

Office of Chief Counsel

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June 23, 2026

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Public Record

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

Re: Docket No. FD 36873, *Union Pacific Corp., et al. - Control - Norfolk Southern Corp., et al.*

Dear Judge Soulikias:

Certain non-Applicant Class I railroads have moved to set production deadlines (BNSF-33/CSX-11/CPKC-27; CN-20) and to compel Applicants to add 28 additional custodians to the 32 custodians they have already agreed to search (BNSF-34/CSX-12/CPKC-28). Applicants submit this reply in opposition to both motions.

Applicants are already making rolling productions. In addition, the parties have made significant progress on additional discovery, and Applicants expect that custodial document productions will move swiftly once the parties agree to custodial discovery parameters. The parties remain engaged in the conference process and, after waiting six weeks, the other Class I railroads have finally offered feedback on Applicants' responsiveness criteria. At the same time, Applicants await additional search term proposals that the other Class I railroads have previewed as likely. Given that key issues regarding the scope of review remain unresolved, it would not be appropriate to enter artificial production deadlines at the present time. It is necessary to determine the review size before setting deadlines to complete custodial productions, and that is not possible while the non-Applicant railroads continue to alter their discovery parameters. Once custodial discovery parameters are set, Applicants have no objection to a reasonable production deadline and rolling productions. In the meantime, Applicants will continue producing other responsive materials.

Regarding custodians, Applicants ask Your Honor to adopt the reasonable compromise that Applicants have offered: allowing the other Class I railroads to select any custodians of interest. Applicants seek only a reasonable limit on the number of custodians.

For these reasons, as further addressed below, the motions to set production deadlines and to compel additional custodians should be denied.

1. Key Issues on Scope of Review Must Be Resolved before Setting Production Deadlines.

Applicants are committed to producing documents expeditiously and efficiently. At the same time, meaningful deadlines cannot be set before establishing the parameters of production.

The parties are actively negotiating the parameters of custodial searches—namely, search terms, custodians, and responsiveness criteria. Until those parameters are set, the volume of

documents requiring review cannot be determined. Imposing deadlines without knowing the scope of review would result in arbitrary timelines.

As of now, Union Pacific has agreed to review *at least* 294,690 documents, and Norfolk Southern has agreed to review *at least* 785,731 documents (and that is before applying additional search terms recently requested by CPKC, as explained further below). But several important unknowns remain that could significantly increase the number of documents and affect the speed of review.

- Number of custodians: While Applicants have agreed to search a combined 32 custodians, movants seek to add 28 additional custodians. Applicants strongly disagree that it is necessary to add any additional custodians, but have nonetheless offered to add eighteen custodians (nine each) for a total of 50 custodians. If eighteen custodians are added, the documents for review will expand significantly. If 28 custodians are added, the volume will increase even more significantly. Additional custodians of any volume will impact the timeline for completing custodial productions.
- Search terms: The other Class I railroads continue to request expansions to Applicants' search protocols. In the five weeks after Applicants initially proposed custodial search terms, they received proposed modifications from only BNSF and CSX. The document counts above reflect Applicants' acceptance of every proposed modification from BNSF and CSX. On June 17, 2026, CPKC offered its first proposed modifications, including proposing modifications to terms that had already been modified by BNSF and CSX and accepted by Applicants. Applicants are still evaluating the impact, but CPKC's proposals would likely add hundreds of thousands of documents to the review set. More recently, BNSF stated that it may propose new search terms, which will doubtlessly further expand the review set.
- Time Periods: Although the parties appear close to agreement on time periods, even a relatively small expansion of the time periods when applied to dozens of custodians will significantly expand the review set.
- Responsiveness Criteria: Applicants shared proposed responsiveness criteria on May 7-8, 2026. On June 19—the day after they filed their motion to set production deadlines—the other Class I railroads provided feedback for the first time. On the same day, CN also informed Applicants that it would serve additional discovery that would require further revisions to the criteria, but offered no specific feedback. If the criteria change after the review is underway, Applicants will need to re-review documents, which will impose a significant burden and delay the production of documents.
- Technology-assisted review: Depending on the final size and composition of the review set, Applicants may employ technology-assisted review (TAR) in combination with human review to more efficiently review documents. The other Class I railroads have indicated they may oppose the use of TAR and would seek to throw out the parties' negotiations regarding search terms if TAR is used. That position introduces significant uncertainty into the production timing.

