

KIRKLAND & ELLIS LLP

1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
United States

+1 202 389 5000

www.kirkland.com

Daniel T. Donovan, P.C.
To Call Writer Directly:
+1 202 389 5174
daniel.donovan@kirkland.com

Facsimile:
+1 202 389 5200

311436

May 20, 2026

ENTERED
Office of Chief Counsel
May 20, 2026
Part of BNSF-29
Public Record

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

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

Dear Chief of Case Administration:

Over the last three weeks, UP and NS have serially corrected and supplemented the data that underlies the contentions in their application. Since April 30, UP and NS have uploaded **169 new or replacement work papers** in four tranches. *See* UP-43/NS-41 (May 4); UP-50/NS-48 (May 11); UP-55/NS-53 (May 13); and UP-57/NS-55 (May 19). UP and NS uploaded 135 of the 169 after stakeholders’ deadline to comment on completeness. It continued last night, when UP and NS uploaded 84 new or replacement workpapers, including dozens of files related to market share. *See* UP-57/NS-55.

UP has stated that still more uploads are coming. It is unclear when UP and NS will be done. In their carefully-worded correspondence, Applicants have **not** (1) committed that UP and NS have fully uploaded complete and accurate work papers and supporting files, (2) provided a date by which they will be able to do so, or (3) certified that they are in compliance with Decision No. 3, Decision No. 8, and/or Decision No. 9.

In Decision No. 9, the Board gave UP and NS until June 22 to submit an amended application. UP and NS decided to file sooner—on April 30. The application is supposed to set forth the entirety of UP’s and NS’s proposed transaction and supporting evidence. It is the proposal that stakeholders analyze and react to; it is also what the Board evaluates. UP and NS should not be allowed to change or supplement their application or the data that underlies it. Doing so denies stakeholders and the Board the allotted time to evaluate the application, and it imposes substantial and needless costs as stakeholders and the Board work to analyze materials that have gaps and/or that are subsequently changed.

We bring these issues to the Board’s attention for consideration as it evaluates whether the amended application was complete and contained the required information as of April 30.

KIRKLAND & ELLIS LLP

May 20, 2026

Page 2

/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

May 20, 2026