

June 19, 2026

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

BNSF-34 / CSX-12 / CPKC-28

Re: STB Docket No. FD 36873 – Motion to Compel Additional UP and NS Custodians

Dear Judge Soulikias:

UP and NS have an obligation to make a reasonable inquiry into discoverable information. That includes identifying relevant custodians who must be searched to fully respond to discovery requests. Rather than meet those obligations, UP and NS have insisted on collecting and searching materials for only a relatively small set of custodians that they self-selected. Other stakeholders have proposed specific, additional custodians. See **Exhibit A**. UP and NS have never said any one of those proposed additions lacks relevant information. And UP and NS never provided any evidence that any proposed addition would duplicate an existing custodian. Yet UP and NS have wholesale declined to add them as custodians.

Accordingly, BNSF, CSX, and CPKC¹ move Your Honor to order that UP search 19 more custodians (35 total) and NS search nine more custodians (25 total).² The custodians have responsibilities for key areas, like the competition, operational, and service issues the Board must evaluate in assessing whether this merger is in the public interest.

I. The Proposed Custodians Possess Relevant Information.

Scope and scale matter. UP and NS are massive enterprises who conduct business across the country. UP has about 30,000 employees; NS has about 20,000. They are asking the Board to approve the biggest merger in the industry's history. When it was signed last summer, it was the largest merger in the world, regardless of industry, over the last three years. They claim this merger will shape the next 100 years of railroading. Am. App. Vol. 1 at 369 ¶ 207. The proposed merger touches virtually every aspect of their businesses—from route planning to CapEx investments to pricing strategies. In a merger matter, the scope of discovery is “broad” and covers, among other things, the “potential benefits and harms of the proposed transaction.” See Decision No. 20 at 3. There are hundreds of potential document custodians for a merger like this, although the movants have narrowed that universe substantially and are asking only that a small fraction of them be searched.

¹ CN has, as of the filing of this letter, not served custodial discovery requests on the Applicants but anticipates serving additional discovery requests shortly, certain of which may call for custodial searches. See CN-20. Accordingly, while CN may not have standing to join this letter motion, it has been participating in these negotiations to ensure an efficient discovery process.

² Since UP and NS have yet to produce the vast majority of their documents, the selection of custodians now should be without prejudice to stakeholders identifying other custodians once more documents are produced. UP's and NS's rights would be reserved to argue undue burden and proportionality for any such then-addition.

Hon. Jenifer J. Soulikias

June 19, 2026

Page 2

UP and NS initially proposed only searching the materials of individuals who submitted verified statements—*i.e.*, individuals that UP and NS unilaterally selected to be witnesses. After movants requested that UP and NS at least include the custodians searched in response to Decision No. 13, UP and NS added some, but not all of them. *See* **Exhibit B**. Then, when movants proposed additional custodians, UP and NS refused to even engage on the relevance of those proposed additions. Instead, after weeks of dodging, UP and NS said that movants could have a 20-custodian cap for UP and a 20-custodian cap for NS. There is no basis for such a cap, and it is inappropriate for a transaction of this scale (\$85 billion) or scope (that touches virtually every aspect of the industry and the Applicants' businesses). Artificially capping custodians only impairs the record, as the files of key witnesses who possess case-relevant information would not be searched.

Each custodian identified in **Exhibit A** likely possesses unique, case-relevant documents. Despite weeks of opportunity to say so, no one at UP or NS will represent otherwise. A few examples illustrate why it is critical to include these individuals as custodians.

- **Rebecca Gregory** is UP's SVP for Administration. She served as Chief of Staff for Jim Vena, UP's CEO and the architect of the merger proposal. As Vena's Chief of Staff, Gregory would have responsibility for managing the flow of information to Vena and likely has merger-related documents that did not reach Vena's desk or inbox. According to UP's web site, Gregory "oversaw all aspects of the company, including driving key strategic initiatives that advanced Union Pacific's goals of Safety, Service and Operational Excellence."
- **Brad Moore**, UP's Vice President of Customer Care & Support, likely has documents reflecting UP's service commitments, customer complaints, and service condition planning. These are relevant because one of Applicants' central theses for the merger is their claim that customers are clamoring for it. *See, e.g.*, Am. App. Vol. 1 at 354.56. Further, the Board directed Applicants to provide additional information regarding potential service issues, *see* Decision No. 21 at 26-27, and Moore should have documents reflecting such information.
- **Marybeth Flournoy**, NS's Director of Strategic Partnerships, possesses information about NS's partnerships and alliances with other railroads. UP and NS contend that the claimed efficiencies can only be achieved through a merger. *See, e.g.*, Am. App. Vol. 1 at 41 ("[C]ontractual alliances cannot match the scale or scope of service improvements that are achieved through a merger."). Flournoy's file will help test the veracity of that contention in a way that other custodians' documents would not.

