

June 18, 2026

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June 18, 2026
BNSF-33 / CSX-11 / CPKC-27 Part of
Public Record

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

Re: STB Docket No. FD 36873 – Motion to Set Production Deadlines for UP and NS

Dear Judge Soulikias:

We write to request an order establishing production deadlines for UP and NS. A production schedule will ensure the efficient and timely production of documents from Applicants. To date, voluntary discovery from the Applicants has not followed any sort of cadence, and we share the Board's concern over the lack of progress in discovery. *See* Decision No. 21 (May 26, 2026) at 19 (the Board indicating it "is troubled by comments highlighting Applicants' purported unwillingness to engage in discovery"). Recognizing that the Board said it expects UP and NS to "expeditiously respond to discovery requests," *id.*, and that UP and NS both said during last Friday's discovery conference that they want to move discovery forward promptly, a discovery schedule is in the interests of all stakeholders.

BNSF and other stakeholders presented UP and NS with the production schedule outlined below. BNSF and others explained that these deadlines are necessary to ensure discovery does, in fact, move forward promptly. During a June 16 meet-and-confer, UP and NS declined to counter that proposal or negotiate any of the dates in it. UP and NS refused to commit to any firm production timeline. Accordingly, BNSF, CSX, and CPKC ask Your Honor to set document production deadlines for UP and NS to ensure the process moves forward.

I. Production Deadlines are Necessary in this Case.

Production deadlines are necessary to avoid a whipsaw where discovery from UP and NS continues to lag while they simultaneously ask the Board for an expedited merits schedule. If UP and NS provide all the supplements the Board requested in Decision No. 21—and if the Board lifts this proceeding out of abeyance—then UP and NS will ask the Board to set a fast deadline for stakeholders to file their merits comments. That is what they attempted last November, when UP and NS asked the Board to shorten the deadline for stakeholder comments because, as they claimed, "Applicants have already begun responding to discovery requests from interested parties." *See* UP-7/NS-7 at 3.

In all events, non-Applicants will need substantial time following any end of the abeyance to prepare their comments and evidence—taking into account Applicants' forthcoming supplement and any further action by the Board in light of the specific supplements they provide. Prompt compliance with discovery obligations is necessary under any conceivable schedule that would support follow-up discovery, depositions, comments, and evidence preparation. To be clear, UP and NS's foot-dragging will prevent any fast-track schedule. The issue now is whether UP and

NS can start to catch up, such that the Board can set a reasonable schedule consistent with due process, fair play, and an informed, evidence-based process.

In that context, UP and NS cannot have it both ways. After dragging their feet for months and months, they cannot continue to slow-play discovery while also attempting to fast-track the merits process. UP and NS must complete their discovery obligations before stakeholders depose UP and NS witnesses, and those depositions should conclude before stakeholders are asked to provide comments on the merits of the application.

II. Deadlines are Widely Used to Ensure Continued Discovery.

Discovery deadlines are widely used to keep discovery moving. “[D]iscovery deadlines are set to ensure the efficient progress” of a case. *Sanchez v. Aircraft Finishing Corp.*, 2022 WL 4121391, at *1 (E.D.N.Y. Sept. 9, 2022). Indeed, “a central purpose of setting a discovery deadline is to move the case expeditiously forward[.]” *Coles v. Perry*, 217 F.R.D. 1, 5 (D.D.C. 2003).

Production deadlines are essential. This matter cannot progress without timely production of documents. UP and NS have indicated they want to begin depositions in August—consistent with the compressed approval timeframe they are seeking—but they refuse to commit to producing documents on any timeline. To depose UP and NS witnesses, stakeholders need complete productions. Further, stakeholders cannot finalize their comments and/or responsive applications until they are allowed to use discovery from UP and NS to test the contentions in the application.

III. The Proposed Deadlines are Reasonable.

Movants are proposing a sensible set of production deadlines.

First, movants propose that UP and NS make rolling productions every two weeks, at a minimum. Applicants have previously said they will make rolling productions, but history proves otherwise. Both UP and NS have gone months between document productions. For example, NS took nearly three months between one round of productions and two months between another. UP also had two, two-month gaps between productions. This pattern emphasizes the need to set interim deadlines that will regulate document productions—particularly when the vast majority of documents have yet to be produced. Production deadlines will help prevent future delays in this proceeding.

Second, movants are proposing that UP and NS complete non-custodial productions in response to the four categories of documents in BNSF’s second motion to compel by July 1. *See* BNSF-28. Those requests have been pending since December—meaning UP and NS will have had **more than six months** to search for, collect, and review relevant documents. July 1 is also nearly two months after UP and NS essentially argued BNSF’s motion is moot because of their willingness to search for and produce the information sought in those four requests. *See* UP-58/NS-56. All that is left is for UP and NS to produce the documents. (Again, this deadline is for non-custodial productions on those four categories of requests only; this is not a proposal that UP and NS complete custodial productions in response to BNSF’s requests ahead of a more global substantial completion deadline.)

Third, the proposed July 24 substantial completion deadline for the overall body of pending requests is also reasonable—particularly in light of how long the requests have been pending. Many of the requests at issue have been pending for six months or more, so a July 24 cut-off is far more generous than the 21-day production deadline that UP and NS agreed to in the discovery guidelines. *See* Guidelines at § E.2. And while the parties still have disputes to resolve regarding custodial searches and review, UP and NS have said they have the resources to conduct large review projects in a matter of weeks. *See, e.g.*, UP-49 (explaining how UP attorneys collected and reviewed tens of thousands of documents filtered by merger-specific search terms in a matter of weeks in response to Decision No. 13). Finally, UP and NS should not be heard to complain about the impacts of any scheduling compression that they created. Stakeholders have been pushing UP and NS since last October to meaningfully advance discovery (and if they later need relief from the July 24 deadline due to technical issues or otherwise, they can file a motion and seek that relief).

CONCLUSION

Setting production deadlines will ensure that discovery in this matter moves efficiently, so that the Board and all stakeholders have prompt access to information to evaluate the proposed transaction. BNSF, CSX, and CPKC respectfully request an order setting the following deadlines:

1. UP and NS shall make bi-weekly rolling productions of both custodial and non-custodial records in response to the full body of pending requests.
2. UP and NS shall provide weekly updates of their progress towards substantial completion in response to the full body of pending requests.
3. By no later than July 1, 2026, UP and NS shall complete non-custodial productions in response to the four categories in BNSF’s second motion to compel.¹
4. By no later than July 24, 2026, UP and NS shall substantially complete their productions (custodian and non-custodial) in response to the full body of pending requests.

We look forward to discussing the need for deadlines—and the specific ones proposed here—at the June 26 conference.

/s/ Daniel T. Donovan

Daniel T. Donovan, P.C.

KIRKLAND & ELLIS LLP

Counsel for BNSF Railway Company

¹ Applicants and CPKC are continuing to meet and confer about CPKC’s First Set of Discovery Requests, dated December 18, 2025. CPKC reserves the right to address those Requests in a separate submission.

/s/ Eric Enson

Eric Enson
CROWELL & MORING LLP
Counsel for CSX

/s/ Joe Matelis

Joseph J. Matelis
SULLIVAN & CROMWELL LLP
Counsel for CPKC

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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