

BEFORE THE
SURFACE TRANSPORTATION BOARD

311333

FINANCE DOCKET NO. 36873

ENTERED
Office of Chief Counsel
May 12, 2026
Part of
Public Record

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

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

The Parties¹ seeking discovery from the Applicants generally agree that discovery protocols will make this proceeding more efficient. In fact, it was these Parties that originally suggested discovery guidelines to the Applicants six months ago. The Applicants did not agree to the Parties' proposals, and the Parties and Applicants were not able to reach an agreement after further conferences. So, discovery guidelines can be an efficient tool. But guidelines should not be used to limit the scope of discovery that would be necessary to develop a full record.

Against that background, there are proposed discovery guidelines where the Parties and Applicants agree. There are also proposed guidelines that should not be accepted, because they would seriously limit the Parties' discovery rights and the

¹ These parties include BNSF Railway Company, CSX Transportation, Inc., Grand Trunk Corporation, and Canadian Pacific Railway Company.

information available to the Board. For example, the Parties agree that expedited letter briefing is an efficient way to promptly resolve discovery disputes. Discovery protocols such as those will aid the discovery *process*. Protocols should not be used, however, to impair the *substance* of discovery, nor the development of the record. Certain parts of the Applicants' proposal would impair the substance—for example, their proposal to cap the number of discovery requests—and thus prevent the Parties and the Board from fully analyzing the Applicants' claims. Accordingly, the Parties attach as **Appendix A** a revised set of guidelines (along with a redline against the Applicants' proposal) that should be approved instead.

NECESSARY REVISIONS TO THE UP AND NS PROPOSAL

Many of the Applicants' proposals are acceptable and will help facilitate an orderly process. For instance, the Parties take no issue with the Applicants' proposals to designate certain discovery responses consistent with the Protective Order, or aspects of their procedure for noticing and scheduling depositions.

On the other hand, four provisions must be modified so that the protocols are not used to impair the development of the record:

- General at ¶ 1 (regarding the scope of discovery);
- Discovery Requests at ¶ 1 (regarding a cap on the number of requests);
- Depositions at ¶¶ 2, 4(a), 8 (regarding potential limitations on who may be deposed, limitations on the timing of depositions, and the sharing of deposition exhibits before depositions); and
- Resolution of Disputes at ¶ 1 (regarding the pages allotted for letter briefs).

I. The Board should deny Applicants’ proposal to limit discovery—in the largest rail consolidation ever proposed—based on the procedural schedule.

Applicants propose that discovery “be tailored to be consistent with the procedural schedule adopted in the proceeding.” *See* UP-48/NS-46, App. A § A.1. That is the complete opposite of what should happen. The schedule should be consistent with the discovery necessary (and a longer schedule will likely be necessary as Applicants have not progressed discovery as they should have). Applicants’ proposal risks a substantive—and unnecessary—impairment of the process.

The Board allows for broad and flexible discovery. *See Omaha Pub. Power Dist. v. Union Pac. R.R.*, NOR 42173, slip op. at 4 (STB served Nov. 18, 2022). According to the STB’s own rules, parties may obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). Parties may use “[a]ll discovery procedures . . . without filing a petition and obtaining prior Board approval,” and may use those procedures “in any sequence.” 49 C.F.R. § 1114.21(b); 49 C.F.R. § 1114.21(d). If relevant discovery creates proportionality concerns, the process is for the objecting

party to raise those concerns and potentially seek a protective order. *See* 49 C.F.R. § 1114.21(c) (stating that it is incumbent on “the person from whom discovery is sought” to bring a motion for protective conditions). The process is not to apply a front-end limitation.

While Applicants may feel some tension between the amount of discovery work they need to do and the realities of the procedural schedule that could be entered, that is a problem of UP’s and NS’s making. Applicants signed their merger agreement in July 2025. The intervening nine months have been more than enough time to collect email and other documents from the wide range of employees with obviously relevant material (e.g., the sales and marketing departments, senior management, finance departments, etc.). And Applicants have been reviewing pending discovery requests from interested parties for several months and presumably have been working on their responses. Despite the Board’s invitation to do so, UP and NS chose not to produce their ordinary course documents or respond to the vast majority of outstanding interrogatories.