Again, no one at UP or NS has ever denied that the individuals identified in **Exhibit A** possess relevant information. In fact, on the last meet-and-confer, UP's counsel said it is not a "relevance" question (because there is no credible argument otherwise).

Hon. Jenifer J. Soulikias
June 19, 2026
Page 3

II. Applicants Offered No Specific Evidence to Justify Omitting These Custodians.

Unable to contest the relevance of the additional custodians, UP and NS's lone defense is to say that searching their files would be "substantively" duplicative. That is no answer; courts reject that reasoning. The bare "idea that responsive documents will necessarily be found in other custodians' records is not sufficient to defeat a search of" a particular custodian's files. *Shenwick v. Twitter, Inc.*, 2018 WL 833085, at *1 (N.D. Cal. Feb. 7, 2018) (rejecting argument that additional custodian's files need not be searched because other custodians likely possessed the same documents).

UP and NS have offered nothing more than "trust us." They have declined to offer any specifics (let alone evidence) as to why the proposed custodians' case-relevant documents will be covered by their self-selected custodians. Indeed, on the last meet-and-confer, UP and NS could not represent that they had even spoken to each additional, proposed custodian to confirm whether they may have incremental, relevant documents. While UP and NS claim the "additional custodians would be cumulative and duplicative" and that their proposed "custodians [are] sufficient," their assertion is "speculative" and "unsupported by either statistical evidence or logical analysis." *Garcia Ramirez v. I.C.E.*, 331 F.R.D. 194, 197 (D.D.C. 2019) (denying protective order to limit custodians despite party's claim that existing custodians were a sufficient "representative population," because the objecting party failed to show any actual degree of overlap). UP and NS have thus failed to meet their burden to reject these additional custodians. See *Thomas v. City of N.Y.*, 336 F.R.D. 1, 2 (E.D.N.Y. 2020) ("[F]or [d]efendants to prevail on limiting discovery because of duplication, they must show that such the resulting information is 'unreasonably cumulative or duplicative.'"); *State Farm Mut. Auto. Ins. Co. v. Fayda*, 2015 WL 7871037, at *2 (S.D.N.Y. Dec. 3, 2015) ("[T]he party resisting discovery has the burden of showing undue burden or expense.").

There is no need to "trust" UP or NS here. The data will tell the story. The files should be collected. If there is overlap, that overlap will be borne after the custodians' data is de-duplicated against each other and then further filtered by search terms.

III. Applicants' 20-Custodian Cap is Insufficient.

Recognizing they must do more, UP and NS have floated a 20-custodian cap per applicant. That is arbitrary, artificial, and insufficient. Capping custodians would omit key employees' documents from search and review. "[T]he selection of custodians is more than a mathematical count. The selection of custodians must be designed to respond fully to document requests and to produce responsive, nonduplicative documents during the relevant period." *Kleen Prods. LLC v. Packaging Corp. of Am.*, 2012 WL 4498465, at *15 (N.D. Ill. Sept. 28, 2012), *objections overruled*, 2013 WL 120240 (N.D. Ill. Jan. 9, 2013) (rejecting unsupported burden objections to adding custodians, where one defendant had already searched 75 custodians and another party had already produced more than 4 million pages).

Hon. Jenifer J. Soulikias

June 19, 2026

Page 4

UP itself has argued against a cap in far less consequential cases before the Board. In UP's own words, if a producing party has "dozens of employees likely to have responsive, non-duplicative information, then" a lower cap "selected by [the producing party] would not permit effective discovery." *N. Am. Freight Car Ass'n v. Union Pac. R.R. Co.*, 2016 WL 6023851, at *1 (S.T.B. Oct. 11, 2016).

