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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 COMMENTS ON PROPOSED PROCEDURAL SCHEDULE

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Dated: November 13, 2025

INTRODUCTION

The UP/NS merger proposal is a pivotal moment for the railroad industry and, in turn, the American manufacturers, farmers, miners, workers, and consumers who depend on competitive rail service. No railroad merger of this scale has ever been proposed. It would create an industry goliath far larger than other railroads and allow UP/NS to exert leverage on industry stakeholders. UP/NS would control 43% of the U.S. rail market and 52,000 track miles in 43 states. It dwarfs prior mergers—in both scale and risk. And it prompts challenging questions about what would be next for the industry if it were approved.

The Board has been planning for this day for 25 years. When the Board imposed a temporary moratorium on major mergers in 2000 and then adopted its 2001 merger rules, the Board recognized that the next Class I merger—such as UP/NS—would likely be its last opportunity to determine whether further consolidation would enhance competition and serve the public interest. That day is now here. Given the stakes, the Board and all stakeholders need sufficient time to ask questions, gather and analyze years of operational and financial data, develop the evidentiary record, and study how this merger would shape the U.S. economy and American railroads for generations.

Informed by conversations with its customers, BNSF has questions and concerns, including about how the merger will create “new or enhanced rail-to-rail competition”;¹ how it would impact the U.S. economy, domestic manufacturing, and

¹ *Final Rule in Major Rail Consolidation Procedures*, EP 582 (Sub-No. 1) (STB served June 11, 2001) (“*Final Rule*”) at 13.

small businesses; how it might weaken the U.S. supply chain by making it over-reliant on a single entity; whether the efficiency and volume increases that UP promises are achievable; how a combined UP and NS would impair the vibrancy and health of the gateways that are critical to a flexible and resilient network; and how the UP and NS systems could be integrated without causing devastating meltdowns that plagued prior mergers. There are still other unanswered questions, like whether the claimed benefits could be achieved through alternatives short of a merger, and what, if any, conditions could ameliorate the massive network and spillover harms this merger could create.

Getting to the bottom of those questions and developing a full record will take time. To facilitate the discovery process and give all stakeholders sufficient time to develop the record, the Board should modify and clarify its proposed schedule in four ways:

- The Board should use the full time allotted by statute, such that the record will close at or near F + 395. The Board should use the additional time to permit a supplemental round of evidence and argument that follows the initial round of stakeholder comments and Applicants' rebuttals.
- The Board should permit both pre-hearing briefs as well as post-hearing final briefs. The record should close with the final briefs.
- The Board should permit ex parte communications up to 15 days before the hearing.
- The Board should deny Applicants' recent request to shorten the procedural schedule.

ARGUMENT

I. The Board should use the full time allotted by statute and permit a supplemental round of evidence and argument.

The Board should utilize all the time allowed by federal law. The Board has up to one year and 30 days from the application’s filing date (F + 395) to conclude evidentiary proceedings. *See* 49 U.S.C. § 11325(b)(3). The Board has noted that “12 months [including the pre-notice period] could be an unduly short period to build a record, allow for full public participation, and complete the necessary environmental documentation for the large, transcontinental mergers that we may be asked to consider.”² But the current proposal leaves 100 days of statutorily authorized time unused. The Board should make full use of the entire statutory window available, including by permitting a supplemental round of evidence and argument following Applicants’ rebuttals. This additional time—and supplemental round of evidence—are appropriate here for multiple, independent reasons.³

First, the stakes could not be higher. The proposed merger is unprecedented both in scale and in the effects it could have on the American economy, jobs, and railroad industry. According to Applicants, the combination of UP and NS “will

² *Final Rule* at 51.

³ “It has been long recognized that agencies have broad discretion to manage and control their own dockets and proceedings.” *Limiting Extensions of Trail Use Negotiating Periods*, 84 Fed. Reg. 66,320, 66,323 (Dec. 4, 2019) (quoting *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 636 (D.C. Cir. 1984) (“It is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business when in a given case the ends of justice require it.”)).

transform the U.S. supply chain.”⁴ Stakeholders and the Board need time to analyze the data; consider potential conditions and responsive applications; and carefully analyze the consequences the merger would have for generations. With so much at stake, there is no reason to leave nearly a quarter of statutorily available time unused.

Second, all stakeholders and the Board need—and will benefit from—additional time to analyze and test the various contentions that UP and NS are expected to make. Because Applicants to date have provided almost no detail regarding the alleged pro-competitive effects of the merger, the Board and stakeholders need time post-application to pressure-test the substantiation and plausibility (or continued lack thereof) of Applicants’ claims. While Applicants have provided vague information about the purported impacts of the merger on truck-to-rail competition, they have provided little about potential merger conditions. By way of example:

- **Enhanced Competition.** The Board has made it clear that Applicants must provide a plan for enhancing rail-to-rail competition in connection with the UP/NS combination.⁵ While Applicants have described their proposed transaction through public statements, they have not identified a single element of the UP/NS merger that would enhance rail-to-rail competition. The ultimate treatment of this issue in the UP/NS application will require thorough analysis by the Board and other stakeholders.⁶

⁴ Applicants’ Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-25, *Union Pac. Corp. & Union Pac. R.R. Co. – Control – Norfolk S. Corp. & Norfolk S. Ry. Co.*, FD 36873 (July 30, 2025) (“Applicant’s Notice of Intent”) at 2.

⁵ *Final Rule* at 13, 17.

