **Trackage Rights on UP in the Kansas City Terminal (CPKC-46 Part VI):**
The Kansas City Southern Railway Company
Dakota, Minnesota & Eastern Railroad Corporation
- **Trackage Rights on UP between Kansas City and Polo, MO (CPKC-46 Part VI):**
Dakota, Minnesota & Eastern Railroad Corporation
- **Trackage Rights on NS Between Chicago, IL and Detroit, MI (CPKC-46 Part VII):**

Soo Line Railroad Company
Canadian Pacific Railway Company²

- **Trackage Rights on UP Techny Line between Bryn Mawr, IL and Tower A20 (CPKC-46 Part VIII):**

Soo Line Railroad Company

- **Return of Assets Relating to Wylie Intermodal Terminal, if Conveyed to NS Prior to Consummation of the Proposed UP-NS Control Transaction (CPKC-46 Part IV):**

The Kansas City Southern Railway Company

Definition of “Applicant Carrier.” *Second*, the Board has routinely granted waiver/clarification to exclude the following categories of entities from the definition of “applicant carrier” under 49 C.F.R. § 1180.3(b) in the context of responsive applications: (i) the primary applicants and any of their rail carrier affiliates; (ii) any rail carriers not subject to the Board’s jurisdiction (such as those located wholly outside the United States); (iii) any rail carrier subsidiaries in which the responsive applicant (here, particular CPKC carrier affiliates) or its subsidiaries hold a non-controlling common stock interest of fifty percent or less; and (iv) any motor or water carrier affiliates. *See CN/IC Decision No. 7* at 6 (granting waiver as to all of the aforementioned); *CP/KCS Decision No. 13* at 5-6 (granting waiver); *CSX/NS/Conrail Decision No. 33* at 3-4 (granting waiver). CPKC requests the Board do so here as well.

As the Board explained in *CN/IC Decision No. 7*, waivers concerning Section 1180.3(b) “are reasonable,” as the “provision of such information would be burdensome to petitioners and is not necessary for a proper evaluation of their responsive applications” because “[s]ufficient

² For clarity, the Canadian Pacific Railway Company may be deemed an involved applicant carrier with respect to these specific rights by virtue of its connection with those rights at Detroit via operations in the United States via the Detroit River Tunnel, but it would not be an involved carrier with respect to any of the other responsive applications CPKC anticipates filing.

data should be available in the responsive applications without resort to the waived material.”

CN/IC Decision No. 7 at 6.

Submission of Corporate Railroad Information on a Consolidated Basis. *Third*, the Board has routinely allowed responsive applicants to submit the corporate railroad information required by the Board’s procedures on a consolidated basis. *See CP/KCS Decision No. 13* at 6; *CN/IC Decision No. 7* at 6. CPKC respectfully requests that the Board grant the same waiver or clarification here, so that the applicant CPKC carrier affiliates may submit information that is consolidated with respect to CPKC’s U.S. rail carrier affiliates as a group (as in CP’s U.S. R-1 reporting), where doing so is less burdensome than providing information that is specific to a particular affiliate. Separate reporting for each operating subsidiary would impose burdens on CPKC without meaningfully assisting the Board’s review. As in the prior cases where such a waiver was granted, the waiver would not diminish CPKC’s obligation to provide information regarding the potential competitive and operational impacts of the proposed responsive applications. *CP/KCS Decision No. 13* at 6. Instead, the waiver would merely allow the Board to conduct a more efficient review of those applications.

II. THE BOARD SHOULD WAIVE CERTAIN FILING REQUIREMENTS FOR “SIGNIFICANT” TRANSACTIONS CONSISTENT WITH ITS PAST PRACTICE

The Board has also consistently waived several other requirements of 49 C.F.R. § 1180.6 in the context of responsive applications, and it should do so here as well. Consistent with Board precedent, CPKC respectfully requests waiver of the following filing requirements under 49 C.F.R. § 1180.6:

- 1180.6(b)(3) (change in control);
- 1180.6(b)(5) (issues);
- 1180.6(b)(6) (corporate chart);

- 1180.6(b)(7) (noncarrier information); and
- 1180.6(b)(8) (intercorporate relationships).

Each of these requirements is “irrelevant to the conditions [CPKC] intends to seek” and would not “be necessary for a responsive application deemed to be a significant transaction.” *CP/KCS Decision No. 13* at 5. The Board granted identical waivers to prospective responsive applicants in *CP/KCS* and *CN/IC*. *See id*; *see also CN/IC Decision No. 7* at 5 (finding that “not all of the information required under 1180.6(b), as applicable to significant transactions, [was] necessary”).