In addition, we already have a case-relevant data point that undermines the 20-per-applicant cap. When ordered to produce the documents that would be turned over in an HSR-reportable transaction, UP and NS collected merger-related documents from 25 and 29 individuals, respectively. *See* UP-49 at 5, NS-47 at 8. In other words, UP and NS knew that searching 20 individuals—for just some of the files that will be required as part of broader discovery—would be insufficient.

Applicants' proposed cap is also inadequate because they refuse to search the files of predecessor custodians. For instance, one of UP's proposed custodians is Todd Rynaski, UP's Senior Vice President for Strategy. It appears that Mr. Rynaski began in that role in May 2025, and UP and NS announced the proposed merger on July 29, 2025. Whoever was in Mr. Rynaski's position (or its equivalent) before May 2025 would certainly have documents relevant to the merger. But under Applicants' proposal, Mr. Rynaski's predecessor's files would not be searched unless that individual was added as a custodian and counted against the 20-custodian cap. Applicants should not be allowed to collect incomplete files for the roles they are searching and force interested parties to choose whether to have complete files or additional custodians.

IV. UP Should Not be Allowed to Pre-Filter the Documents They Are Searching.

On the parties' June 16 conference, UP disclosed (after repeatedly dodging the question) that UP had filtered custodians' email data with search terms *before* collecting that data off UP's servers. In other words, instead of collecting every single document from its custodians, UP collected a subset by filtering for documents hitting on specific terms that UP alone chose. This is inappropriate for three main reasons. *First*, the parties are currently negotiating search terms to address UP's burden concerns. Those negotiated terms will sufficiently exclude potentially irrelevant documents. UP cannot unilaterally decide to exclude an unknown number of documents on the front end and therefore restrict the number of documents against which search terms will be applied. *Second*, UP's own decision to filter its custodial data is contrary to standard e-discovery practice. Indeed, NS confirmed that NS did not conduct any data filtering before collecting its custodians' data off the NS servers. *Third*, UP says the pre-culling search terms were "broad," but UP has declined to provide data on how many documents were left behind and not collected (which would allow stakeholders to assess that contention).

UP's pre-collection filtering creates a risk that relevant documents are never even collected, let alone reviewed and produced. It risks an incomplete record—for no good reason. It is contrary to standard discovery practice and should not be permitted.

Hon. Jenifer J. Soulikias
June 19, 2026
Page 5

CONCLUSION

Your Honor should compel UP to add 19 custodians and NS to add nine custodians, as identified on **Exhibit A**. These additions should be without prejudice to stakeholders identifying additional custodians once UP and NS catch up on their production obligations.³ Your Honor should also compel UP to follow NS's lead and collect all data from its custodians and not use self-selected search terms to pre-cull the collected data.⁴

/s/ Daniel T. Donovan

Daniel T. Donovan, P.C.
KIRKLAND & ELLIS LLP
Counsel for BNSF Railway Company

/s/ Eric Enson

Eric Enson
CROWELL & MORING LLP
Counsel for CSX

/s/ Joseph J. Matelis

Joseph J. Matelis
SULLIVAN & CROMWELL LLP
Counsel for CPKC

cc: Counsel of Record

³ The custodian sets identified here are for purposes of document discovery only and do not limit the universe of witnesses the movants may seek to depose. Movants reserve the right to seek depositions of individuals beyond those identified in Exhibit A and Exhibit B.

⁴ 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.