Imposing production deadlines before resolving the issues above will also make it more difficult to resolve those issues. With a deadline in place, the other Class I railroads will have no incentive to make reasonable compromises to ensure efficient production because they will know that production must occur by a date certain.¹ Applicants are not opposed to the eventual setting of a production deadline, but it must be informed by final resolution of the issues described above.

2. The Movants Fail to Justify 28 Additional Custodians.

The other Class I railroads requested that Applicants add 28 custodians (19 for UP and nine for NS) to the 32 that Applicants already agreed to search. On June 16, Applicants responded that the additional custodians were likely to be substantively duplicative of the existing custodians. *See* Att. 1; Att. 2. Applicants nonetheless offered to add four custodians each of the other Class I railroads' choosing. On June 19, the other Class I railroads rejected that offer. On June 23, 2026, Applicants offered an additional five custodians for each party, for a total of nine each, bringing the total number of custodians to 25 for UP, and 25 for NS. *See* Att. 3. We understand that non-Applicants are currently considering this offer.² Under 49 CFR § 1114.21(c), "discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought." *Norfolk S. Corp. & Norfolk S. Ry.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R.*, FD 36836, at 3 (STB served July 25, 2025); *see also Canadian Pac. Ry., et al.—Control—Dakota, Minn. & E. R.R. Corp., et al.*, FD 35081, at 1 (STB served Mar. 27, 2008). "Discovery requests must be narrowly drawn, directed toward a relevant issue, and not used for a general fishing expedition." *Duke Energy Corp. v. Norfolk S. Ry.*, NOR 42069, at 4 (STB served July 26, 2002). The Federal Rules similarly provide that discovery must be proportional to the needs of the case and discovery should be limited if it is "unreasonably cumulative or duplicative." Fed. R. Civ. P. 26(b)(1), (b)(2)(C)(i).

A party challenging discovery efforts bears the burden of showing why those efforts are inadequate. *Enslin v. Coca-Cola Co.*, 2016 WL 7042206, at *3 (E.D. Pa. June 8, 2016). That burden applies equally to demands for additional custodians. *Fort Worth Employees' Ret. Fund v. J.P. Morgan Chase & Co.*, 297 F.R.D. 99, 107 (S.D.N.Y. 2013) ("[A]s the defendants have already included custodians from certain business units in their ESI search protocol, the plaintiffs must demonstrate that the additional requested custodians would provide unique relevant information not already obtained."). The other Class I railroads have not met their burden.

First, the criticism that Applicants provided a "self-selected" group of custodians is misdirected. Applicants identified the leaders of the two companies and the executives who submitted testimony for the Application, as well as additional custodians from the Hart-Scott-

¹ The non-Applicant railroads also repeat their refrain that they served these discovery requests six months ago. They fail to mention, however, that discovery was closed until less than two months ago when Applicants filed their Amended Application. Applicants invite the non-Applicant railroads to focus on moving discovery forward.

² Given the difficulties in exporting documents from UP's archived email system, UP has also offered an alternative proposal in which UP would search 15 additional custodians but for a period beginning after UP stopped using its archived email system.

Rodino (“HSR”) process. That group includes the CEOs, CFOs, CMOs and COOs of each company and belies any suggestion that Applicants somehow seek to shield key custodians. And that suggestion is further undercut because Applicants have offered the non-Applicant railroads the option to select any additional custodians—within a reasonable overall cap.

Second, the other Class I railroads have not shown that the proposed additional custodians would have non-duplicative, relevant information of sufficient value to justify the substantial burden of expanding the custodians. Fifteen of the proposed additional 19 custodians for Union Pacific report directly to an existing custodian, and all proposed additional custodians are in the chain of command of an existing custodian. Similarly for NS, five of the proposed additional 9 custodians report directly to an existing custodian, and all proposed additional custodians are in the chain of command of an existing custodian. The existing custodians are the decisionmakers of the railroads. Every important marketing, operational, administrative, and financial decision crosses their desks. While these proposed additional custodians may have some unique documents—such as drafts of documents sent to ultimate decisionmakers—they are unlikely to have relevant information that is not duplicative of the existing custodians.

