

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 SETTING DISCOVERY GUIDELINES

Decision No. 24

Decided: June 18, 2026

Discovery is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision (Aug. 28, 2025). The following discovery guidelines shall apply in this matter, including the expeditious resolution of discovery disputes with the setting of a Discovery Calendar.

A. General

1. The parties shall endeavor to avoid duplicative discovery requests and expeditiously resolve all disputes in good faith.
2. The Board's discovery rules set forth at 49 C.F.R. pt. 1114 will apply to this proceeding, except as modified by Board decision or by these discovery guidelines. Any of the discovery guidelines contained herein may be varied by written agreement between or among a producing party and one or more receiving parties (except if such a variance would adversely affect any other interested party). Any such agreement shall apply only to the parties making that agreement. The Administrative Law Judge ("ALJ") may vary any discovery guideline for good cause. The default rules for non-party discovery shall apply, subject to further review and discussion as the case progresses.
3. Documents produced in response to a discovery request will be Bates numbered such that each page can be uniquely identified and will include the acronym the producing party has chosen pursuant to 49 C.F.R. § 1180.4(a)(2) (e.g., UP or NS) and, if designated by a party, the level of confidentiality assigned to the document or information (i.e., "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL").
4. Within 24 hours of each evidentiary filing, the filing party will serve upon or otherwise make available to all other parties of record all (a) workpapers supporting the filing, (b) documents relied upon by expert witnesses, and (c) documents referenced by fact witnesses,

in a manner consistent with the protective order issued in Docket No. FD 36873 (the “Protective Order”). “Make available to” means providing access to digital copies, including via email or FTP site, consistent with the procedures discussed in Paragraph 16 of the Protective Order. To receive documents designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” a representative of a party of record must first execute the appropriate undertaking to the Protective Order and request such materials from the filing party.

5. To the extent two or more parties agree to establish a shared electronic repository, the following procedures shall apply:

a. The party maintaining the repository shall establish reasonable procedures for the operation of the document repository.

b. Access to the repository shall be limited to outside counsel only. To the extent the repository contains material designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” access will only be provided to individuals who have requested access and executed an appropriate undertaking to the Protective Order.

c. Persons reviewing documents designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall first execute an appropriate undertaking pursuant to the protective order issued in Docket No. FD 36873.

6. Any discovery response containing confidential information or data as defined in the Protective Order shall be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” consistent with the requirements of the Protective Order. Discovery responses shall be served by email upon all other parties of record in a manner consistent with the protective order issued in Docket No. FD 36873. To receive discovery responses marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” a representative of a party of record must first execute the appropriate undertaking to the Protective Order and request such materials from the filing party.

B. Discovery Requests

1. Any party wishing to participate in discovery or to receive service of all discovery requests in the proceeding shall file a notice of intent to participate in Finance Docket No. 36873 (with the required certificate of service). Parties of record that have filed notices of intent to participate may receive copies of productions made in response to discovery requests in this proceeding by requesting them from the producing party and identifying the individual(s) to whom the productions should be made available. To receive productions marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the individual(s) who will receive the productions must first execute the appropriate undertaking to the Protective Order.

C. Depositions

1. Absent agreement among all interested parties or prior approval from the ALJ, all depositions shall be conducted either where the witness is located or in Washington, DC (at the witness’s preference) and shall be conducted in a manner that allows for virtual participation by

anyone permitted to attend the deposition pursuant to the Protective Order. The parties shall confer regarding appropriate protocols for virtual participation in depositions.

2. Depositions shall be subject to the following limits, which may be modified by agreement among all interested parties or prior approval from the ALJ for good cause shown:

a. A person who has submitted written testimony in this proceeding shall be made available for deposition. A person who has not submitted written testimony in this proceeding may be deposed on notice in accordance with 49 C.F.R. § 1114.22, which notice shall identify the cause or reason why such deposition will be taken. Any party opposing a deposition shall have the burden to secure a protective order in accordance with 49 C.F.R. § 1114.21(c). Any party seeking a ruling from the ALJ as to a deposition shall follow the procedures set forth below in Section F (Resolution of Disputes).

b. Each witness shall be deposed no more than one time, except (i) upon a showing of good cause to recall the witness for a second deposition due to a failure to timely produce a witness's documents or respond to other relevant discovery requests, and (ii) a witness who submits an additional verified statement after the witness's deposition in this proceeding may be deposed no more than one additional time regarding the content of the additional verified statement; and

c. For fact witnesses, no deposition shall be longer than one day of seven (7) hours. Parties shall use their best efforts to complete depositions as promptly as practicable. With respect to the deposition of any expert witness, the parties shall meet and confer regarding an extended hours cap on an expert-by-expert basis.