PUBLIC VERSION - REDACTED

EXHIBIT A – Proposed Additional Custodians

UP Additional Custodians		
Name	Title	Relevance
Rebecca Gregory	SVP Administration, Chief of Staff to Jim Vena	- Has documents and knowledge of executive-level analysis and evaluation of the merger, its impacts, and alternatives to it. - Serves as a conduit of information in and out of the UP C-Suite, including as to the merger, why it is being proposed, and its impacts on various stakeholders.
David Hughes	AVP, Joint Facilities & Interline Ops	- Hughes has day-to-day knowledge of UP's joint facilities, how interline operations work, and how they might be affected by the merger. UP and NS have claimed a core reason for the merger is that they would no longer need to interline in some locations, while others are concerned that the merger will lead to Applicants misuse their control of joint facilities and refusing to interline. - Documents already produced show that [REDACTED] [REDACTED] See UP-STB-D13-0000659.
Brad Moore	VP, Customer Care & Support	Has documents reflecting service commitments, customer complaints, performance metrics, and service condition planning. Such materials are directly relevant to evaluating whether the merger serves the public interest.
Carl Garrison	VP, Network Planning & Ops	Applicants claim that the merger is justified because they can optimize shipments by optimizing routing and avoiding congested areas. Garrison has documents reflecting how UP previously viewed its network and how UP views the post-merger network – issues core to analyzing whether the claimed optimization is credible.

PUBLIC VERSION - REDACTED

UP Additional Custodians		
Name	Title	Relevance
Jennifer Bailey	AVP, Operating Integration	Ms. Bailey is an AVP in the Operating Integration team. How Applicants plan to integrate their operations, risks to that integration, and the success (or failure) of past integrations are core pieces information in the Board's assessment of whether this merger is in the public interest.
Mike Santa Maria	VP, HDC & Network Ops	Mr. Santa Maria has key information about how the UP network operates and might operate post-merger. Specifically, he has unique information about dispatching, which is relevant because Applicants' control over dispatching operations could be used to harm competition.
Jamie Peters	AVP, Operating Services	- Ms. Peters' role involves managing communications, policy administration, training development, and department-wide initiatives for UP's employees. - Details about how UP has been communicating, training, and managing its employees in preparation for the merger—and plans for its employees post-merger—are relevant to how UP is evaluating the merger and the impacts that UP thinks the merger will have on various stakeholders.
Steven Bybee	SVP-Ops, Southern Region	Mr. Bybee has on-the-ground knowledge of UP's operation in the Southern Region, which is a large part of UP's network that would be heavily affected by the merger.
Elise Gosch	VP, LOUP	Sits directly under Kenny Rocker, UP EVP of marketing and sales, one of UP's declarants. LOUP is one of UP's core businesses, and is directly related to intermodal. Documents about how UP priced its intermodal business, what competition for such business is, and how the merger might affect intermodal business, are relevant.

PUBLIC VERSION - REDACTED

UP Additional Custodians		
Name	Title	Relevance
Hunsdon Cary IV	VP-Premium	Sits directly under Eric Gehringer, UP EVP of operations, one of UP's declarants. UP's premium business is one of its core businesses. Cary likely has strategic documents and information about how UP priced its premium business, competition for such business, and the effects of a merger on the business.
Kari Kirchhoefer	SVP, M&S Premium	Each likely has on-the-ground knowledge of how UP priced and marketed its premium business as well as how UP's anticipates the merger will impact competition in that space.
Ryan Steinbach	AVP-Premium Marketing	
Laura Heisterkamp	AVP-Premium Marketing	
Jacque Bendon	SVP, M&S Industrial	Sits directly under Rocker. Bendon has strategic documents and information about how UP priced its industrial business, competition for industrial business, and how the merger might affect the industrial business.
Jason Hess	SVP, M&S Bulk	Sits directly under Rocker. Hess has strategic documents and information about how UP priced its bulk business, competition for bulk business, and how the merger might affect the bulk business.
Jason Steele	Sr. AVP-Automotive	Steele has strategic documents and information about how UP priced its automotive business, competition for automotive business, and how the merger might affect the automotive business.
Andrew Brady	VP External Relations	Brady has unique information about UP was communicating with external parties about the merger, including the impacts it is anticipated to have on various stakeholders.

PUBLIC VERSION - REDACTED

UP Additional Custodians		
Name	Title	Relevance
Jeff Pincock	VP-Strategy & Corporate Development	Sits directly under Todd Rynaski, UP SVP of Strategy. Rynaski was a core member of the merger team, so his direct report should have the “day-to-day” information on merger planning and strategy.
Dan McLaughlin	AVP M&S Ops	McLaughlin has unique, on the ground information about how UP marketed and priced its services.