Finally, the burden is likely to be substantial in relation to its value. At 32 custodians, Applicants have already agreed to review approximately one million documents—and that is *before* the inclusion of CPKC’s expanded search terms and potential additional search terms from BNSF. The other Class I railroads’ vague assertions of potential relevance, such as that Rebecca Gregory “likely has merger-related documents that did not reach Vena’s desk or inbox,” *see* BNSF-34/CSX-12/CPKC-28 at 2, do not justify adding 28 custodians, which would likely double the data subject to export, processing, and potential review.

The cases the other Class I railroads cite do not support a contrary ruling. *Shenwick v. Twitter, Inc.*, for example, involved a request to search the files of Twitter’s CEO and co-founder. 2018 WL 833085, at *1 (N.D. Cal. Feb. 7, 2018). But here, Applicants have agreed to search the files of the ultimate decisionmakers, including both railroads’ CEOs, CFOs, CMOs, and COOs. And in *Thomas v. City of New York*, the crux of the dispute was that the defendants had refused to search the custodial files of *named defendants*. 336 F.R.D. 1, 4 (E.D.N.Y. 2020) (emphasis added). Here, Applicants’ existing custodians include all those employed by Applicants who submitted Verified Statements supporting the Amended Application. Finally, Applicants note that one case cited by the other Class I railroads—*Kleen Prods. LLC v. Packaging Corp. of Am.*—ordered exactly the compromise approach that Applicants have offered here. There, the court granted Plaintiffs “a small number of additional custodians” and allowed Plaintiffs to “select eight additional custodians from [its] prioritized list.” *Kleen Prods. LLC v. Packaging Corp. of Am.*, No. 10 C 5711, 2012 WL 4498465, at *16 (N.D. Ill. Sept. 28, 2012), *objections overruled*, No. 10 C 5711, 2013 WL 120240 (N.D. Ill. Jan. 9, 2013).

3. UP’s Data Export Practices Are Reasonable.

UP has employed a reasonable methodology to identify and export large amounts of data, which contain potentially responsive documents. The suggestion that UP’s data export methodology is somehow deficient is also without merit, and lacks any substantive complaint about the methodology’s impact on document productions. UP used broad export terms, which it provided to the other Class I railroads, to collect data for export to its discovery vendor. This

approach is particularly reasonable given the difficulty of exporting large volumes from UP's archived email system, which was used until approximately October 2021. Then, its discovery vendor applied the narrower search terms, specifically including the terms proposed by BNSF to that collected data. The result is no different than applying the search terms to the full custodial data set. The other Class I railroads can see for themselves from the export terms that no documents that could possibly hit on the negotiated search terms were left uncollected.

UP's method for collecting data and applying search terms is in accordance with its established practices. Courts have consistently held that a producing party has the discretion to determine the procedures, methodologies, and technologies appropriate for producing its own ESI. *See, e.g., Hyles v. New York City*, 2016 WL 4077114, at *3 (S.D.N.Y. Aug. 1, 2016) ("Under Sedona Principle 6, the City as the responding party is best situated to decide how to search for and produce ESI responsive to [Plaintiff's] document requests. . . The City can use the search method of its choice."); *Ford Motor Co. v. Edgewood Props., Inc.*, 257 F.R.D. 418, 427 (D.N.J. 2009) ("The Sedona Principles wisely state that it is, in fact, the producing party who is in the best position to determine the method by which they will collect documents."); *DeGeer v. Gillis*, 755 F. Supp. 2d 909, 918 (N.D. Ill. 2010) (noting that The Sedona Principles are "the leading authorit[ies] on electronic document retrieval and production.").

* * *

For the foregoing reasons, Applicants respectfully request that Your Honor deny the non-Applicant Class I railroads' Joint Motion to Set Production Deadlines (BNSF-33/CSX-11/CPKC-27; CN-20) or defer it until the review set can be more reasonably ascertained. Applicants also respectfully request that Your Honor deny the Motion for Additional Custodians (BNSF-34/CSX-12/CPKC-28), except as to the additional nine custodians each that Applicants have agreed to add.