⁶ Further, unlike the last round of major mergers in the 1990s, Applicants have not reached any settlement agreements with major rail competitors before filing the merger. *See, e.g.*, CN/IC, FD 33556; UP/SP, FD 32760; BN/SF, FD 32549. Those pre-merger settlement agreements had the effect of providing a clear set of conditions up front, and they removed major competitors as opposition parties in the merger proceedings. Neither is present here,

- ***Claimed Benefits.*** Applicants claim that “UP and NS have highly complementary networks” and that the combination will create a “faster, more efficient, and more reliable network.”⁷ UP claims these efficiencies stem from “new single-line service.”⁸ However, UP’s past merger integrations raise concerns about the achievability of these purported merger efficiencies and how this one could go wrong. Ahead of its 1996 merger with Southern Pacific, UP and SP similarly claimed that their combination would allow for increased single-line service and increased efficiency.⁹ But that merger caused service impacts and deteriorations that took years to unwind, resulting in “the mess in the West.”¹⁰ UP’s efficiency and reliability claims must be extensively tested in discovery.
- ***Impact on Customers.*** Applicants claim the deal would “reduce costs for customers, businesses and manufacturers by enabling more freight to shift to lower-cost rail.”¹¹ But UP’s last merger integrations fell short and had a negative effect on rail customers. The stakes are higher here: a combined UP/NS would leave many customers crossing the Mississippi with fewer rail options. UP has a clear and lengthy history of driving up rates on captive traffic and aggressively cutting staffing and resiliency investments, which will impact the entire supply chain. This is among the reasons the agricultural and chemical industries oppose the merger.¹² Thorough discovery is needed to determine how this deal will ultimately affect rail customers.
- ***Downstream Effects.*** The revised merger rules require both the Board and Applicants to evaluate the effects of downstream railroad consolidation

and it will result in commentors and the Board needing more time to analyze and work through the issues.

⁷ Notice of Intent at 2.

⁸ Union Pacific Corp., Amend. No.1 to Registration Statement (Form S-4) (filed Sept. 30, 2025) at 100.

⁹ John E. Kwoka, Jr. and Lawrence J. White, *Manifest Destiny? The Union Pacific and Southern Pacific Railroad Merger (1996)*, in *The Antitrust Revolution: Economics, Competition, and Policy*, 35 (4th ed. 2004), available at https://global.oup.com/us/companion.websites/fdscontent/uscompanion/us/pdf/kwoka/9780195322972_01.pdf.

¹⁰ *Opinion: UP-NS Merger Would Hurt Industries White House Aims to Promote, TrainsPRO Staff*, TrainsPRO (Sept. 22, 2025), <https://www.trains.com/pro/freight/class-i/opinion-up-ns-merger-would-hurt-industries-white-house-aims-to-promote/>.

¹¹ Norfolk Southern Corp., Facts About the Union Pacific and Norfolk Southern Combination (Form 425) (filed Oct. 2, 2025).

¹² Mary Kennedy, *American Chemistry Council, Rail Coalition Against Proposed UP-NS Merger*, Progressive Farmer (Sept. 29, 2025), <https://www.dtnpf.com/agriculture/web/ag/news/article/2025/09/29/american-chemistry-council-rail-ns-2>.

that may result from the merger—by considering the cumulative impacts and crossover effects that are likely to occur as rival carriers respond to the proposed combination. *See* 49 C.F.R. § 1180.1(i) (“Because there are so few remaining Class I carriers and the railroad industry constitutes a network of competing and complementary components, the Board cannot evaluate the merits of a major transaction in isolation. The Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination.”). More time is needed given the Board’s complex task of evaluating those “cumulative impacts and crossover effects.” *Id.*

- ***Labor Impacts.*** Applicants claim the “combined UP-NS will produce rail volume growth that will drive additional employment opportunities” in areas across the combined rail network,¹³ but Applicants have not provided details. There’s reason to be skeptical. Applicants have not offered post-merger protections for non-union employees. And in its recent agreement with SMART-TD, UP did not commit to maintain, let alone increase, the existing number of union workers or their pay levels. Other labor groups, including the Brotherhood of Maintenance of Way Employees Division, are understandably concerned how the transaction will impact workers,¹⁴ and it will take time to get to the bottom of those impacts.

Third, the parties—both Applicants and non-Applicants—can use the additional time productively by preparing a supplemental round of evidence for the Board’s review. This supplemental round would still give Applicants the final evidentiary word (which BNSF proposes occur 15 days before pre-hearing briefs). *See **Appendix A***. A supplemental round of evidence will sharpen and distill the key evidentiary and legal issues for the Board. The Board will benefit from the additional evidence as the parties trade contentions throughout 2026 about their primary and responsive applications and any conditions that are proposed. A supplemental round will assist the Board by creating opportunity for helpful iteration of ideas raised by

¹³ Notice of Intent at 2-3.

¹⁴ Josh Funk, *Biggest rail union joins others in endorsing Union Pacific merger but some still have reservations*, Associated Press (Sept. 22, 2025), <https://apnews.com/article/smarttd-union-pacific-norfolk-southern-railroad-merger-39d0c6237856f96a78446c1f4cb80bd4>.

the commenting parties; and allow the parties to present data analyses and testimony on issues that arise or evolve next year—for example, in response to changing economic conditions or operational or industry issues that develop.

Fourth, Applicants are not prejudiced by the extra time. Applicants have told their shareholders they expect the approval process will last into 2027.¹⁵ And if Applicants want a faster process, they can file their application before the January 29, 2026 cut-off, as they have indicated they will do.¹⁶

* * * * *

The merger proposal is unprecedented. The Board’s decision on it will shape the U.S. economy and the railroad industry for generations. The Board should use the time allotted by statute to fully consider the enormous consequences that it poses, and the Board should permit a supplemental round of evidence that will maximize opportunities to develop the record for the Board’s benefit.

II. The Board should permit both pre-hearing and post-hearing briefs, and the record should close with the final, post-hearing briefs.

