

SERVICE DATE – JUNE 18, 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 GRANTING IN PART AND DENYING IN PART MOTIONS TO ENTER
AMENDED PROPOSED DISCOVERY GUIDELINES

Decision No. 23

Decided: June 18, 2026

Discovery is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision (Aug. 28, 2025). The undersigned scheduled and conducted a discovery conference on June 12, 2026. See Decision No. 22. This decision memorializes the rulings made at that conference.

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).

On May 4, 2026, Applicants filed a Motion to Enter Proposed Discovery Guidelines, which were amended following discussions with other interested parties on May 7, 2026. On May 12, 2026, the non-Applicant Class I railroad parties filed a competing motion to enter their version of the proposed discovery guidelines. By the discovery hearing, the parties had resolved many of the issues in the proposed guidelines.

By separate order, the ALJ is entering Discovery Guidelines, which grants in part Applicants’ Motion to Enter Amended Proposed Discovery Guidelines and the non-applicant Class I Motion to Enter Proposed Discovery Guidelines. The undersigned added some edits to

the proposed discovery guidelines, including by adding a bi-weekly discovery conference to resolve discovery disputes, providing for attendance of parties at discovery conferences who are not involved in discovery disputes, and adding a paragraph of “Additional Discovery Conference Information,” which provides logistical details about the discovery conferences.

Applicants requested that the discovery requests be limited,¹ either in number (e.g., 50 written requests) or by time (e.g., through July 27, 2026, tied to Applicants’ deadline to respond to the supplemental information required by the Board). See Decision No. 21 (May 28, 2026). The Board’s decision makes clear that discovery is separate from the Board’s consideration: “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[.]” Id. at 19. There are a multitude of discoverable issues in this case, and the Board’s Decision No. 21 highlights many of them. See id. 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). Therefore, the ALJ denied Applicants request to limit discovery by either number or time in the Discovery Guidelines. The parties, however, must work to avoid duplication and to streamline discovery to be as efficient as possible.

Applicants also sought to limit the deposition testimony of expert witnesses to 7 hours.² The undersigned understands Applicants’ request to limit the deposition testimony time of the expert witnesses. The underlying facts and opinions for the expert witness statements are subject to probing at deposition. Counsel should make a good faith effort to avoid duplication and be as efficient as possible during the expert witness depositions. If agreement cannot be reached on an hour limit for any expert witness, then the Resolution of Disputes provision of the Discovery Guidelines may be used.

Further, Applicants argued a witness should be deposed no more than one time, except upon showing of good cause to recall a witness. CPKC argued against this proposal. Other non-Applicant Class I railroad parties agreed that this procedure is appropriate in this case. The ALJ decided to incorporate Applicants’ proposed good cause requirement for recalling a deposition witness.

Two motions to compel were addressed at the discovery conference, BNSF’s Second Motion to Compel, filed May 15, 2026, and CPKC’s Motion to Compel, filed May 28, 2026. Applicants argued that the parties were negotiating a comprehensive custodial procedural framework. (Applicants’ Replies, May 20, 2026; June 9, 2026.) The undersigned discussed with the parties that they needed to discuss the pending issues to attempt to resolve them or narrow them significantly before the next discovery conference. Otherwise, the remaining issues will be resolved by the undersigned down to search terms and custodians. Until the next discovery

¹ Applicants’ request to limit the number of requests is found in the proposed discovery guidelines, paragraph B.1.

² By the discovery conference, the parties agreed to limit fact witness depositions to 7 hours.

conference, which will be held on June 26, 2026, the motions to compel are held in abeyance. According to the Discovery Guidelines, it is only necessary for the moving party to file the ALJ Letter in advance of the discovery conference.

It is ordered:

1. Applicants' Motion to Enter Amended Proposed Discovery Guidelines and Non-Applicants' Motion to Enter Amended Proposed Discovery Guidelines are both granted in part and denied in part. The Discovery Guidelines will be entered separately.
2. Applicants' Motion to Enter Proposed Discovery Guidelines is denied as moot.
3. BNSF's Second Motion to Compel and CPKC's Motion to Compel are held in abeyance and will be heard by the ALJ at the next discovery conference, scheduled for June 26, 2026, at 9:00 a.m. CT/10:00 ET.
4. This decision is effective on the date of service.

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