Sincerely,

/s/ Laura Flahive Wu

Laura Flahive Wu
*Attorney for Union Pacific
Corporation and Union Pacific
Railroad Company*

cc: All Parties of Record

ATTACHMENT 1

From: [Kelly, Kevin](#)
To: [Korman, Marc](#); [Enson, Eric](#); [Gridi, Avia](#); [Thompson, McClain](#); [Matelis, Joseph \(NON-SIDLEY @SULLCROM.COM\)](#); [Fanchiang, Eric](#); [Rosenthal, Michael](#)
Cc: [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [Ellis, Abram J.](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); [*pdenton@steptoe.com](#); [*tstrafford@steptoe.com](#); [Cunningham, Rich](#); [Damitio, Daniel](#); [Scheib, John M.](#); [Gardiner, Kent](#); [van Houwelingen, Luke](#); [Aluise, Dylan M.](#); [Hynes, Samantha E.](#); [Golden, Nathan H.](#); [Warren, Matthew J.](#); [William Mullins](#); [Ludwin, Derek](#); [Harrison, Caroline](#); [ratkins](#); [Krovoza, Charlotte](#); [Joseph, Neil](#); [Flahive Wu, Laura](#); [Georges, Maria](#); [Benov, Matthew](#); [Volbrecht, Tate D.](#); [Brown, Molly](#)
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework
Date: Tuesday, June 16, 2026 9:47:15 PM
Attachments: [UP Collection Search Terms.xlsx](#)
[2026.06.16 Agreed and Proposed Additional Custodians Chart.docx](#)
[image001.png](#)

All,

I am writing to follow-up on the meet and confer we had this morning. This email recaps our discussion and is sent on behalf of both Applicants.

Custodians: We explained that our own review of the additional custodians demonstrates that they are likely to be substantively duplicative of the existing custodians. In fact, most report to an existing custodian. We requested that you articulate your basis for concluding that each of the 32 additional custodians you have identified possess documents that are material to the Board's merits analysis and non-duplicative of those likely to exist in the files of the existing custodians. As of now you have not provided that explanation.

While we think we have already identified the appropriate custodians, as a compromise, and as discussed, we think it would be productive for us to agree on a number of custodians. Specifically, each Applicant offered to add any four custodians, which would bring the total number of custodians for each Applicant to 20. We think this is a reasonable number and anything more would be unduly burdensome. As discussed, attached is a chart for the additional custodians proposed for Union Pacific, which includes titles, reporting structure, and employment dates. We understand that counsel for Norfolk Southern will send their own, similar chart.

In making this offer, we noted one of your proposed additional custodians, Rebecca Gregory, is a lawyer who has worked in various legal roles at Union Pacific. If you choose Ms. Gregory, we will not collect documents from the time periods when she held a legal role.

Regarding the person most knowledgeable for TRRA, we believe that is already covered in our custodial set. To the extent there is anyone else that might fit that category, David Hughes could be a candidate based on our assessment of your request. For NS, Ed Boyle—who is already an agreed upon custodian—is NS's TRRA board member and is who NS would identify as the person most knowledgeable for TRRA.

During the meet and confer, you asked several questions about our proposal and indicated that you will speak with your clients for their positions. We look forward to hearing from you.

Export Search Terms: You asked for the search terms Union Pacific applied for collections. Attached are the export search terms employed to export data to Union Pacific's e-discovery vendor for processing and additional searching.

CPKC Search Terms: During our subsequent meet and confer call with counsel for CPKC this afternoon, counsel stated that they will send us their counterproposals for search terms. We look forward to receiving those.

Data Sources: As we explained during the meet and confer, we are collecting Enterprise data systems (email, One Drive, and Teams) for custodians, as well as additional sources to the extent we determine they are likely to contain responsive documents.

Unique Hits: We have agreed to your search term modifications, so it is not clear why you need this information. Nonetheless, we will provide the unique hits to you as soon as we obtain them from our e-discovery vendor. We understand that counsel for Norfolk Southern will send their own.

