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BY ELECTRONIC FILINGHon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001
Email: alj.soulikias.inbox@stb.gov**Re: Finance Docket No. 36873, *Union Pacific – Control – Norfolk Southern***

Dear Judge Soulikias:

Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City, on behalf of itself and its U.S. rail carrier subsidiaries (collectively, “CPKC”),¹ submits this letter in support of the Motion to Compel production of Schedule 5.8 to the Applicants’ merger agreement filed by Grand Trunk Corporation (“CN”). See CN’s Motion to Compel the Production of the Schedule to Merger Agreement (CN-7) (filed Jan. 8, 2026).

CPKC has already explained to the Board that Applicants were obligated to include Schedule 5.8 with their Application pursuant to the requirement of 49 C.F.R. § 1180.6(a)(7)(ii) that the Application include the parties’ “agreement,” not just the parts they choose to share. See CPKC’s Comments on the Completeness of the Application (CPKC-7) (filed Dec. 29, 2025) at 9-14. Without prejudice to CPKC’s position on the incompleteness of the Application, there is no doubt that, were the omission of Schedule 5.8 not to render the Application incomplete, Applicants would have an obligation to produce the document in discovery.²

As set forth in CN’s Motion, CPKC and other parties to this proceeding have a legitimate interest in Schedule 5.8, which defines material terms of the transaction that Applicants have

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.

² In its first set of discovery requests served on Applicants, CPKC asked that Applicants produce “all information and Documents that Applicants or their representatives produce in response to discovery requests submitted by other participants in this proceeding.” In an effort to avoid duplicative discovery, CPKC was mindful not to repeat discovery requests that had already been served by other parties.

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submitted to the Board for regulatory approval. No good faith claim of privilege applies to contractual promises UP made to induce NS to sign the merger agreement. *See generally In re Côte d'Azur Est. Corp.*, 2022 WL 17574747, at *12 (Del. Ch. Dec. 12, 2022) (“When parties are engaged in adversarial negotiation, they do not share a common interest sufficient to support privilege.”). And even if a privilege were potentially at issue, which it is not, Applicants would have waived it by providing their contract to Morgan Stanley, Wells Fargo, and Bank of America to prepare fairness opinions, *UP/NS*, Finance Docket No. 36873, Application Vol. I, at 567-583 (filed Dec. 19, 2025). *See In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982) (“[A]ny voluntary disclosure by the client to a third party breaches the confidentiality of the attorney-client relationship and therefore waives the privilege.”).

It is also worth observing that in the *CP/KCS* merger proceeding in 2021 (which created CPKC), the application for Board approval contained a version of the merger agreement that included (in unredacted form) the analogous “efforts” clause reflecting CP’s obligations regarding seeking and obtaining regulatory approval. *See CP/KCS*, Finance Docket No. 36500, Application Vol. IV, at 3-144 (filed Oct. 29, 2021).

CPKC accordingly supports the motion filed by CN and joins its request that Applicants be ordered to produce immediately Schedule 5.8 to their merger agreement.

Respectfully submitted,

/s/ David L. Meyer
David L. Meyer
Attorney for CPKC

cc: All Parties of Record
Joseph J. Matelis (Sullivan & Cromwell LLP)
Dylan M. Aluise (Sullivan & Cromwell LLP)
Nizam Hasam (CPKC)

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of January 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 Soulikias.

/s/ Kiera S. Judge _____
Kiera S. Judge