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ALJ

SERVICE DATE – MAY 28, 2026

SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

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

ORDER SETTING DISCOVERY CONFERENCE
FOR FRIDAY, JUNE 12, 2026, AT 9:00 A.M. CENTRAL TIME

Decision No. 22

Decided: May 28, 2026

This discovery matter is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision (Aug. 28, 2025).

On April 30, 2026, 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) (Union Pacific and Norfolk Southern collectively, Applicants) filed a Revised Application with the Board. The proposed Transaction seeks Board approval under 49 U.S.C. §§ 11323-11325 for (i) the acquisition of control by UPC of NSC, and through NSC of NS and NS’s rail carrier subsidiaries, and (ii) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. (Rev. Appl. 1-12.)

The Board accepted the Revised Application as complete on May 28, 2026. See Union Pac. Corp.—Control—Norfolk S. Corp. (Dec. No. 21), FD 36873 et al., slip op. at 11-17 (STB served May 28, 2026). While the Board found the Revised Application complete, the Board stated that “[b]ased on the Board’s initial assessment, the Board concludes that information in the Revised Application lacks clarity and detail and does not yet afford parties a meaningful opportunity to comment on the merits of the Transaction. And the Board’s own review of the Transaction’s consistency with the public interest, including its consideration of the contours of potential conditions, would suffer.” Id. at 18. The Board required Applicants to supplement their Revised Application with information detailed in the Board’s decision. Id. at 19.

The Board also held the proceedings in abeyance; however, it expressly permitted discovery to continue and set its expectations:

Abeyance of the proceedings does not affect discovery, including in proceedings before the ALJ. See Decision No. 17, FD 36873 et al. Continued discovery is essential to developing a record that allows for full consideration of this unprecedented proposed Transaction, and the Board is troubled by comments highlighting Applicants' purported unwillingness to engage in discovery. (See, e.g., BNSF Comments 8, May 8, 2026; CPKC Comments 19, May 8, 2026.) However, while disputes remain to be addressed by the ALJ, Applicants have expressed interest in entering discovery guidelines to "ensure that discovery proceeds smoothly and disputes are resolved efficiently," and **the Board expects that Applicants and other parties will adhere to any discovery guidelines imposed and expeditiously respond to discovery requests.** (Applicants Mot. to Enter Prop. Discovery Guidelines 1, May 4, 2026.)

Id. at 19 (emphasis added).

The Surface Transportation Board regulations provide for broad discovery. These regulations provide that "[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). The Board has recognized that this regulation allows for broad discovery. See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery "[b]roadly"). An order may be entered for good cause and which justice requires, to protect from "annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of the issues untimely or inappropriate to the proceeding." 49 C.F.R. § 1114.21(c). Protective orders may include that discovery not be had or that discovery be had only on specified conditions. 49 C.F.R. § 1114.21(c)(1)-(2).

Applicants requested a discovery conference by letter, dated May 13, 2026. On May 14, 2026, BNSF Railway Company (BNSF) joined Applicants' request. Canadian Pacific Railway Company and CSXT Transportation, Inc., joined the request through their own letters, dated May 15, 2026. By its letter, dated May 27, 2026, BNSF also requested that its Second Motion to Compel be heard at the discovery conference.

The ALJ agrees that a discovery conference will expedite and streamline the discovery process. To ensure that the discovery conference itself is efficient, the ALJ sets the following requirements.

Replies to any pending discovery motions shall be filed by the ordered deadline.

In advance of the discovery conference, counsel must send a letter to the ALJ by the ordered deadline.

At the discovery conference, regarding Applicants' Motion to Enter Proposed Discovery Guidelines, please be prepared to discuss whether:

- a) any changes might be warranted for requested non-party discovery pursuant to 49 U.S.C. § 1321,¹ and
- b) Applicants' request to limit the number of discovery requests to 50 written discovery requests is warranted considering the number of issues, including those properly regarding the Transaction's merits, outlined by the Board's Decision No. 21, 11-17 (served May 28, 2026). If the Board stated that the matter is one for the merits, then generally, the issue is subject to discovery. See 49 C.F.R. § 1114.21(a)(1).

It is ordered:

1. Applicants' request for a discovery conference is granted.
2. BNSF's request to hear its Second Motion to Compel at the discovery conference is also granted. Counsel must list BNSF's Second Motion to Compel among the issues to be heard in their letter to the ALJ before the discovery conference.
3. All replies to any pending discovery motions (and only discovery motions) are due on or before Tuesday, June 9, 2026, at 5:00 p.m. Central Time.
4. Counsel must send a letter to the ALJ (preferably jointly) with a brief description of the issues to be resolved and a list of who will attend for each party, on or before Tuesday, June 9, 2026, at 5:00 p.m. Central Time.
5. A discovery conference is scheduled for **Friday, June 12, 2026, at 9:00 a.m. Central Time** (10 a.m. Eastern Time). Conference information will be sent before that time.
6. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.

¹ This section was previously found at 49 U.S.C. § 721 but renumbered in 2015. See Pub. L. 114-110.