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March 4, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

**Re: Docket No. FD 36873, *Union Pacific Corp., et al.* –
*Control – Norfolk Southern Corp. et al.***

Dear Chief of Case Administration:

I write on behalf of Applicants¹ in response to the March 3, 2026, letter filed by the Antitrust Division of the United States Department of Justice (the “DOJ”) regarding discovery in this proceeding.

Respectfully, the DOJ’s letter contains several misunderstandings regarding Applicants’ position on the discovery of “ordinary course” documents, which may stem from the mischaracterizations offered by Applicants’ railroad competitors. Applicants are not refusing to produce such documents.² Applicants have agreed to conduct reasonable searches for certain responsive documents, including documents responsive to the very requests cited by the DOJ,³ and have consistently expressed their willingness to confer with the other parties regarding specific requests with the goal of identifying workable solutions using targeted collections.⁴ To

¹ “Applicants” are Union Pacific Corporation (“UPC”) and Union Pacific Railroad Company (“UP”) (collectively, “Union Pacific”) and Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NS”) (collectively, “Norfolk Southern”).

² As the DOJ’s Letter acknowledges, the DOJ has not yet sought discovery or participated in negotiations between Applicants and other railroads, but rather is relying on assertions made by Applicants’ railroad competitors. *See* DOJ Letter at 3.

³ *See* UP-24/NS-23 at 18 (describing agreement to produce “board materials that address the proposed transaction, which include materials from bankers or financial advisors that the Applicants considered in approving the proposed transaction”); *id.*, Exhibit 2 at 29 (offering to conduct reasonable search for “documents sufficient to show current interline business relationship service products” between UP and NS in response to request regarding “joint ventures, marketing alliances, and other forms of cooperative agreements”).

⁴ *See* UP-24/NS-23 at 9-10.

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date, Applicants have voluntarily produced more than 56,000 pages and hundreds of gigabytes of requested data sets, agreements, and other materials. Disputes have arisen not because Applicants have refused to produce “ordinary course” documents, but because BNSF (and other parties) have attempted to circumvent the conferral process and the Board’s rules in order to pursue sprawling and untimely discovery.

Moreover, the suggestion that the STB should import the DOJ’s merger discovery practices into this STB proceeding overlooks fundamental statutory and procedural differences. Applicants have previously explained in detail why the DOJ’s process does not align with the Board’s distinctive and deliberately application-centric merger review framework.⁵ In brief, the DOJ’s generalized merger review process requires parties to produce broad categories of highly sensitive internal company documents and subjects DOJ employees to criminal penalties for improper disclosure of those documents, *including disclosures to the parties’ competitors*.⁶ By contrast, the Board’s industry-specific process requires parties to submit a comprehensive control application, supported by detailed workpapers, addressing topics specifically identified in the governing statute and the Board’s regulations. The Board’s process also requires merging parties to produce to their competitors a substantial amount of highly sensitive internal data so those competitors can perform their own analyses of the proposed transaction. Accordingly, determinations regarding the scope of or approach to discovery in this proceeding must be grounded in the governing statutes and the Board’s own rules, rather than by the practices of other regulatory bodies.

Sincerely,

/s/ Michael L. Rosenthal

Michael L. Rosenthal
*Attorney for Union Pacific
Corporation and Union Pacific
Railroad Company*

cc: ALJ Soulikias
All Parties of Record

⁵ See *id.* at 11-15.

⁶ See 18 U.S.C. § 1905 (providing criminal penalties for federal employees for unauthorized disclosure of confidential business information obtained in the course of their employment); 15 U.S.C. § 18a(h) (providing that information submitted in a merger investigation under the HSR Act is exempt from FOIA and may not be made public). The DOJ and the Federal Trade Commission, which also investigates mergers and other transactions under the HSR Act, also do not disclose information obtained under the HSR Act to state attorneys general, other federal agencies, or competition law enforcement authorities in other jurisdictions without the disclosing party’s written waiver of confidentiality.