

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

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

**CSX TRANSPORTATION INC.'S REPLY IN SUPPORT OF
BNSF RAILWAY COMPANY'S MOTION TO COMPEL**

CSX Transportation, Inc. ("CSXT") submits this reply in support of BNSF Railway Company's ("BNSF") January 9 Motion to Compel (the "Motion"). *See* BNSF-12.

CSXT joins and supports BNSF's motion to compel for all of the reasons expressed in the Motion. As explained in the Motion, the Applicants' board materials, banker materials, and email communications are highly relevant in evaluating the potential competitive effects of the proposed merger; potential conditions that would mitigate merger-related harms; alternatives to the proposed merger; and a variety of other issues central to this matter. Indeed, these materials are routinely and regularly relied upon in merger litigations and have been referred to as "ubiquitous" by courts evaluating mergers. *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 25-26 (D.D.C. 2017) (noting that internal assessments of competition, including internal emails, were "ubiquitous" at trial); *F.T.C. v. Whole Foods Mkt., Inc.*, 548 F.3d 1028,

1032 (D.C. Cir. 2008) (noting that FTC relied on emails from the CEO to the board regarding the purpose of the merger); *Parsi v. Daiouleslam*, 778 F.3d 116, 132 (D.C. Cir. 2015) (describing the “withholding of relevant emails as ‘indefensible’”).

As further explained in the Motion, discovery of the Applicants’ board materials, banker materials, and email communications is also proportional to the needs of this proceeding. The Applicants themselves have expressed the magnitude and importance of the merger to American railroading. Thus, requiring Applicants to turn over materials that are central to the issues is proportional to the magnitude of the proposed combination.

Finally, CSXT agrees with the Motion’s request that should the Board accept the Application for further proceedings, the Board should defer the Procedural Schedule until the Applicants satisfy their discovery obligations.

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Respectfully submitted,

/s/ Eric P. Enson

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Dated: January 13, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of January, 2026, I have caused the foregoing CSX TRANSPORTATION INC.'S REPLY IN SUPPORT OF BNSF RAILWAY COMPANY'S MOTION TO COMPEL 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/ Eric P. Enson

Eric P. Enson

Attorney for CSX Transportation, Inc.