Like the proposed responsive applicants in those cases, CPKC’s rail carrier affiliates are long-established rail carriers whose corporate structures, ownership, and rail operations are well known to the Board and were the subject of extensive review in *CP/KCS*. *See CP/KCS Decision No. 13* at 5; *see also Norfolk Southern Corp. – Acquisition of Control – Norfolk & Portsmouth Belt Line R.R.*, Finance Docket No. 36836 (Decision No. 2, STB served Mar. 14, 2025) at 8 (“[T]he Board will waive the requirements in 49 C.F.R. 1180.6(b)(3), (b)(6), and (b)(8), all of which require information about an applicant’s corporate structure. The Board will also waive 49 C.F.R. 1180.6(b)(7), which applies only to noncarriers, because NSR is a carrier.”). None of the information contemplated by those provisions would materially aid the Board’s evaluation of the targeted and geographically limited conditions CPKC anticipates seeking via its responsive applications. Accordingly, the Board should waive requirements under Sections 1180.6(b)(3) and 1180.6(b)(5) through (b)(8).

III. THE BOARD SHOULD CLARIFY THAT CERTAIN OF CPKC’S PROPOSED RESPONSIVE APPLICATIONS CONTEMPLATE “MINOR” TRANSACTIONS

Finally, CPKC respectfully asks the Board to clarify that certain of the responsive applications CPKC anticipates filing would be properly classified as “minor” transactions under

49 C.F.R. § 1180.2(c). CPKC seeks such a determination for four of CPKC's anticipated responsive applications, each of which seeks relief that would be geographically limited in scope, would not have any anticompetitive effects, and would not give CPKC access to any source of rail traffic to which it lacks access today:

- Rights in the Kansas City Area: (a) Preservation of Trackage Rights on UP between Kansas City and Polo, MO (CPKC-46 Part VI); and (b) Confirmation or Grant of Trackage Rights on UP in the Kansas City Terminal (CPKC-46 Part VI)
- Preservation of Trackage Rights on UP Techny Line between Bryn Mawr, IL and Tower A20 (CPKC-46 Part VIII)
- New Trackage Rights on UP Between Shreveport and Houston (CPKC-46 Part III)
- Return of Assets Relating to Wylie Intermodal Terminal, if Conveyed to NS Prior to Consummation of the Proposed UP-NS Control Transaction (CPKC-46 Part IV)

Each of these proposed transactions is appropriately classified as “minor.” A “minor transaction” is one involving more than one railroad that is not major, significant, or exempt. *Id.* § 1180.2(c).³ A transaction is *not significant* if (a) it is not “of regional or national transportation significance,” *id.* § 1180.2(b), or (b) a determination can be made either that (1) the transaction “clearly will not have any anticompetitive effects,” or (2) “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)(1)-(2).

CPKC submits that each of the anticipated transactions listed above is “minor” under the Board’s standards.

³ Trackage rights arrangements would be exempt from application requirements were they not sought as responsive applications. *See* 49 C.F.R. § 1180.2(d)(7)(i)-(ii).

Confirmation or Grant of Trackage Rights on UP in the Kansas City Terminal. CPKC believes that it already possesses rights to operate over 1.2 miles of UP trackage in the Kansas City Terminal connecting CPKC's Knoche Yard with Kansas City Terminal Railway trackage in the vicinity of "Broadway," via UP's "Incline Track." UP has disputed the existence of those rights and has refused to grant such rights for use to interchange with BNSF in Kansas City. The rights CPKC may seek by responsive application would confirm or restore rights that CPKC's predecessors had used for decades until UP disputed their character as trackage rights and sought to cancel them. Through these rights, CPKC would handle the same traffic that it moves today between its Knoche Yard and the west side of the Kansas City Terminal, including for interchange with BNSF, but via a much more direct and efficient route than CPKC currently must use as a result of UP's position. As such, this responsive application is limited in scope, could not have anticompetitive effects and is appropriately classified as "minor." *See CN/IC Decision No. 7* at 4-5; *Burlington Northern, Inc. – Control & Merger – Santa Fe Pacific Corp.*, Finance Docket No. 32549 (Decision No. 18, STB served Apr. 20, 1995) ("*BN/Santa Fe Decision No. 18*") at 2; *Union Pacific Corp. – Control & Merger – Southern Pacific Rail Corp.*, Finance Docket No. 32760 (Decision No. 13, STB served Feb. 15, 1996) ("*UP/SP Decision No. 13*") at 2-3; *CSX/NS/Conrail Decision No. 33* at 3-4.

Preservation of Trackage Rights on UP between Kansas City and Polo, MO. These trackage rights do not extend beyond the geographic scope of rights CPKC possesses today on the 41.28 mile "Polo Line" paired track between Kansas City and Polo, MO. Through these trackage rights, CPKC would handle the same traffic that it handles today on this route; these rights would at most preserve the efficiency associated with CPKC's access to the paired trackage and potentially facilitate improved timeliness and reliability of operations there.