Applicants should not be allowed to use their deliberate strategy of delays to narrow the scope of discovery based on the schedule. There is no need or basis to vary from the default rules here. Applicants’ proposed limitation would create confusion, be difficult to apply, and risk further disputes.

II. The Board should deny Applicants’ proposed restrictions on written discovery.

Applicants propose restricting the number of requests that each party can serve to 50 written requests—with no differentiation between whether those requests

are interrogatories or requests for production of documents. UP-48/NS-46, App. A § B.1. No such limit exists in the Board's rules, and Applicants do not offer any reason why written discovery should be limited in such a way. *See* 49 C.F.R. § 1114.26-28. It cannot be that parties are limited to what they can seek and ask in the biggest proceeding in the Board's history. No limit was imposed during the Board's review of the much smaller CP-KCS merger, either. In fact, in that proceeding, UP alone propounded more than 180 formal discovery requests in addition to dozens of informal requests for information.

Limiting parties to just 50 requests would narrow the substantive scope of discovery in this far more consequential proceeding. Capping the number of requests would only hamstring the Board's efforts to develop a complete record. And it is unnecessary: if requests are burdensome or duplicative, Applicants can assert those line-level objections or seek a protective order, as warranted.

The proposed cap is problematic in a second way. Many parties have already served more than 50 requests on UP and NS, and UP and NS have served responses and objections to those requests. Parties served more than 50 requests in reliance on the default rules (that, again, do not contain a cap). Imposing a retroactive cap here would create confusion and mischief, as UP and NS would assert the ability to decide which discovery requests they want to answer and which ones they would rather ignore. Applicants should not get to pick and choose which questions they get to answer. This is further exacerbated by the fact that UP and NS have already begun to answer some discovery requests. Imposing a retroactive cap would allow UP and

NS to answer 50 of a party's discovery requests now, then unilaterally declare discovery closed.

III. The Board should deny Applicants' proposed restrictions on depositions.

Applicants' deposition proposals are overreaching. They appear to seek to influence who may be deposed and on what terms. The proposed restrictions are unnecessary and could impair the development of the record.

First, it appears that Applicants are proposing to limit who may be deposed. But the Rules are clear: "The testimony of *any* person, including a party, may be taken by deposition." 49 C.F.R. § 1114.22 (emphasis added). After initially suggesting that only declarants could be deposed, Applicants now propose that declarants "shall be made available for depositions," and anyone "may be deposed on notice in accordance with 49 C.F.R. § 1114.22." UP-48/NS-46, App. A § C.2.a. That could be workable, *provided* that the burden shall rest with the party opposing any deposition to secure a protective order if that opposing party believes the deponent does not have case-relevant information.²

Second, UP and NS seek the disclosure of deposition exhibit sets 24 hours before the deposition. UP-48/NS-46, App. A § C.8. No Board rule imposes such an obligation (and it is completely foreign to any litigation process). Pre-identifying

² Applicants' proposal that each deponent sits once is acceptable, *provided* it is clear that the failure to timely produce a witness's documents or respond to other relevant discovery requests before his or her deposition would constitute good cause for that witness to be recalled. Similarly, discovery provided after the deposition that materially changes the factual record as to that witness's testimony could also constitute good cause for that witness to be recalled. This is one of the reasons stakeholders pushed UP and NS to get ahead of their discovery obligations in recent months. They declined to do so.

documents would be cumbersome. Worse, such a process would allow deponents to rehearse answers to lines of inquiry meant to test knowledge and probe credibility. There is simply no reasonable justification for this disclosure requirement that relates to aiding the Board's or interested parties' analysis of the merger. It instead appears aimed at *limiting* the information that might come out during discovery. UP and NS witnesses should answer deposition questions in the same manner as any other witness in any other proceeding in America.³

Third, UP and NS's proposal for scheduling depositions is generally acceptable, but it should not limit the start of all depositions. UP and NS are proposing that all parties serve their deposition notices *after* the deadline for notices of intent to participate. UP-48/NS-46, App. A. § C.4.a. Practically—and assuming *arguendo* the Board deems the Amended Application complete—this means that depositions would not begin until late June. Some parties have already requested the depositions of certain UP and NS witnesses. The discovery guidelines should allow for depositions to begin sooner than late June. Otherwise, Applicants'