The Board’s schedule contemplates final briefs 30 days before the hearing. The Board should permit both pre-hearing briefs and post-hearing briefs, and the record should close with the final briefs. Allowing two rounds of written filings tracks the Board’s approach in the most recent major merger proceeding (CP-KCS)¹⁷ and the

¹⁵ Press Release, *Union Pacific and Norfolk Southern to Create America’s First Transcontinental Railroad*, Union Pacific (July 29, 2025), <https://investor.unionpacific.com/news-releases/news-release-details/union-pacific-and-norfolk-southern-create-americas-first>.

¹⁶ *Id.*

¹⁷ *Canadian Pac. Ry. Ltd. – Control – Kan. City S. (Decision No. 18)*, FD 36500 (May 27, 2022) at 4.

CSX/Pan Am proceeding.¹⁸ Pre-hearing briefs will help set the stage for the hearing and preview the evidence the Board will consider. But new issues and potential commitments are likely to be raised at the hearing in response to Board reactions to the evidence. The Board should have the benefit of final briefs that summarize the evidence and firm up the parties' positions on issues raised, including any new ones that arise during the hearing.

III. The Board should permit ex parte communications up to 15 days before the hearing.

As BNSF noted in its September 22 brief, BNSF would support a Board decision to permit ex parte communications so long as ex parte opportunities are available and open to all participants. The Board should ensure there is sufficient time for ex parte meetings at least until after the filing and Board consideration of comments and responsive applications. Consistent with BNSF's proposal for a supplemental round of evidence, the Board should allow ex parte communications up to 15 days before the hearing. This is the most straightforward approach. It ensures that all participants have a reciprocal opportunity to discuss their positions and provide their operational expertise with a full view of the evidence that is developed with respect to the parties' applications and comments to them. Allowing ex parte communications up to 15 days before the hearing maximizes the information flow to the Board on what are likely to be complex and consequential issues.

¹⁸ *CSX Corp. and CSX Transp., Inc., et al. – Control and Merger – Pan Am Sys., Inc. (Decision No. 2)*, FD 36472 (Apr. 22, 2021) at 4.

IV. The Board should deny Applicants’ recent request to shorten the procedural schedule.

Finally, the rushed procedural schedule requested by Applicants—which inexplicably shortens the period proposed in their initial schedule—is categorically insufficient for this unprecedented merger.¹⁹ The Board should deny Applicants’ abbreviated request for several reasons:

First, Applicants’ citation of Executive Order (“E.O.”) 14219 is inapt and not relevant to the Board’s procedural schedule. E.O. 14219 concerns reviewing and rescinding unlawful or harmful regulations, and nothing in that E.O. has affected the Board’s 2001 merger rules for Class I railroads. Neither the Board nor any other executive agency has called those rules into question, and there has never been a successful legal challenge against the 2001 rules. Contrary to Applicants’ arguments about efficiency, the procedural schedule should not be rushed because the stakeholders have seen firsthand the harms of ill-considered mergers—including the service and competition harms to shippers by UP’s previous acquisition of Southern Pacific and the “mess in the West.”²⁰ The Applicants’ misunderstanding of E.O. 14219 is further underscored by the Rail Customer Coalition’s September 16 letter to the Board, stating that “leaving captive shippers with even fewer Class I rail companies . . . is in direct contrast to the President’s executive orders aimed at

¹⁹ Applicants Petition to Establish Procedural Schedule, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk S. Corp. and Norfolk S. Ry. Co.*, FD 36873 (July 30, 2025) at App’x A.

²⁰ Paul D. Larson, *Union Pacific/Southern Pacific merger: impact on shippers*, 10 J. of Transportation Management 45, 45-52 (1998), <https://digitalcommons.wayne.edu/jotm/vol10/iss1/7/>; *supra* n.10.

promoting American prosperity, curbing anti-competitive practices, and preventing monopolistic behavior.”²¹

Second, Applicants are wrong in claiming that “because of the merger’s end-to-end nature, the transaction does not present any complex competitive or operating issues.”²² That argument is identical to the one rejected by the Board in the CP-KCS merger, where the applicants claimed “that the issues in the case should be of limited scope because CP’s and KCS’s systems are entirely end-to-end[.]”²³ In the CP-KCS proceedings, the Board held that “[g]iven the high level of interest in this proceeding, as well as the complexity and magnitude of issues that may potentially arise,” it was necessary “to ensure sufficient time for the submission and review of evidence and arguments, as well as for the careful consideration of the merits of the proposed transaction.”²⁴ The UP/NS Application will be far more complex and expansive than the CP-KCS merger, as it aims to create the largest transcontinental railroad in the industry’s history. All parties must have sufficient time to rigorously review the record and consider the merits of the proposed merger.

Third, Applicants’ proposal contradicts UP’s prior position. UP used to recognize the value of a schedule close to the one BNSF now proposes. In the run up

²¹ Rail Customer Coalition Letter, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk S. Corp. and Norfolk S. Ry. Co. (Filing No. 310074)*, FD 36873 (Sept. 16, 2025) at 1.

²² Applicants Comments on the Proposed Procedural Schedule, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk S. Corp. and Norfolk S. Ry. Co.*, FD 36873 (Oct. 20, 2025) at 2.

²³ Petition to Establish Procedural Schedule, *Canadian Pac. Ry. Ltd. – Control – Kan. City S. (Filing No. 301793)*, FD 36500 (Mar. 22, 2021) at 2.

²⁴ *Canadian Pac. Ry. Ltd. – Control – Kan. City S. (Decision No. 9)*, FD 36500 (Nov. 2, 2021) at 2.

to the 2001 merger rules, “UP contend[ed] that, for the next major Class I merger, a 15-month procedural schedule would be reasonable” because it “would permit the Board to apply its new rules, consider downstream effects, and review much more detailed service and market evidence.”²⁵ Judged against UP’s prior statements on scheduling, Applicants’ latest position should be viewed skeptically.