PUBLIC VERSION - REDACTED

NS Additional Custodians		
Name	Title	Importance
Randolph St. Claire	AVP, Operations	St. Claire has unique documents and knowledge relating to capacity issues, dispatch control, gateways, and joint assets. How Applicants plan to integrate their operations and the success (or failure) of past integrations are core pieces information.
Tim Livingston	SVP Transportation	Livingston has documents relating to train operations, route utilization, and capacity planning, all of which are core issues.
Craig Hudson	VP, Industrial Development	Hudson has strategic documents and information about how NS priced its industrial business, competition for industrial business, and how the merger might affect the industrial business. NS's past pricing behavior is relevant to the effects of the merger.
Rob Jones	Director, Industrial Development, Northern Region	Jones is director for a major region and a core part of NS's business. He has unique documents and information about how NS priced, marketed, and operated in this region.
Mike Grim	Director, Industrial Development, Southern Region	Grim is director for a major region and a core part of NS's business. He has unique documents and information about how NS priced, marketed, and operated in this region.
Marybeth Flournoy	Director, Strategic Partnerships	Flournoy has unique documents and information about NS's interline agreements and other partnerships and alliances. Because Applicants claim the efficiencies they are gaining can only be accomplished through merger, the details

PUBLIC VERSION - REDACTED

NS Additional Custodians		
Name	Title	Importance
		of their non-merger partnerships are relevant to their Application.
Christine Traubel	Group Vice President	• Reports directly to Claude Elkins, NS EVP & Chief Commercial Officer. He has relevant information about pricing and marketing.
Frank Voyack	VP Government Relations	• Voyack has relevant information about how the merger was being explained to government agencies and officials, including information about merger planning and the impacts it will have on various stakeholders.
Elizabeth Talton-Buck	Chief Communications Officer	• Talton-Buck has relevant information about how the merger was being explained to customers and others in the industry, including the impacts it will have on various stakeholders.

PUBLIC VERSION - REDACTED

Exhibit B – Existing Custodians

Union Pacific Fact Declarants

1. Eric Gehringer, EVP – Operations
2. Matthew Graham, General Director – Environmental Management
3. Grant Janke, AVP – Capital Planning and Finance
4. Katherine Novak, General Director – Interline Operations
5. Maqui Parkerson, VP – Labor Relations
6. Joshua Perkes, SVP and Chief Human Resources Officer
7. Carrie Powers, VP, Controller, and Chief Accounting Officer
8. Kenny Rucker, EVP – Marketing & Sales
9. John Turner, SVP – Operations – Northern Region
10. Jim Vena, Chief Executive Officer

Union Pacific-Added HSR Custodians

11. Todd Rynaski, SVP – Strategy
12. Jennifer Hamann, EVP and Chief Financial Officer
13. Mike Miller, VP – Finance and Real Estate Treasurer
14. Rahul Jalali, EVP & Chief Information Officer
15. Corrie Schumaker, General Director – Integration Planning
16. Beth Whited, President

PUBLIC VERSION - REDACTED

Norfolk Southern Fact Declarants

1. Mark George, President & CEO
2. John Orr, Chief Operating Officer
3. Claude E. “Ed” Elkins, EVP & Chief Commercial Officer

Norfolk Southern-Added HSR Custodians

4. Michael Barr, VP, Treasurer, Investor Relations & Integrated Resource Planning
5. Anil Bhatt, EVP & Chief Information & Digital Officer
6. Edward Boyle, VP, Engineering
7. Felismina de Oliveriera, VP – Enterprise Resources
8. Jacob Elium, VP – Financial Planning and Analysis
9. John Felps, VP – Safety
10. Stefan Loeb, VP – Business Development & First and Final Mile Markets
11. Michael McClellan, SVP & Chief Strategy Officer
12. Kathleen Smith, VP – Industrial Products
13. Dwayne Swindall, VP – Intermodal & Automotive Operations
14. Yannik Thomas, VP – Network Design & Optimization
15. Shawn Tureman, VP – Intermodal & Automotive Marketing
16. Jason Zampi, EVP & Chief Financial Officer

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 Williams

Attorney for BNSF Railway Company

June 19, 2026