³ The parties may very well exchange some documents in advance in good faith, but there should not be a rule requiring such disclosure. It is unnecessary and risks making the process less efficient. While prior mergers' guidelines may have included a similar provision, those were negotiated compromises for the needs of those proceedings (and UP and NS did not bargain with the other stakeholders for any such trade-off here). The needs of this proceeding are quite different. Applicants are proposing a merger that they claim will "shape the next hundred years of American railroading," so it is imperative that the discovery guidelines allow the Board and all stakeholders to test the credibility of Applicants' claims with candid questioning. Am. App. Vol. 1 at 369 ¶ 207; *see also* Decision No. 13 at 5 (recognizing the unique nature of "this proceeding where Applicants seek approval to create American's first transcontinental railroad").

deposition scheduling proposal would be yet another reason that an elongated procedural schedule would be necessary.

Fourth, UP and NS's proposal for the length of depositions is acceptable as to fact witnesses but is too limiting on experts. *See* UP-48/NS-46, App. A § C.2.c (limiting depositions to one day of 7 hours). As already evidenced in this proceeding, experts will play an integral role in assessing this merger. As such, more time will be needed to depose the experts, so the parties should meet and confer in good faith for more time as needed.

IV. The Board should allow five pages for opening and responsive letter briefs, and three pages for supporting letter briefs.

The Parties are aligned that expedited letter briefing is the better process to have discovery disputes resolved. UP and NS propose limiting opening and opposition letter briefs to three pages and supporting letter briefs to one page. *See* UP-48/NS-46, App. A § F.1(a)–(c). While page limits are appropriate, a modest expansion—to five pages for opening and opposition briefs and three pages for supporting briefs—may aid the ALJ in having more context and argument available. This is particularly true where a letter request addresses multiple issues. These modest increases allow parties to address discovery disputes with sufficient detail but without unduly burdening the ALJ.

CONCLUSION

For those reasons, the Board should deny Applicants' proposed discovery guidelines in part and enter the alternative guidelines attached as **Appendix A**.

Respectfully submitted,

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

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

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

Counsel for BNSF Railway Company

Michael S. Burns
John P. Patelli
Jason M. Marques
Steven Armbrust
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3276

John M. Scheib
Gentry Locke Attorneys
101 W. Main Street, Suite 705
Norfolk, VA, 23510
(757) 916-3511
scheib@gentrylocke.com

/s/ Eric P. Enson
Kent A. Gardiner
Luke van Houwelingen
Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
(202) 624-2624
KGardiner@crowell.com
LvanHouwelingen@crowell.com

Eric P. Enson
Crowell & Moring LLP
515 South Flower Street, 41st
Floor
Los Angeles, CA 90071
(213) 622-4750
eenson@crowell.com

Louis E. Gitomer
Law Offices of Louis E. Gitomer,
LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Shawn R. Johnson
Fried, Frank, Harris, Shriver &
Jacobson LLP
801 17th Street, NW
Washington, DC 20006
(202) 639-7000
Shawn.Johnson@friedfrank.com

Counsel for CSX Transportation, Inc.

Cassandra P. Quach
7550 Ogden Dale Road S.E.
Calgary, AB T2C 4X9
Canada
cassandra.quach@cpkcr.com

/s/ David L. Meyer
David L. Meyer
Law Office of David L. Meyer
1105 S Street, N.W.
Washington, D.C. 20009
david@meyerlawdc.com
(202) 294-1399

Nizam Hasham
1290 Central Parkway West
Suite 800
Mississauga, ON L5C 4R3
Canada
nizam.hasham@cpkcr.com
(888) 333-6370

Joseph J. Matelis
Dylan M. Aluisse
Nathan H. Golden
Sullivan & Cromwell LLP
1700 New York Avenue, N.W.
Suite 700
Washington, D.C. 20006
matelisj@sullcrom.com
aluised@sullcrom.com
goldenn@sullcrom.com
(202) 956-7500

David Reeves
427 W. 12th Street
Kansas City, MO 64105
david.reeves@cpkcr.com
(816) 983-1387

Counsel for Canadian Pacific Railway Company

Olivier Chouc
CN
935 de La Gauchetière Street West
16th Floor
Montréal, QC H3B 2M9
CANADA