Finally, the availability of pre-application discovery in this matter does not justify Applicants’ request to shorten the procedural schedule. Discovery is not moving at the pace it should. To date, Applicants have produced only 367 documents in discovery; most documents in that modest productions are lease and waiver agreements, which provide little to no insight into the core questions that need to be answered in this proceeding. Applicants cannot justify shrinking the responsive period for stakeholders while delaying and impeding discovery. The request to shorten the procedural schedule should be denied.²⁶

CONCLUSION

For those reasons, the Board should modify and clarify the proposed schedule in four ways:

- The Board should use the full time allotted by statute, such that the record will close at or near F + 395. The Board should use the additional time to permit a supplemental round of evidence and

²⁵ *Final Rule* at 182; see also Union Pacific’s Reply Comments on Proposed Merger Rules, *Major Rail Consolidation Procedures*, EP 582 (Sub-No. 1) (Dec. 18, 2000) at 35 (UP argued that an abbreviated schedule “would not be sufficient to determine the future structure of the North American rail system,” and would not be appropriate for “a Class I merger under rules that the Board has never applied.”).

²⁶ BNSF’s initial letters to UP and NS regarding its concerns with the pace and extent of discovery to date are attached as **Exhibit 1** and **Exhibit 2**.

argument that follows the initial round of stakeholder comments and Applicants' rebuttals.

- The Board should permit both pre-hearing briefs as well as post-hearing final briefs. The record should close with the final briefs.
- The Board should permit ex parte communications up to 15 days before the hearing.
- The Board should deny Applicants' recent request to shorten the procedural schedule.

Respectfully submitted,

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Dated: November 13, 2025

APPENDIX A

BNSF's Proposed Procedural Schedule (Changes Shown in Redline)

- | | |
|--------------------|--|
| F | Primary application and any related application(s) filed. |
| F + 30 | Board notice of acceptance of primary application and any related application(s) to be published in the Federal Register. |
| F + 45 | Notices of intent to participate due. |
| F + 60 | Proposed Safety Integration Plan (SIP) due. |
| F + 75 | Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due. |
| F + 115 | Responsive environmental information and environmental verified statements for responsive, including inconsistent, applicants due. |
| F + 120 | Comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or any related application(s) due (except filings from DOJ and DOT). Responsive, including inconsistent, applications due. |
| F + 135 | Preliminary comments from DOJ and DOT, if any, due. |
| F + 150 | Notice of acceptance of responsive, including inconsistent, applications, if any, published in the Federal Register. |
| F + 210 | Responses to comments (including those of DOJ and DOT, if any), protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application and any related application(s) due. Responses to responsive, including inconsistent, applications due. |
| F + 240 | Rebuttals in support of responsive, including inconsistent, applications due. |
| F + 270 | Sur-reply evidence and argument from non-Applicants. |
| F + 330 | Applicants' response to F + 270 sur-replies. |

F + 330 Rebuttals in support of responsive, including inconsistent, applications due.

F + ~~270~~345 ~~Final~~ Pre-hearing briefs due.

~~TBD~~F + 365 Public hearing (~~if necessary~~). ~~Close of the record.~~

F + 395 Final briefs due. Close of the record.

EXHIBIT 1

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November 12, 2025

Via E-Mail

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Re: *STB Finance Docket No. 36873 – UP’s Initial Discovery Responses*

Dear Counsel:

We write for BNSF regarding UP’s responses to BNSF’s First Set of Discovery Requests, as well as the pace of discovery to date.

The UP-NS merger proposal is a pivotal moment for the railroad industry and, in turn, the American manufacturers, workers, and consumers who depend on competitive rail service. No railroad merger of this scale has ever been proposed. And UP has embraced its significance: UP contends the proposed UP-NS merger is “unprecedented” and will “transform the U.S. supply chain[.]”¹ Given the stakes, the Board and all stakeholders need discovery to study how this merger would shape the U.S. economy and American railroads for generations.

To date, UP has slow-walked discovery and blocked our ability to access that necessary information. More than 100 days after announcing the transaction, UP has produced just 331 documents (and the majority of that production was lease agreements and waiver conditions). UP has produced no emails, board materials, or internal analyses of the merger and its expected impacts on the rail industry and customers. And based on its initial written discovery responses, it appears that UP intends to not provide timely discovery into case-relevant information. UP declined to conduct any searches for 13 of BNSF’s initial requests,² and for others, UP is not providing responsive materials or otherwise declining to respond until UP files its Application.³

¹ Applicants’ Notice of Intent, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 at 2 (Jul. 30, 2025).

² UP’s Responses and Objections to BNSF’s First Set of Discovery Requests, at Nos. 3, 5-6, 13-15, 18-19, 21-24, and 26.

³ See *id.* at Nos. 3, 5, 8-10, 12, 14-15, 18-21, and 27.

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In light of UP's approach to discovery to date and limited productions, we were disappointed to see UP attempt to use its engagement in the discovery process as a basis to *shorten* the procedural schedule.⁴ We will be sure to point out these short comings when we file our response to the procedural schedule.

Below, we write regarding some of our initial concerns about UP's participation in the discovery process to date.

UP's General Responses and Objections

Objections relating to UP's upcoming applications. UP objected to BNSF's requests to the extent that BNSF sought discovery that "will be available or accessible . . . through the application and accompanying workpapers to be submitted in this proceeding, once filed." UP Responses ¶ 2. Although there may be overlap between UP's Application and some of BNSF's discovery requests, UP cannot defer answering BNSF's requests until it files its Application—particularly when UP is telling the Board that it is actively responding to stakeholders' pre-Application discovery requests. Please confirm UP will withdraw this objection and address the discovery that we have served.