Responsiveness Criteria: As we explained, in an effort to consolidate the various overlapping requests, we articulated broad responsiveness criteria that applies across categories of requests and that we think reasonably addresses your requests. For example, addressing the specific categories of documents sought in BNSF's motion to compel, we've agreed to search for documents and communications regarding the Committed Gateway Pricing program (Applicants' proposals re BNSF 2nd, Request No 8); documents and communications regarding integration planning, including risks to integration (*id.* at BNSF 2nd, Request No. 34); documents and communications regarding pricing, quality, and cost efficiencies related to interline arrangements (*id.* at BNSF 2nd, Request No. 55); documents and communications regarding UP's offers to customers opening new facilities (*id.* at BNSF 2nd, Request No. 59), documents and communications regarding UP's railroad-wide or commodity-wide pricing strategies and documents and communications regarding the impacts of the Proposed Transaction, including on pricing (*id.* at CPKC 1st, Request No. 20); and the projected synergies resulting from the Proposed Transaction (*id.* at BNSF 2nd, Request No. 6). Similarly, for CPKC's requests subject to the meet and confer, our responsiveness criteria track the language of the requests.

But if there are specific revisions you believe are necessary, we remain willing to consider your proposals.

Production Deadlines and TAR: As discussed during the meet and confer, we think that discussions of a production schedule and TAR protocol are premature. We cannot take positions on either until we know the universe of documents that we will need to review. That universe of documents will expand as we add more custodians. That said, we are committed to producing documents as quickly as possible and on a rolling basis, and we will be prepared to set deadlines once we know the scope of data we need to review. We are willing to work on a schedule that would allow us to substantially complete productions 10 business days before depositions, which we anticipate will begin this summer. We would prioritize custodial review based on the ordering of depositions. We will also provide additional information on TAR once we resolve the remaining issues regarding the scope of custodial searches. As we explained, any use of TAR will be validated in accordance with best practices and will include human review.

Non-Custodial and Centralized Sources: We explained during the meet and confer that we are also searching non-custodial locations, such as SharePoint/Teams channels.

Beginning Date Range: You stated that there may be transaction-related documents back to 2023. You also proposed that we review a sample of 500 documents from 2023 for these search terms to determine responsiveness. We continue to be confused as to why you think there will be documents created in connection with the Proposed Transaction dating back to January 1, 2023. Nevertheless, in an effort to be cooperative, we are willing to consider your proposal for an earlier start date. We also explained that if we agree to a reasonable time period, we would be willing to apply all search terms to all custodians.

Ending Date Range: You stated you will further consider potential ending dates, including whether the end

date proposed by Applicants (and adopted by the Board in Decision No. 13) would be acceptable with limited ongoing production of certain categories of documents.

Best,

Kevin

Kevin Kelly

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COVINGTON

Agreed and Proposed Additional Custodians

Name	Current Title / Last Title	Reports To	Dates of Employment
Eric Gehringer	EVP - Operations	Jim Vena, CEO	In position: 01/01/2021 - Present At UP since 01/18/2006
Matthew Graham	General Director - Environmental Management	Rod Doerr, VP & Chief Safety Officer	In position: 01/03/2022 - Present At UP since 01/03/2022
Grant Janke	AVP - Capital Planning & Finance	Michael Miller, VP Finance & Real Estate Treasurer	In position: 09/01/2014 - Present At UP since 05/31/1994
Katherine Novak	General Director - Interline Operations	David Hughes, AVP Joint Facilities & Interline Ops	In position: 01/08/2024 - Present At UP since 07/01/2006
Maqui Parkerson	VP Labor Relations	Josh Perkes, SVP and Chief HR Officer	In position: 04/20/2022 - Present At UP since 01/13/2021
Joshua Perkes	SVP and Chief Human Resources Officer	Jim Vena, CEO	In position: 08/01/2024 - Present At UP since 06/13/2002
Carrie Powers	VP, Controller & Chief Accounting Officer	Jennifer Hamann, EVP & Chief Financial Officer	In position: 05/08/2025 - Present At UP since 02/01/2000
Kenny Rocker	EVP - Marketing & Sales	Jim Vena, CEO	In position: 08/15/2018 - Present At UP since 08/01/1994
John Turner	SVP - Operations - Northern Region	Eric Gehringer, EVP Operations	In position: 04/01/2024 - Present At UP since 04/20/1998
Jim Vena	Chief Executive Officer	N/A	In position: 08/14/2023 - Present At UP: 01/14/2019 - 07/01/2021; 08/14/2023 - Present
Todd Rynaski	SVP Strategy	Jim Vena, CEO	In position: 05/08/2025 - Present At UP since 05/30/1995
Jennifer Hamann	EVP & Chief Financial Officer	Jim Vena, CEO	In position: 01/01/2020 - Present At UP 01/27/1992

