

# KIRKLAND & ELLIS LLP

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

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

+1 202 389 5000

www.kirkland.com

311485

Facsimile:  
+1 202 389 5200

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BNSF-31

Hon. Jenifer J. Soulikias  
Administrative Law Judge  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

*Re: STB Docket No. FD 36873 – BNSF’s Second Motion to Compel*

Dear Judge Soulikias:

We write to request a hearing on BNSF’s second motion to compel. *See* BNSF-28. Applicants and non-Applicants have requested a conference with Your Honor to discuss discovery issues. *See, e.g.,* UP-53/NS-51; BNSF-27. BNSF requests that its second motion to compel be part of that hearing agenda.

BNSF’s second motion to compel focuses on four categories of materials: The Committed Gateway Pricing program, integration planning, pricing strategy pre- and post-merger, and internal modeling of synergies and efficiencies. In their reply, UP and NS did not argue those materials were irrelevant, burdensome, or privileged. Instead, UP and NS suggested that BNSF’s motion is moot because UP and NS said they will negotiate custodial searches regarding these topics. *See* UP-58/NS-56.

The motion is not moot. The vast majority of the requested materials have not been produced, and there is no promise that they will be produced. Particularly given UP and NS’s indication that witnesses will be deposed once, and that depositions should follow substantial completion of documents being produced from those custodians, delaying resolution of document production issues may well have collateral consequences for scheduling of depositions, which should move forward expeditiously. Accordingly, BNSF requests that a conference on discovery be set at the Your Honor’s earliest convenience.

/s/ Daniel T. Donovan

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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