Communications and documents other than emails. UP objects to searching any communications or documents other than emails as unduly burdensome and not proportional. *Id.* at ¶ 13-14. UP's refusal to search non-email communications—including texts, meeting invitations, instant messages, or chat logs from electronic platforms—is unsupported by 49 C.F.R. Part 1114 and denies BNSF and other stakeholders access to responsive information. Although BNSF is willing to meet and confer to negotiate parameters around searches for non-email communications, please confirm UP will withdraw its front-end objection to even searching from those sources.

Please also identify the custodians that UP proposes to search, so that we can consider further and begin those conversations.

Relevant time period. UP generally objects to responding to BNSF's discovery requests to the extent they require UP "to collect documents or information for an unduly burdensome period of time and 'until the present.'" *Id.* at ¶ 26. UP asserts that it will "only search for and provide documents or information from January 1, 2019 up to July 29, 2025." *Id.* While BNSF appreciates there could be some valid undue burden concerns related to some pre-2019 materials,

⁴ See Applicants' Comments on the Proposed Procedural Schedule, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 (Oct. 20, 2025).

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a sharp cut-off is inappropriate. Pre-2019 materials—such as intermodal train schedules and joint ventures between the applicants—could be relevant and should be searched. Similarly, a July 29, 2025 cut-off would improperly exclude relevant materials—including communications with shippers and governmental agencies about the merger and its effects on the industry and customers; integration planning materials; and internal discussions within UP about the transaction and its implementation. Although BNSF is willing to negotiate parameters for those searches, please confirm UP will withdraw those front-end date objections.

UP's Specific Responses and Objections

While BNSF intends to follow up with UP regarding other of BNSF's initial requests as discovery unfolds, we write in this first instance regarding aspects of 12 requests where it appears we may have near-term disputes. We reserve our rights to follow up about other aspects—and the other requests—at the appropriate time.

***BNSF Request No. 2:** Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.*

UP responded that it would produce “nonprivileged materials” that it made available to government agencies “in response to the request of such entity or in response to UP’s legal obligations to provide such information, to the extent such information can be collected and produced without undue burden and can be located after a reasonable search.” *Id.* at 12-13.

We have several concerns with this response. **First**, please identify what privileges—if any—UP is using or might use to withhold responsive materials that were shared with federal or state government agencies. We are not aware of any such valid privilege assertions.

Second, UP improperly limits its search and production to materials “in response to the request of such entity or in response to [UP’s] legal obligations to provide such information[.]” *Id.* at 13. BNSF is entitled to relevant information provided by UP to federal and state government agencies whether or not UP had a *legal* obligation to disclose such. UP must produce all relevant documents and communications previously produced to the Board, DOJ, or any other federal or state government agency relating to the Proposed Transaction or BNSF’s requests. Please confirm that UP will withdraw this limitation.

Third, UP responds that it would produce materials “to the extent such information can be collected and produced without undue burden and can be located after a reasonable search.” *Id.*

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That limitation is unacceptable, since all of the materials requested by BNSF have already been—or will be—produced to third parties and should be identifiable with minimal burden to UP. Please confirm that UP will withdraw this limitation.

BNSF Request No. 4: Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

Although UP agreed to produce materials responsive to this request, UP improperly limited that production to agreements “between Union Pacific and a counter-party that are designed to facilitate freight rail service operations between the existing Union Pacific and existing Norfolk Southern networks[.]” *Id.* at 15 (emphasis added). UP’s response improperly re-writes our request and purports to limit UP’s response. We seek agreements between UP and counter-parties that “facilitate service between the existing UP or NS networks.” Please confirm that UP will search for agreements facilitating service between existing UP or NS networks. That information is relevant to understanding the operational efficiency of UP and NS’s rail networks and potential for service disruptions, among other things.

Please confirm that UP’s productions will include any agreements for “rubber wheel interchanges” where containers are interchanged between UP or NS via truck or drayage. Those short-haul trucking movements can add substantial time, cost, and congestion to intermodal operations, and are directly relevant to the operational efficiency, competitive effects, and environmental impact of the proposed merger, among other things.

BNSF Request No. 5: Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Although UP states that it “has engaged in widespread outreach” to various entities and that it “will provide these letters of support with the application,” that is not responsive to BNSF’s request. BNSF is seeking the identities of all individuals or entities for whom UP has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction—not merely those providing letters of support to UP. Such information is relevant to this proceeding because, among other things, UP has cited customer support as a basis for Board

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approval of the Proposed Transaction.⁵ Please confirm that UP will amend its response to identify all individuals or entities responsive to this request (which would include those who have chosen not to provide letters of support).

BNSF Request No. 6: *Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.*

UP also fails to adequately respond to BNSF's Request No. 6, which seeks the identity of all individuals or entities that expressed or communicated concern about the Proposed Transaction. Although some of those individuals or entities may choose to file materials with the Board, others that expressed or communicated concerns to UP may not—particularly those who may have concerns about taking a public stance against what would be the only transcontinental railroad. Because UP is touting customer support as a basis for approval, the identities of individuals or entities who have expressed concern are relevant to these proceedings and should be identified by UP. Please confirm that UP will amend its response to identify all individuals or entities responsive to this request.

BNSF Request No. 13: *Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.*

UP made two objections to this request: (1) that it seeks “materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding;” and (2) “it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” These objections are improper.

First, UP's privilege-based objections are meritless. There is nothing privileged about the terms of a contract signed by two parties negotiating at arms-length. Please confirm whether UP is withholding responsive documents based on privilege, and if so, please specifically identify the

⁵ See Statements of Support, <https://www.up-nstranscontinental.com/>.

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privilege on which UP is relying and how that privilege could shield the Materially Burdensome Regulatory Conditions from discovery.