3. Counsel for interested parties shall use their best efforts to agree on a deposition date that is convenient for the witness and those interested parties that intend to participate in the examination of the witness.

4. The parties shall use the following procedure for scheduling depositions:

a. Any party wishing to examine a witness may serve notice of intent to depose the witness upon counsel to the party with whom that witness is affiliated and all parties of record.

b. Within 3 business days of the initial notice of intent to depose, if any party other than the noticing party wishes to depose the same witness, that party shall serve notice of intent to participate in the witness's deposition on all parties of record. The party with whom the witness is affiliated is not required to serve a notice of intent to participate in the witness's deposition.

c. Within 3 business days of the initial notice of intent to depose, counsel for the party with whom the witness is affiliated shall propose dates for the witness's deposition.

d. Counsel for all parties intending to depose the witness and counsel for the party with whom the witness is affiliated shall meet and confer to agree upon a date for the deposition. All parties shall coordinate with each other to ensure that no witness is deposed beyond what is permitted under Paragraph C.2.

5. Counsel for the parties that wish to participate in the deposition shall confer prior to the deposition to allocate examination time.

6. At least 10 business days before the date for a witness's deposition, the party with whom the witness is affiliated shall substantially complete production of the witness's custodial documents consistent with the party's discovery responses and objections and any orders of the ALJ or Board.

7. Any party who, after giving a notice of intent to examine, decides not to examine a witness, shall submit a written notice of such decision to counsel for the party with whom that witness is affiliated and to all parties of record no later than 2 business days prior to the date of the deposition.

8. All parties shall have access to and shall be entitled to use the transcript of any deposition (provided the use is otherwise consistent with the Protective Order), regardless of whether that party participated in the deposition.

D. Service

1. All discovery requests, objections, and motions to compel shall be served in the most expeditious manner possible, by e-mail on the ALJ, the party to which the requests, objections or motions are directed, and on all other parties of record. The parties shall not copy the ALJ on routine discovery correspondence, including any correspondence reflecting an agreement to modify or narrow the scope of the discovery requests, unless such correspondence requests a decision by the ALJ consistent with the procedures described in paragraph F.1.

2. Discovery responses shall be served by email upon all other parties of record in a manner consistent with the Protective Order. Discovery responses containing information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be served only in redacted form on parties who have not executed an appropriate undertaking to the Protective Order. To receive unredacted copies of discovery responses designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," a representative of a party of record must first execute the appropriate undertaking to the Protective Order and then request such materials from the responding party in writing.

3. A party producing documents in response to a discovery request by another party shall provide written notice to all parties of record that it has produced documents responsive to a discovery request. The producing party shall make the produced documents available only to parties requesting in writing copies of such productions who have executed an appropriate undertaking pursuant to the Protective Order. To comply with this requirement, the responding

party may maintain a digital repository of its discovery productions and provide access to that repository to the party requesting access.

E. Responses

1. All objections to discovery requests propounded after entry of these discovery guidelines shall be made within 5 business days from the date of service of the discovery request by means of a written objection containing a general statement of the basis for the objection. Interrogatory responses shall be made within 10 business days from the date of service of the interrogatory request.

2. The responding party may produce documents through reasonable digital means of its choosing, including through an FTP site or electronic document depository. The responding party shall endeavor to produce documents by placing those documents in its document depository or otherwise making them available within 21 days from the date of service of the discovery response. If the responding party is not able to produce such documents within the 21-day period, it shall contact the propounding party at the earliest possible time within the 21-day period and indicate its best judgment as to the date the documents will be provided.

