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UP-48/NS-46

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

**APPLICANTS' MOTION TO ENTER AMENDED
PROPOSED DISCOVERY GUIDELINES**

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Applicants¹ respectfully move the Board to enter the attached Amended Discovery Guidelines for the captioned proceeding. Applicants submitted proposed Discovery Guidelines on May 4, 2026. After discussion with other interested parties, Applicants propose amending Section C.2.a. in the previously submitted Discovery Guidelines, which concerns depositions. As amended, Section C.2.a. would provide:

- **C.2.a.** “A person who has submitted written testimony in this proceeding shall be made available for deposition. A person who has not submitted written testimony in this proceeding may be deposed on notice in accordance with 49 C.F.R. § 1114.22, which notice shall identify the cause or reason why such deposition will be taken. Any party seeking a ruling from the ALJ as to a deposition shall follow the procedures set forth below in Section F. Resolution of Disputes.”

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”).

A proposed set of Amended Discovery Guidelines, including the revised Section C.2.a., is attached as Appendix A. The Board should enter the attached Amended Discovery Guidelines for the reasons set forth in Applicants' Motion to Enter Proposed Discovery Guidelines (UP-45/NS-43).

Respectfully submitted,

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APPENDIX A

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DISCOVERY GUIDELINES

A. General

1. All discovery requests, responses, and objections must be tailored to be consistent with the procedural schedule adopted in the proceeding. The parties shall avoid duplicative discovery requests and shall endeavor to expeditiously resolve all disputes in good faith.

2. The Board's discovery rules set forth at 49 C.F.R. pt. 1114 will apply to this proceeding, except as modified by Board decision or by these discovery guidelines. Any of the discovery guidelines contained herein may be varied by agreement between or among a producing party and one or more receiving parties (except if such a variance would adversely affect any third party). Any such agreement shall apply only to the parties making the agreement. The Administrative Law Judge ("ALJ") may vary any discovery guideline for good cause.

3. Documents produced in response to a discovery request will be Bates numbered such that each page can be uniquely identified and will include the acronym the producing party has chosen pursuant to 49 C.F.R. § 1180.4(a)(2) (e.g., UP or NS) and, if designated by a party, the level of confidentiality assigned to the document or information (i.e., “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”).

4. Within 24 hours of each evidentiary filing, the filing party will serve upon or otherwise make available to all other parties of record all (a) workpapers supporting the filing, (b) documents relied upon by expert witnesses, and (c) documents referenced by fact witnesses, in a manner consistent with the protective order issued in Docket No. FD 36873 (the “Protective Order”). “Make available to” means providing access to digital copies, including via email or FTP site, consistent with the procedures discussed in Paragraph 16. To receive documents designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” a representative of a party of record must first execute the appropriate undertaking to the Protective Order and request such materials from the filing party.

5. To the extent two or more parties agree to establish a shared electronic repository, the following procedures shall apply:

- a. The party maintaining the repository shall establish reasonable procedures for the operation of the document repository.
- b. Access to the repository shall be limited to outside counsel only. To the extent the repository contains material designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” access will only be provided to individuals who have requested access and executed an appropriate undertaking to the Protective Order.
- c. Persons reviewing documents designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall first execute an appropriate

undertaking pursuant to the protective order issued in Docket No. FD 36873.

6. Any discovery response containing confidential information or data as defined in the Protective Order shall be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” consistent with the requirements of the Protective Order. Discovery responses shall be served by email upon all other parties of record in a manner consistent with the protective order issued in Docket No. FD 36873. To receive discovery responses marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” a representative of a party of record must first execute the appropriate undertaking to the Protective Order and request such materials from the filing party.

B. Discovery Requests

1. Each party of record may not propound more than 50 written discovery requests (including requests for production and interrogatories) on each Applicant. To the extent a party of record has previously served more than 50 written discovery requests on an Applicant, it may withdraw previously served requests except where responsive materials have already been produced by the Applicant. Each Applicant may not propound more than 50 written discovery requests (including requests for production and interrogatories) on each party of record.

2. Any party wishing to participate in discovery or to receive service of all discovery requests in the proceeding shall file a notice of intent to participate in Finance Docket No. 36873. Parties of record that have filed notices of intent to participate may receive copies of productions made in response to discovery requests

in this proceeding by requesting them from the producing party and identifying the individual(s) to whom the productions should be made available. To receive productions marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the individual(s) who will receive the productions must first execute the appropriate undertaking to the Protective Order.

C. Depositions

1. Absent agreement among all interested parties or prior approval from the ALJ, all depositions shall be conducted either where the witness is located or in Washington, DC (at the witness’s preference) and shall be conducted in a manner that allows for virtual participation by anyone permitted to attend the deposition pursuant to the Protective Order. The parties shall confer regarding appropriate protocols for virtual participation in depositions.

2. Depositions shall be subject to the following limits, which may be modified by agreement among all interested parties or prior approval from the ALJ for good cause shown:

- a. A person who has submitted written testimony in this proceeding shall be made available for deposition. A person who has not submitted written testimony in this proceeding may be deposed on notice in accordance with 49 C.F.R. § 1114.22, which notice shall identify the cause or reason why such deposition will be taken. Any party seeking a ruling from the ALJ as to a deposition shall follow the procedures set forth below in Section F. Resolution of Disputes;
- b. Each witness shall be deposed no more than one time, except that a witness who submits an additional verified statement after the witness’s deposition in this proceeding may be deposed no more than one additional time regarding the content of the additional verified statement; and

- c. No deposition shall be longer than one day of seven (7) hours. Parties shall use their best efforts to complete depositions as promptly as practicable.