As such, this responsive application is limited in scope, could not have anticompetitive effects and is appropriately classified as “minor.” *See, e.g., CN/IC Decision No. 7* at 4 (classifying responsive applications as minor transactions where proposals “merely [sought] limited trackage rights intended to preserve pre-merger competition”); *BN/Santa Fe Decision No. 18* at 2 (finding that responsive applications were minor transactions where they involved local and overhead trackage rights of under 100 miles); *UP/SP Decision No. 13* at 2-3 (classifying responsive applications as minor transactions where they involved seeking limited trackage and interchange rights); *CSX/NS/Conrail Decision No. 33* at 1, 3-4 (finding that responsive applications were minor where they sought trackage rights providing an alternate route for traffic that moved over a line proposed to be abandoned).

Preservation of Trackage Rights on UP’s Techny Line between Bryn Mawr, IL and Tower A20. As with the Kansas City-Polo rights discussed above, these trackage rights do not extend beyond the geographic scope of rights CPKC possesses today on 10.24 miles of UP’s Techny line between Bryn Mawr, IL, near CPKC’s Bensenville Yard, and Tower A20. Through these trackage rights, CPKC would handle the same traffic it handles today on this route; these rights would at most preserve the efficiency associated with CPKC’s access to this route as an alternative to operations via Tower A5 that can conflict with Metra and Amtrak passenger operations. CPKC may seek modifications to its existing rights aimed at safeguarding timely and reliable operations over this route, but those modifications would not alter the scope of traffic CPKC could move over these lines.

As such, this responsive application is limited in scope, could not have anticompetitive effects and is appropriately classified as “minor.” *See CN/IC Decision No. 7* at 4; *BN/Santa Fe Decision No. 18* at 2; *UP/SP Decision No. 13* at 2-3; *CSX/NS/Conrail Decision No. 33* at 3-4.

New Trackage Rights on UP Between Shreveport and Houston. These overhead rights across UP’s Lufkin Subdivision would allow CPKC traffic to bypass merger-related congestion on lines CPKC shares with UP between Houston and DeQuincy, LA. CPKC’s operations using these rights would carry the traffic that would otherwise move via CPKC’s own lines between Shreveport and Houston. As such, there could be no possible anticompetitive effect. *See CPKC – Acquisition & Operation – Certain Rail Line of Meridian & Bigbee R.R.*, Finance Docket No. 36732 (Decision No. 1, STB served Nov. 3, 2023) (“*CPKC/MNBR Decision No. 1*”), at 8-9 (finding that transaction was minor where it would result in efficiency gains from avoiding a congested gateway); *cf. CSX/NS/Conrail Decision No. 33* at 1, 3-4 (finding that responsive applications were minor where they sought trackage rights providing an alternate route for traffic that moved over a line proposed to be abandoned); *see also CN/IC Decision No. 7* at 4-5; *BN/Santa Fe Decision No. 18* at 2; *UP/SP Decision No. 13* at 2-3.

Return of Assets Relating to Wylie Intermodal Terminal, if Conveyed to NS Prior to Consummation of the Proposed UP-NS Control Transaction. CPKC’s proposed conditions will seek to preserve the competitive status quo as it exists today, with CPKC as the owner and operator of the Wylie Intermodal Terminal. A responsive application would be necessary only in the unlikely event that NS succeeds in compelling the conveyance of CPKC’s Wylie Intermodal Terminal prior to Applicants’ consummation of their Proposed Transaction, in which case a return of any assets acquired by NS would be required to restore the status quo ante.

Given that the relief CPKC anticipates seeking would be limited in geographic scope to a single intermodal terminal and aimed at preserving the current competitive landscape—in which UP controls two Dallas-area intermodal terminals and CPKC controls one (*i.e.*, Wylie)—it “clearly will not have any anticompetitive effects” within the meaning of § 1180.2(b)(1) and is

appropriately treated as “minor.” *See CPKC/MNBR Decision No. 1* at 9 (noting, while classifying a transaction as minor, that “existing shippers . . . could receive the same rail service and have the same rail options currently available”); *see also CN/IC Decision No. 7* at 4 (classifying responsive applications as minor transactions where proposals “merely seek limited trackage rights intended to preserve pre-merger competition”).

CONCLUSION

For the foregoing reasons, CPKC respectfully requests that the Board grant the waivers and/or clarifications sought in this Petition.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2026, I caused a copy of the foregoing CPKC's Petition for Waiver and/or Clarification to be served by email or by first-class mail, postage prepaid on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Rachel P. Clyburn

Rachel P. Clyburn