F. Resolution of Disputes and Discovery Calendar

1. The ALJ will hold virtual discovery conferences every other **Friday at 10:00 a.m. ET/ 9:00 a.m. CT** (beginning June 26, 2026), which the ALJ anticipates will continue on a bi-weekly basis (as needed) through at least the end of December 2026. All parties shall attempt to resolve discovery disputes voluntarily (or significantly narrow the disputed issues) whenever possible and shall meet and confer regarding any such dispute before seeking a ruling from Administrative Law Judge Soulikias. However, if the party against whom relief is sought fails to meet and confer in good faith within four calendar days of the request, the party seeking relief may seek a ruling from the ALJ. Otherwise, discovery disputes will be presented via letter briefs to the ALJ filed with the Board in the public docket using the following procedures and deadlines:

a. **Opening Letter Briefs.** Opening letter briefs shall not exceed 5 pages single-spaced in a 12-point, standard font. Opening letter briefs shall be submitted by 6:00 p.m. ET the Thursday before the next scheduled bi-weekly conference (i.e., eight days before the hearing).

b. **Supporting Letter Briefs.** Any duplicative briefing may be struck from the record. Supporting letter briefs shall not exceed 3 pages single-spaced in a 12-point, standard font. Supporting letter briefs shall be submitted by 6:00 p.m. ET the Friday before the next scheduled bi-weekly conference (i.e., seven days before the hearing).

c. **Opposition Letter Briefs.** Opposition letter briefs shall not exceed 5 pages single-spaced in a 12-point, standard font. Opposition letter briefs shall be submitted by 6:00 p.m. ET the Tuesday before the hearing (i.e., three days before the hearing).

2. **Letter to the ALJ.** The following letter(s) must be sent to the ALJ by the set deadline.

a. **Parties to the Discovery Dispute(s).** No later than 6:00 p.m. ET on the Wednesday immediately preceding the conference, the moving party must send a letter to ALJ via email to the ALJ's inbox [alj.soulikias.inbox@stb.gov], with a copy to all parties. The letter will indicate whether the conference will be necessary, and if so, whether the issues have been narrowed and what remains to be resolved. If the parties to the dispute expect confidential or highly confidential material to be discussed, the letter should so state. At any discovery conference, those parties seeking and resisting discovery are expected to be represented by counsel authorized to speak for the party on the matter at issue. The letter to the ALJ will have the names of the individuals who are expected to be present at the hearing. This letter must also be filed with the Board in the public docket.

b. **Other Parties Who Want to Attend.** Any other party who has filed the required notice of intent (with the required certificate of service) and wants to attend by telephone, must send a letter via email to the ALJ's inbox [alj.soulikias.inbox@stb.gov] and copied to all parties no later than 12:00 p.m. ET on the Thursday immediately preceding the conference. The letter must indicate the party's name and contact information (i.e., phone number and email address). Letters from parties seeking to attend a discovery conference by telephone and providing contact information **do not** need to be filed with the Board in the public docket. For any discovery conference in which the moving party has stated that confidential or highly confidential material is expected to be discussed, a party seeking to attend the conference must also attach to their email a copy of the appropriate undertaking to the protective order issued in Docket No. FD 36873 signed by the person seeking to attend.

3. **Additional Discovery Conference Information.** To coordinate the discovery conferences and ensure the discovery conferences are conducted orderly:

a. In advance of the discovery conference, STB staff will advise the moving party to the discovery dispute of the videoconference and dial-in information. The moving party must make the videoconference and dial-in information available to the attending counsel for the other parties to the discovery dispute.

b. At her discretion, the ALJ may permit interested parties who are not involved in the discovery dispute to attend by video. The ALJ will request that STB staff advise representatives for such parties of the videoconference and dial-in information.

b. In advance of the discovery conference, STB staff will advise any non-moving party who submitted a timely letter to the ALJ inbox of the dial-in information, so the non-moving party may attend the discovery conference by telephone.

c. All discovery conference participants and telephone attendees are requested to join **early**. Once the ALJ starts the discovery conference, no additional telephone attendees will be admitted. Please **MUTE your phone or device**, unless you are speaking to the ALJ about the discovery dispute.

d. The ALJ will memorialize rulings made at the discovery conferences by a written order.

It is ordered:

1. The above set forth Discovery Guidelines shall apply in this matter.
2. This decision is effective on the date of service.

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