Name	Current Title / Last Title	Reports To	Dates of Employment
Mike Miller	VP Finance and Real Estate Treasurer	Jennifer Hamann, EVP & Chief Financial Officer	In position: 02/01/2022 - Present At UP since 05/28/1993
Rahul Jalali	EVP & Chief Information Officer	Jim Vena, CEO	In position: 06/01/2023 - Present At UP since 11/02/2020
Corrie Schumaker	General Director – Integration Planning	Jennifer Hamann, EVP & Chief Financial Officer	In position: 01/01/2026 - Present At UP since 06/09/2003
Beth Whited	President		In position: 08/14/2023 - 06/30/2025 At UP 12/21/1987 to 6/30/2025
Brad Moore	VP, Customer Care and Support	Eric Gehringer, EVP Operations	In position: 08/15/2018 - Present At UP since 01/30/1995
Jennifer Bailey	AVP, Operating Integration	Eric Gehringer, EVP Operations	In position: 12/01/2025 - Present At UP since 01/02/2007
Mike Santa Maria	VP HDC & Network Ops	Eric Gehringer, EVP Operations	In position: 04/07/2025 - Present At UP since 05/17/2004
Carl Garrison	VP Network Planning & Ops	Eric Gehringer, EVP Operations	In position: 04/01/2024 - Present At UP since 07/17/2006
Jamie Peters	AVP Operating Services	Eric Gehringer, EVP Operations	In position: 04/17/2004 - Present At UP since 06/09/2005
David Hughes	AVP Joint Facilities & Interline Ops	Carl Garrison, VP Network Planning & Ops	In position: 01/08/2024 - Present At UP since: 05/28/1999
Steven Bybee	SVP Ops, Southern Region	Eric Gehringer, EVP Operations	In position: 04/01/2024 - Present At UP since: 03/07/2005
Erin Batt	VP Dispatching (VP of Network Ops and HDC)	Eric Gehringer, EVP Operations	In position: 10/31/2023 - 03/28/2025 At UP 01/09/2006 - 03/28/2025
Elise Gosch	VP Loup Logistics	Kenny Rocker, EVP Marketing & Sales	In position: 08/01/2024 At UP since 04/08/2004

Name	Current Title / Last Title	Reports To	Dates of Employment
Hunsdon Cary, IV	VP Premium Strategy	Eric Gehringer, EVP Operations	In position: 03/04/2024 - Present At UP 10/27/2018 - 02/15/2021; 03/04/2024 - Present
Jacque Bendon	SVP M&S Industrial	Kenny Rocker, EVP Marketing & Sales	In position: 05/01/2023 - Present At UP since 05/27/1998
Jason Hess	SVP M&S Bulk	Kenny Rocker, EVP Marketing & Sales	In position: 05/01/2023 - Present At UP since 09/29/1994
Kari Kirchhoefer	SVP M&S Premium	Kenny Rocker, EVP Marketing & Sales	In position: 05/01/2023 - Present At UP since 10/29/1992
Ryan Steinbach	AVP M&S - International	Kari Kirchhoefer, SVP M&S Premium	In position: 05/15/2025 - Present At UP since 08/15/2005
Laura Heisterkamp	AVP Premium Marketing	Kari Kirchhoefer, SVP M&S Premium	In position: 05/15/2025 - Present At UP since 01/14/1991
Jason Steele	AVP M&S - Premium	Kari Kirchhoefer, SVP M&S Premium	In position: 05/15/2025 - Present At UP since 07/01/2000
Andrew Brady	VP External Relations	Jim Vena, CEO	In position: 03/01/2024 - Present At UP since 07/08/2019
Jeff Pincock	VP Strategy & Corporate Development	Todd Rynaski, SVP Strategy	In position: 08/01/2024 - Present At UP since 08/15/2022
Dan McLaughlin	AVP M&S Operations	Kenny Rocker, EVP Marketing & Sales	In position: 05/02/2022 - Present At UP since 05/29/2001
Rebecca Gregory	SVP Administration	Jim Vena, CEO	In position: 03/23/2026 - Present At UP since 08/06/2008

