

BNSF-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

**BNSF'S RESPONSE TO APPLICANTS' MOTION
TO PERMIT STAKEHOLDER COMMUNICATIONS
IN ACCORDANCE WITH 49 U.S.C. § 11324(f)**

Jill K. Mulligan
Adam Weiskittel
Courtney B. Estes
Tyler R. White
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

Peter W. Denton
Anthony J. LaRocca
Timothy J. Strafford
Steptoe LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-3000

Matthew J. Reilly
Richard H. Cunningham
Daniel T. Donovan
Jeffrey Ayer
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 389-5000

Counsel for BNSF Railway Company

Dated: September 22, 2025

310096
ENTERED
Office of Chief Counsel
September 22, 2025
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

**BNSF’S RESPONSE TO APPLICANTS’ MOTION
TO PERMIT STAKEHOLDER COMMUNICATIONS
IN ACCORDANCE WITH 49 U.S.C. § 11324(f)**

BNSF Railway Company (“BNSF”) respectfully submits this response to Applicants’ August 29, 2025 motion to permit stakeholder communications in accordance with 49 U.S.C. § 11324(f) pursuant to *Decision No. 4* in this proceeding.¹ In the motion, Applicants ask the Surface Transportation Board (“Board”) to waive, for purposes of this proceeding, the prohibition on ex parte communications for railroad merger proceedings established by the Board in *Petition of Fieldston Co. to Establish Procedures Regarding Ex Parte Communications in Railroad Merger Proceedings (Fieldston)*, 1 S.T.B. 1083 (1996)—from the date the Board grants the request to Day 150 of Applicants’ proposed schedule.

BNSF is evaluating the proposed transaction and its potential impacts on competition and the public interest. BNSF anticipates participating actively in this proceeding. BNSF shares the Board’s goal of a rigorous, fact-based process, and to

¹ Unless otherwise defined herein, the acronyms and defined terms used in these BNSF Comments are the same as those used in *Decision No. 4*.

that end, BNSF would support a Board decision to permit ex parte communications in this proceeding. As BNSF noted in 2017 when the Board considered modernizing its ex parte rules in connection with informal rulemaking proceedings, increasing the flow of information and technical expertise between the Board and its stakeholders facilitates decision-making that is grounded in the complex operational and market realities of the rail industry. *See BNSF Comments, Ex Parte Comms. in Informal Rulemaking Proceedings*, EP 739 (filed Nov. 1, 2017).

BNSF is confident the Board can craft appropriate parameters for ex parte communications. The Board should ensure that ex parte opportunities in this proceeding are available and open to all participants—not just the Applicants—and ensure that parties have a reasonable opportunity to respond to and address factual assertions, legal positions, and proposals advanced by Applicants during the proceeding. The parameters the Board sets for any ex parte communications should apply equally to all participants.

Applicants have proposed that the period for ex parte meetings would conclude 150 days after the filing of the application. The Board should ensure that the procedural schedule set in this proceeding includes sufficient time for ex parte meetings at least until after the filing and Board consideration of comments and responsive applications. Whether the temporal restrictions that Applicants propose is fair to all depends on the final schedule. Accordingly, BNSF anticipates addressing that timing issue, among potentially others, in any comments that BNSF files regarding Applicants' proposed procedural schedule, once the Board notices that proposal for comment.

Respectfully submitted,

Jill K. Mulligan
Adam Weiskittel
Courtney B. Estes
Tyler R. White
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

/s/ Peter W. Denton
Peter W. Denton
Anthony J. LaRocca
Timothy J. Strafford
Steptoe LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-3000

Matthew Reilly
Richard Cunningham
Daniel Donovan
Jeffrey Ayer
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 389-5000

Counsel for BNSF Railway Company

Dated: September 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF's Response to Applicants' Motion to Permit Stakeholder Communications in Accordance with 49 U.S.C. § 11324(f)* to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams

Attorney for BNSF Railway Company

September 22, 2025