Kathryn J. Gainey
Christopher K. Diamond
Davon M. Collins
CN
975 F Street, NW, Suite 301
Washington, DC 20004
kathryn.gainey@cn.ca
christopher.diamond@cn.ca
davon.collins@cn.ca

/s/ Sara Y. Razi
Sara Y. Razi
Abram J. Ellis
Lindsey Bohl
Simpson Thacher & Bartlett LLP
900 G Street, NW
Washington, DC 20001
(202) 636-5500
sara.razi@stblaw.com
aellis@stblaw.com
lindsey.bohl@stblaw.com

Thomas J. Litwiler
Valerie O. Quinn
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, IL 60606-3208
(312) 252-1508
tlitwiler@fletcher-sippel.com
vquinn@fletcher-sippel.com

Attorneys for CN

Dated: May 12, 2026

APPENDIX A

Revised Guidelines Proposal

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. The parties shall endeavor to avoid duplicative discovery requests and 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 other interested party). Any such agreement shall apply only to the parties making that 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 of the Protective Order. 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. 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 opposing a deposition shall have the burden to secure a protective order if they believe the deponent does not have case-relevant information. 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 failure to timely produce a witness's documents or respond to other relevant discovery requests before the deposition constitutes good cause to recall the witness, and 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. Except with respect to the deposition of any expert witness offered by a party, 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. With respect to the deposition of any expert witness, the parties shall meet and confer regarding an extended hours cap on an expert-by-expert basis.

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. 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. All parties shall have access to and shall be entitled to use the transcript of any deposition, regardless of whether that party participated in the deposition.

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 Soukiliyas. However, if the party against whom relief is sought fails to meet and confer in good

faith within four calendar days of the request, the party seeking relief may seek a ruling from the ALJ. 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 5 pages single-spaced in a 12 point, standard font.
- b. Supporting Letter Briefs.** Any letter brief submitted in support of an opening letter brief must be filed no later than 1 business days after service of the opening letter brief. Any duplicative briefing may be struck from the record. Supporting letter briefs shall not exceed 3 pages single-spaced in a 12 point, standard font.
- 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 5 additional pages single-spaced in a 12 point, standard font 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 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.

APPENDIX B

Redline Against Applicants' Proposal

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. ~~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 endeavor to 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~~ other interested party). Any such agreement shall apply only to the parties making ~~the~~ that 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 of the Protective Order. 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.

~~6-6.~~ 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. ~~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.~~

1. ~~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. ~~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 [opposing a deposition shall have the burden](#)

to secure a protective order if they believe the deponent does not have case-relevant information. 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 failure to timely produce a witness's documents or respond to other relevant discovery requests before the deposition constitutes good cause to recall the witness, and 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~~Except with respect to the deposition of any expert witness offered by a party, 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. With respect to the deposition of any expert witness, the parties shall meet and confer regarding an extended hours cap on an expert-by-expert basis.

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~~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.~~

8. All parties shall have access to and shall be entitled to use the transcript of any deposition, regardless of whether that party participated in the deposition.

D. ~~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. 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. ~~F.~~ Resolution of Disputes¹

~~1.1.~~ 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 Soukiliias. However, if the party against whom relief is sought fails to meet and confer in good faith within four calendar days of the request, the party seeking relief may seek a ruling from the ALJ. 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 ~~35~~ pages single-spaced in a 12 point, standard font.
- b. **Supporting Letter Briefs.** Any letter brief submitted in support of an opening letter brief must be filed no later than 1 business days after service of the opening letter brief. Any duplicative briefing may be struck from the record. Supporting letter briefs shall not exceed ~~13~~ pages single-spaced in a 12 point, standard font.
- 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 ~~15~~ additional pages single-spaced in a 12 point, standard font for each supporting letter brief filed.

~~2.2.~~ Parties shall state whether a conference on a discovery dispute is

~~^x-This provision shall not apply to any motions filed prior to the entry of these discovery guidelines-~~

requested in their submissions to ALJ Soulikias's office at ~~alj.soulikias.inbox@stb.gov~~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 ~~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 I have caused the foregoing *Reply to Applicants' Motion to Enter Proposed Discovery Guidelines* 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

May 12, 2026