Second, UP's relevance-related objections are similarly meritless. The UP-NS merger agreement includes multiple references to Materially Burdensome Regulatory Conditions, which would allow UP to walk away from the Proposed Transaction without paying NS a termination fee, among other things. Those conditions are relevant to the Proposed Transaction because they may show, among other things, the Applicants' internal assessment of competitive risk and Applicants' willingness to accept conditions necessary to protect shippers and enhance competition. Please confirm that UP will withdraw its relevance objection.

BNSF Request No. 15: Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

UP's response "directs BNSF to its forthcoming application for information on operational integration and the future operation of jointly-owned companies." Stakeholders like BNSF need not wait months for UP to produce data that it currently possesses, particularly when that information is directly relevant to this proceeding. Among other things, those communications bear directly on (a) the impact on the deal on interlining pricing, (b) the likelihood of the purported efficiencies claimed by the Applicants, (c) the probability of network breakdowns caused by the merger, and (d) how the Applicants are planning to change the operations of jointly-owned companies relied on by others in the industry. Please confirm whether UP will produce communications responsive to Request No. 15 prior to filing its Application, and when BNSF can anticipate that production being made.

BNSF Request No. 17: Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

UP responded that it "will provide documents *sufficient* to show current interline business relationship service products between [UP] and [NS]," but that response falls far short of BNSF's request for *all* documents and communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger. That information is relevant because, among other things, it demonstrates the ability of UP and NS to obtain operational efficiencies without a formal merger—which bears directly on a factor that the Board must evaluate as part of its assessments.

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Additionally, UP's proposal that it would "provide documents sufficient to show *current* interline business service products" is insufficient. Discussions about agreements that were not implemented may demonstrate the feasibility of UP/NS coordination without a merger, among other things. Please confirm if UP will respond to BNSF's request as BNSF made it.

BNSF Request No. 18: Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

UP directs BNSF to its public website "and to its forthcoming application" concerning how UP would cooperate with other carriers to address or resolve service disruptions on UP-NS lines during the transitional period and afterwards. That response is insufficient. UP cannot withhold responsive information merely because it may overlap with UP's public statements or pending Application. UP surely contemplated how it would address service disruptions that are common with railroad mergers, and those plans are relevant to the Proposed Transaction and how it would affect the public interest, among other things. Please confirm that UP will amend its response to Request No. 18 before filing its Application, so stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 19: Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

Similar to its response to Request No. 18, UP directs BNSF to its public website "and to its forthcoming application" concerning how the Proposed Transaction would enhance competition. Again, UP cannot withhold responsive information merely because it may overlap with UP's public statements or forthcoming Application, particularly on a core issue like competition. Please confirm that UP will amend its response to Request No. 19 before filing its Application, so stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 21: Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on: [12 information subsets concerning the Applicants' businesses].

BNSF Request No. 22: Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.

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UP directs BNSF to its public website and SEC filings in response Request Nos. 21-22, in addition to referring BNSF to UP's forthcoming Application. UP cannot withhold responsive information merely because it may overlap with UP's public statements or forthcoming Application. The materials sought by BNSF concern business and financial information that UP possessed and considered prior to initiating the Proposed Transaction, and while there may be some modest overlap with UP's SEC filings, those public filings do not excuse UP from conducting a reasonable search and producing the relevant materials requested by BNSF. Please confirm that UP will amend its response to Request Nos. 21 and 22 before filing its Application, including so that stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 24: *Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.*

UP again directs BNSF to its public website for information responsive to Request No. 24, which does not address BNSF's request. While UP objects that the request is overly broad because it requests "all" documents provided to third parties concerning the Proposed Transaction, that is no basis for producing **zero** documents that are responsive to this request. BNSF will meet-and-confer to negotiate search parameters for this request. Those materials are relevant because they may reveal how the Proposed Transaction may impact stakeholders, including effects on the public interest and competition, among other things. Please confirm whether UP will amend its response to Request No. 24.

* * * * *

Please advise by November 17 whether UP intends to amend its Responses to address the issues and deficiencies identified above, and that UP will provide those amendments by November 24. We are available to discuss at your convenience.

Sincerely,

/s/ McClain Thompson

McClain Thompson

EXHIBIT 2

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November 12, 2025

Via E-Mail

Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Re: *STB Finance Docket No. 36873 – NS’s Initial Discovery Responses*

Dear Counsel:

We write for BNSF regarding NS’s responses to BNSF’s First Set of Discovery Requests, as well as the pace of discovery to date.

The UP-NS merger proposal is a pivotal moment for the railroad industry and, in turn, the American manufacturers, workers, and consumers who depend on competitive rail service. No railroad merger of this scale has ever been proposed. And NS has embraced its significance: NS contends the proposed UP-NS merger is “unprecedented” and will “transform the U.S. supply chain[.]”¹ Given the stakes, the Board and all stakeholders need discovery to study how this merger would shape the U.S. economy and American railroads for generations.

To date, NS has slow-walked discovery and blocked our ability to access that necessary information. More than 100 days after announcing the transaction, NS has produced just 36 documents (and the majority of that production was lease agreements). NS has produced no email, board materials, or internal analyses of the merger and its expected impacts on the rail industry and customers. And based on its initial written discovery responses, it appears that NS intends to not provide timely discovery into case-relevant information. NS declined to conduct any searches for 13 of BNSF’s initial requests,² and for others, NS is not providing responsive materials or otherwise declining to respond until NS files its Application.³ In light of NS’s approach to

¹ Applicants’ Notice of Intent, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 at 2 (Jul. 30, 2025).

² NS’s Responses and Objections to BNSF’s First Set of Discovery Requests, at Nos. 3, 5-6, 13-15, 18-19, 21-24, and 26.