3. Counsel for interested parties shall use their best efforts to agree on a deposition date that is convenient for the witness and those interested parties that intend to participate in the examination of the witness.

4. The parties shall use the following procedure for scheduling depositions:

- a. After the deadline for notices of intent to participate in the proceeding, any party wishing to examine a witness may serve notice of intent to depose the witness upon counsel to the party with whom that witness is affiliated and all parties of record.
- b. Within 3 business days of the initial notice of intent to depose, if any party other than the noticing party wishes to depose the same witness, that party shall serve notice of intent to participate in the witness's deposition on all parties of record. The party with whom the witness is affiliated is not required to serve a notice of intent to participate in the witness's deposition.
- c. Within 3 business days of the initial notice of intent to depose, counsel for the party with whom the witness is affiliated shall propose dates for the witness's deposition.
- d. Counsel for all parties intending to depose the witness and counsel for the party with whom the witness is affiliated shall meet and confer to agree upon a date for the deposition. All parties shall coordinate with each other to ensure that no witness is deposed beyond what is permitted under Paragraph C.2.

5. Counsel for the parties that wish to participate in the deposition shall confer prior to the deposition to allocate examination time.

6. At least 10 business days before the date for a witness's deposition, the party with whom the witness is affiliated shall substantially complete production of the witness's custodial documents consistent with the party's discovery responses and objections and any orders of the ALJ or Board.

7. Any party who, after giving a notice of intent to examine, decides not to examine a witness, shall submit a written notice of such decision to counsel for the party with whom that witness is affiliated and to all parties of record no later than 2 business days prior to the date of the deposition.

8. To the extent reasonably practicable, at least 24 hours prior to the scheduled start of the deposition, any party intending to examine the witness shall advise the counsel to the party with whom the witness is affiliated of the cause or reason why such deposition will be taken and disclose the documents as to which the questioning will concern.

D. Service

1. All discovery requests, objections and motions to compel shall be served in the most expeditious manner possible, by e-mail on the ALJ, the party to which the requests, objections or motions are directed, and on all other parties of record. The parties shall not copy the ALJ on routine discovery correspondence, including any correspondence reflecting an agreement to modify or narrow the scope of the discovery requests, unless such correspondence requests a decision by the ALJ consistent with the procedures described in paragraph F.1.

2. Discovery responses shall be served by email upon all other parties of record in a manner consistent with the Protective Order. Discovery responses containing information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be served only in redacted form on parties who have not executed an appropriate undertaking to the Protective Order. To receive unredacted copies of discovery responses designated “CONFIDENTIAL” or “HIGHLY

CONFIDENTIAL,” a representative of a party of record must first execute the appropriate undertaking to the Protective Order and then request such materials from the responding party in writing.

3. A party producing documents in response to a discovery request by another party shall provide written notice to all parties of record that it has produced documents responsive to a discovery request. The producing party shall make the produced documents available only to parties requesting in writing copies of such productions who have executed an appropriate undertaking pursuant to the Protective Order. To comply with this requirement, the responding party may maintain a digital repository of its discovery productions, and provide access to that repository to the party requesting access.

E. Responses

1. All objections to discovery requests propounded after entry of these discovery guidelines shall be made within 5 business days from the date of service of the discovery request by means of a written objection containing a general statement of the basis for the objection. Interrogatory responses shall be made within 10 business days from the date of service of the interrogatory request.

2. The responding party may produce documents through reasonable digital means of its choosing, including through an FTP site or electronic document depository. The responding party shall endeavor to produce documents by placing those documents in its document depository or otherwise making them available within 21 days from the date of service of the discovery response. If the responding party is not able to produce such documents within the 21-day period, it shall contact

the propounding party at the earliest possible time within the 21-day period and indicate its best judgment as to the date the documents will be provided.

F. Resolution of Disputes¹

1. All parties shall attempt to resolve discovery disputes voluntarily whenever possible and shall meet and confer regarding any such dispute before seeking a ruling from Administrative Law Judge Soulikias. Otherwise, discovery disputes will be presented via letter briefs to the ALJ using the following procedures:

- a. **Opening Letter Briefs.** Opening letter briefs shall not exceed 3 pages.
- b. **Supporting Letter Briefs.** Any letter brief submitted in support of an opening letter brief must be filed no later than 1 business day after service of the opening letter brief. Any duplicative briefing may be struck from the record. Supporting letter briefs shall not exceed 1 page.
- c. **Opposition Letter Briefs.** Opposition letter briefs shall be filed no later than 3 business days after service of an opening discovery letter brief. Opposition letter briefs shall not exceed 3 pages, except that the brief may contain 1 additional page for each supporting letter brief filed.

2. Parties shall state whether a conference on a discovery dispute is requested in their submissions to ALJ Soulikias's office at [alj.soulikias.inbox@stb.gov]. If a discovery conference occurs, it shall be held within 3 business days of service of the opposition letter brief at [395 E Street, S.W., Washington, DC 20423], with the option of participating by videoconference. No later than 5:00 p.m. ET on the business day immediately preceding the conference, the

¹ This provision shall not apply to any motions filed prior to the entry of these discovery guidelines.

moving party shall send notice by email to the ALJ and to all parties indicating, based on the status of such settlement discussions as may have been held, as to whether or not the conference will be necessary. At any discovery conference, those parties seeking and resisting discovery are expected to be represented by counsel authorized to speak for the party on the matter at issue.

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of May, 2026, the foregoing document 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/ Daniel Damitio