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Office of Chief Counsel
May 14, 2026
Part of
Public Record

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May 14, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

BNSF-26

Re: STB Docket No. FD 36873 – Issues and Deficiencies in Applicants’ Workpapers

Dear Chief of Case Administration:

BNSF Railway writes regarding ongoing issues with the workpapers and data sets that are the foundation for the amended application. Over the last week, BNSF and other stakeholders have noted hundreds of documented problems with the amended application. UP and NS have addressed some issues, but not all. New and replacement uploads continued last night—two weeks after the application was filed—with UP and NS sharing five new workpapers and 46 replacement workpapers. *See* UP-55/NS-53.

Data issues remain, and they are impairing a complete review of UP’s and NS’s claims about their merger proposal. These are not foot-faults. UP and NS are compromising the integrity of the Board’s proceeding. They are not providing the Board and other parties with all that is needed to replicate and audit the processes and calculations UP and NS undertook to generate the summary data presented in the amended application. UP and NS have ready access to everything we have identified as missing. There is no reason or basis to withhold this data and information. All should have been provided—in final and complete form—on April 30. By the time UP and NS sort this all out, weeks will have already run on the assessments of both the completion of the amended application and its merits.

* * * * *

On April 30, UP and NS filed their amended application and some supporting papers. Within days, BNSF identified **181** missing workpapers, intermediate datasets, and other files needed to verify UP’s and NS’s calculations. BNSF notified UP and NS of these issues on May 5 and provided a chart summarizing the missing materials. In response, UP and NS said they had identified 19 missing workpapers; they filed those missing papers on May 8. When trying to shrug off the importance of most of the other missing workpapers, UP and NS revealed that several workpapers that had been produced (scripts which cited to the missing workpapers) were outdated. UP and NS said they would update those outdated workpapers, and their first attempt to do so on

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May 8 consisted of re-producing many of the exact same scripts they just acknowledged were outdated. Another attempt at updating some of these occurred last night. Additionally, UP and NS acknowledged they had put a number of other files in the wrong folder; listed workpapers they never intended to produce (and didn't produce) in their workpaper index; and produced workpapers which have no place in their calculations.

The more BNSF and its consultants dug in, the more issues and questions they uncovered. On May 9, BNSF asked UP and NS several additional questions. BNSF later asked whether UP and NS could certify compliance with Decision No. 8—which required Applicants to identify replacement files and explain any differences between the original and replacement files. They dodged that question. As it stands, approximately 73 workpapers, intermediate data sets, and other files remain missing. These are not tertiary issues. For example, UP and NS have not produced the intermediate database with their *full projected market shares* (“[dbo].[apdx_v26_2023_proj_fnl]”) cited in their supplemental work paper “market_shares_enhanced_transearch_full_vF.sql.” Likewise, for the existing workpapers, there are several outstanding issues that impede all parties’ ability to evaluate the amended application.

First, UP and NS expect reviewing parties—including the Board and its staff—to recreate intermediate files needed to verify Applicants’ outputs. An intermediate file is a database that is produced by running a script provided in workpapers; this script may combine and update other databases to facilitate reproduction of data analyses. Intermediate files are typically provided in workpapers to assist opposing experts with replicating results to limit disputes between experts. BNSF has asked for them because such re-creation would take weeks. Re-creation risks introducing errors. Considering that there are over 800 interconnected operating plan workpapers and over 300 interconnected diversion workpapers, the absence of (or any errors in) intermediate files will prevent a fulsome review of *all* associated workpapers. It would invite chaos down the road to have multiple individual parties (and the Board) each reproducing intermediate files and the Board then having to reconcile competing data from multiple parties. And it is unnecessary, because UP and NS have the data. It is expected and required of them to provide to support their application.

Second, the revelation that certain scripts are outdated expands the scope of these problems. If scripts are outdated, the files cannot be accurately reproduced. UP and NS are simultaneously asking the Board and others to reproduce intermediate files based on incorrect or outdated scripts. UP and NS claim they have provided updated scripts to BNSF and other Class 1 railroads, but it is unclear whether all parties (and the Board’s staff) have the updated scripts needed to verify Applicants’ outputs. Applicants’ first attempt consisted of reproducing many of the exact same scripts they said were outdated.

Third, Applicants claim to have provided missing workpapers, but some of these files still have not been provided. For example, Applicants claim Dr. Bailey’s workpaper “04 Base/waybill

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wide stack revenue flag 2019 2024 flag match reliable” is not missing and identified the folder where this file is stored. This folder is empty. It contains no data.

UP and NS should have provided full and complete work papers and data on April 30. They had months to prepare for that day. Their failure to do so compromises the integrity of the Board’s proceeding. Data issues remain and have not been fully addressed. Accordingly, BNSF respectfully asks the Board to order that UP and NS certify compliance with Decision Nos. 3, 8, and 9, by no later than Monday, May 18, 2026.

/s/ Daniel T. Donovan, P.C. _____
Daniel T. Donovan, P.C.

cc: Counsel of Record

CERTIFICATE OF SERVICE

I certify that I caused the foregoing 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

Attorney for BNSF Railway Company

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