³ *See id.* at Nos. 3, 5-12, 14-15, 18-21 (objecting or responding that NS will produce those materials in its “Control Application”).

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discovery to date and limited productions, we were disappointed to see NS attempt to use its engagement in the discovery process as a basis to *shorten* the procedural schedule.⁴ We will be sure to point out these short comings when we file our response to the procedural schedule.

Below, we write regarding some of our initial concerns about NS's participation in the discovery process to date.

NS's General Responses and Objections

Objections relating to NS's upcoming applications. NS objected to BNSF's First Set of Discovery Requests as "untimely and premature" to the extent that BNSF sought "sweeping discovery before any application has been filed." NS Responses ¶ 1; *see also id.* ¶ 3 ("NS objects . . . to the extent they seek information that is . . . obtainable from publicly available sources, such as the Control Application"). Although there may be overlap between NS's Application and some of BNSF's discovery requests, NS cannot defer answering BNSF's requests until it files its Application—particularly when NS is telling the Board that it is actively responding to stakeholders' pre-Application discovery requests. Please confirm NS will withdraw this objection and address the discovery that we have served.

Communications and documents other than emails. NS objects to searching any communications or documents other than emails as unduly burdensome and not proportional. *Id.* at ¶ 11. NS's refusal to search non-email communications—including texts, meeting invitations, instant messages, or chat logs from electronic platforms—is unsupported by 49 C.F.R. Part 1114 and denies BNSF and other stakeholders access to responsive information. Although BNSF is willing to meet and confer to negotiate parameters around searches for non-email communications, please confirm NS will withdraw its front-end objection to even searching from those sources.

Please also identify the custodians that NS proposes to search, so that we can consider further and begin those conversations.

Relevant time period. NS generally objects to responding to BNSF's discovery requests to the extent they require NS to search for "documents and data through 'the present' as vague and ambiguous[.]" *Id.* at ¶ 20. NS asserts that "the time frame for NS's document search is January 1, 2019 through July 29, 2025." *Id.* While BNSF appreciates there could be some valid undue burden concerns related to some pre-2019 materials, a sharp cut-off is inappropriate. Pre-2019 materials—such as intermodal train schedules and joint ventures between the applicants—could

⁴ See Applicants' Comments on the Proposed Procedural Schedule, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 (Oct. 20, 2025).

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be relevant and should be searched. Similarly, a July 29, 2025 cut-off would improperly exclude relevant materials—including communications with shippers and governmental agencies about the merger and its effects on the industry and customers; integration planning materials; and internal discussions within NS about the transaction and its implementation. Although BNSF is willing to negotiate parameters for those searches, please confirm NS will withdraw those front-end date objections.

NS's Specific Responses and Objections

While BNSF intends to follow up with NS regarding other of BNSF's initial requests as discovery unfolds, we write in this first instance regarding aspects of 12 requests where it appears we may have near-term disputes. We reserve our rights to follow up about other aspects—and the other requests—at the appropriate time.

BNSF Request No. 2: Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.

NS objected to this request “to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or other applicable privilege, including material related to settlement discussions.” *Id.* at 8. NS then responded that it would “produce to BNSF documents it produces to other federal or state agencies relating to the Proposed Transaction in response to the requests of those agencies or NS’s legal obligations to provide such information, to the extent that such documents are not publicly available.” *Id.* at 9. NS further responded that, as of the date the responses were served, “there are no such documents.” *Id.*

We have several concerns with this response. **First**, please identify what privileges—if any—NS is using or might use to withhold responsive materials that were shared with federal or state government agencies. We are not aware of any such valid privilege assertions.

Second, NS improperly limits its search and production to materials “in response to the requests of those agencies or NS’s legal obligations to provide such information” *Id.* at 9. BNSF is entitled to relevant information provided by NS to federal and state government agencies whether or not NS had a *legal* obligation to disclose such. NS must produce all relevant documents and communications previously produced to the Board, DOJ, or any other federal or state government agency relating to the Proposed Transaction or BNSF’s requests. Please confirm that NS will withdraw this limitation.

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Third, NS responds that it would produce materials “to the extent that such documents are not publicly available.” *Id.* That limitation is unacceptable, since all of the materials requested by BNSF have already been—or will be—produced to third parties and should be identifiable with minimal burden to NS, regardless whether those documents may have been or will be produced in public filings. Please confirm that NS will withdraw this limitation.

BNSF Request No. 4: Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

Although NS agreed to produce materials responsive to this request, NS improperly limited that production to agreements “between NS and a counterparty that are designed to facilitate freight rail service operations between the existing UP **and** existing NS networks.” *Id.* at 10 (emphasis added). NS’s response improperly re-writes our request and purports to limit NS’s response to it. BNSF’s Request No. 4 seeks agreements between NS and counter-parties that “facilitate service between the existing UP **or** NS networks.” Please confirm that NS will search for agreements facilitating service between existing UP **or** NS networks. That information is relevant to understanding the operational efficiency of UP and NS’s rail networks and potential for service disruptions, among other things.

Please confirm that NS’s productions will include any agreements for “rubber wheel interchanges” where containers are interchanged between UP or NS via truck or drayage. Those short-haul trucking movements can add substantial time, cost, and congestion to intermodal operations, and are directly relevant to the operational efficiency, competitive effects, and environmental impact of the proposed merger, among other things.

BNSF Request No. 5: Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Although NS states that it “has conducted wide-ranging outreach” to various entities and that “[s]ome letters of support have been submitted already, and additional letters of support will be filed as part of the forthcoming Control Application,” that is not responsive to BNSF’s request. BNSF is seeking the identities of **all** individuals or entities for whom NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction—not merely those providing letters of support to NS. Such information is relevant to this proceeding because, among other thing, NS has cited customer support as a basis for Board approval of the

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Proposed Transaction.⁵ Please confirm that NS will amend its response to identify all individuals or entities responsive to this request (which would include those who have chosen not to provide letters of support).

BNSF Request No. 6: Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

NS also fails to adequately respond to BNSF's Request No. 6, which seeks the identity of all individuals or entities that expressed or communicated concern about the Proposed Transaction. Although some of those individuals or entities may choose to file materials with the Board, others that expressed or communicated concerns to NS may not—particularly those who may have concerns about taking a public stance against what would be the only transcontinental railroad. Because NS is touting customer support as a basis for approval, the identities of individuals or entities who have expressed concern are relevant to these proceedings and should be identified by NS. Please confirm that NS will amend its response to identify all individuals or entities responsive to this request.

BNSF Request No. 13: Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.

NS made two objections to this request: (1) that “it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege;” and (2) “it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence[.]” These objections are improper.

First, NS's privilege-based objections are meritless. There is nothing privileged about the terms of a contract signed by two parties negotiating at arms-length. Please confirm whether NS is withholding responsive documents based on privilege, and if so, please specifically identify the privilege on which NS is relying and how that privilege could shield the Materially Burdensome Regulatory Conditions from discovery.

⁵ See Statements of Support, <https://www.up-nstranscontinental.com/>.

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Second, NS's relevance-related objections are similarly meritless. The UP-NS merger agreement includes multiple references to Materially Burdensome Regulatory Conditions, which would allow UP to walk away from the Proposed Transaction without paying NS a termination fee, among other things. Those conditions are relevant to the Proposed Transaction because they may show, among other things, the Applicants' internal assessment of competitive risk and Applicants' willingness to accept conditions necessary to protect shippers and enhance competition. Please confirm that NS will withdraw its relevance objection.

BNSF Request No. 15: Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

NS's response "refers BNSF to its forthcoming Control Application and workpapers for that application for information on operational integration and the future operation of jointly-owned companies." Stakeholders like BNSF need not wait months for NS to produce data that it currently possesses, particularly when that information is directly relevant to this proceeding. Among other things, those communications bear directly on (a) the impact on the deal on interlining pricing, (b) the likelihood of the purported efficiencies claimed by the Applicants, (c) the probability of network breakdowns caused by the merger, and (d) how the Applicants are planning to change the operations of jointly-owned companies relied on by others in the industry. Please confirm whether NS will produce communications responsive to Request No. 15 prior to filing its Application, and when BNSF can anticipate that production being made.

BNSF Request No. 17: Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

NS responded that it "will conduct a reasonable search and produce non-privileged documents that are *sufficient* to show current interline business relationship service products between UP and NS," but that response falls far short of BNSF's request for *all* documents and communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger. That information is relevant because, among other reasons, it demonstrates the ability of UP and NS to obtain operational efficiencies without a formal merger, which bears directly on a factor that the Board must evaluate as part of its assessments.

Additionally, NS's proposal that it would provide documents "sufficient to show *current* interline business relationship service products" is insufficient. Discussions about agreements that

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were not implemented may demonstrate the feasibility of UP/NS coordination without a merger, among other things. Please confirm that NS will respond to BNSF's request as BNSF made it.

BNSF Request No. 18: Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

NS directs BNSF to "its forthcoming Control Application and workpapers for that application" concerning how NS would cooperate with other carriers to address or resolve service disruptions on UP-NS lines during the transitional period and afterwards. That response is insufficient. NS cannot withhold responsive information merely because it may overlap with NS's public statements or forthcoming Application. NS surely contemplated how it would address service disruptions that are common with railroad mergers, and those plans are relevant to the Proposed Transaction and how it would affect the public interest, among other reasons. Please confirm that NS will amend its response to Request No. 18 before filing the Application, including so that stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 19: Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

Similar to Request No. 18, NS directs BNSF to "its forthcoming Control Application and workpapers for that application" concerning how the Proposed Transaction would enhance competition. Again, NS cannot withhold responsive information merely because it may overlap with NS's public statements or forthcoming Application, particularly on a core issue like competition. Please confirm that NS will amend its response to Request No. 19 before filing its Application, so stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 21: Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on: [12 information subsets concerning the Applicants' businesses].

BNSF Request No. 23: Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

NS directs BNSF to its public website and SEC filings in response Request Nos. 21 and 23, in addition to referring BNSF to NS's forthcoming Application. NS cannot withhold responsive information merely because it may overlap with NS's public statements or forthcoming

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Application. The materials sought by BNSF concern business and financial information that NS possessed and considered prior to initiating the Proposed Transaction, and while there may be modest overlap with NS's SEC filings, those public filings do not excuse NS from conducting a reasonable search and producing the relevant materials requested by BNSF. Please confirm that NS will amend its response to Request Nos. 21 and 23 before filing its Application, including so that stakeholders can serve and tailor other aspects of the discovery process.

***BNSF Request No. 24:** Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.*

NS again directs BNSF to its public website for information responsive to Request No. 24, which does not address BNSF's request. While NS objects that the request is overly broad because it requests "all" documents provided to third parties concerning the Proposed Transaction, that is no basis for producing **zero** documents that are responsive to this request. BNSF will meet-and-confer to negotiate search parameters for this request. Those requested materials are relevant because they may reveal how the Proposed Transaction may impact stakeholders, including effects on the public interest and competition, among other things. Please confirm that NS will amend its response to Request No. 24.

* * * * *

Please advise by November 17 whether NS intends to amend its Responses to address the issues and deficiencies identified above, and that NS will provide those amendments by November 24. We are available to discuss at your convenience.

Sincerely,

/s/ McClain Thompson

McClain Thompson

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF's Comments on Proposed Procedural Schedule* 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

November 13, 2025