ATTACHMENT 2

From: [Korman, Marc](#)
To: [Kelly, Kevin](#); [Enson, Eric](#); [Gridi, Avia](#); [Thompson, McClain](#); [Matelis, Joseph \(NON-SIDLEY @SULLCROM.COM\)](#); [Fanchiang, Eric](#); [Rosenthal, Michael](#)
Cc: [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [Ellis, Abram J.](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); [*pdenton@steptoe.com](#); [*tstrafford@steptoe.com](#); [Cunningham, Rich](#); [Damitio, Daniel](#); [Scheib, John M.](#); [Gardiner, Kent](#); [van Houwelingen, Luke](#); [Aluise, Dylan M.](#); [Hynes, Samantha F.](#); [Golden, Nathan H.](#); [Warren, Matthew J.](#); [William Mullins](#); [Ludwin, Derek](#); [Harrison, Caroline](#); [ratkins](#); [Krovoza, Charlotte](#); [Joseph, Neil](#); [Flahive Wu, Laura](#); [Georges, Maria](#); [Benov, Matthew](#); [Volbrecht, Tate D.](#); [Brown, Molly](#)
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework
Date: Tuesday, June 16, 2026 10:07:09 PM
Attachments: [image001.png](#)
[Agreed and Proposed Custodian List.xlsx](#)

[EXTERNAL]

Attached is the equivalent Norfolk Southern custodian chart for your review.

Thank you,
Marc

MARC A. KORMAN
Counsel

SIDLEY AUSTIN LLP
+1 202 736 8417
mkorman@sidley.com

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Tuesday, June 16, 2026 9:47 PM
To: Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

All,

I am writing to follow-up on the meet and confer we had this morning. This email recaps our discussion and is sent on behalf of both Applicants.

Custodians: We explained that our own review of the additional custodians demonstrates that they are likely to be substantively duplicative of the existing custodians. In fact, most report to an existing custodian. We requested that you articulate your basis for concluding that each of the 32 additional custodians you have identified possess documents that are material to the Board's merits analysis and non-duplicative of those likely to exist in the files of the existing custodians. As of now you have not provided that explanation.

While we think we have already identified the appropriate custodians, as a compromise, and as discussed, we think it would be productive for us to agree on a number of custodians. Specifically, each Applicant offered to add any four custodians, which would bring the total number of custodians for each Applicant to

20. We think this is a reasonable number and anything more would be unduly burdensome. As discussed, attached is a chart for the additional custodians proposed for Union Pacific, which includes titles, reporting structure, and employment dates. We understand that counsel for Norfolk Southern will send their own, similar chart.

In making this offer, we noted one of your proposed additional custodians, Rebecca Gregory, is a lawyer who has worked in various legal roles at Union Pacific. If you choose Ms. Gregory, we will not collect documents from the time periods when she held a legal role.

Regarding the person most knowledgeable for TRRA, we believe that is already covered in our custodial set. To the extent there is anyone else that might fit that category, David Hughes could be a candidate based on our assessment of your request. For NS, Ed Boyle—who is already an agreed upon custodian—is NS's TRRA board member and is who NS would identify as the person most knowledgeable for TRRA.

During the meet and confer, you asked several questions about our proposal and indicated that you will speak with your clients for their positions. We look forward to hearing from you.

Export Search Terms: You asked for the search terms Union Pacific applied for collections. Attached are the export search terms employed to export data to Union Pacific's e-discovery vendor for processing and additional searching.

CPKC Search Terms: During our subsequent meet and confer call with counsel for CPKC this afternoon, counsel stated that they will send us their counterproposals for search terms. We look forward to receiving those.

Data Sources: As we explained during the meet and confer, we are collecting Enterprise data systems (email, One Drive, and Teams) for custodians, as well as additional sources to the extent we determine they are likely to contain responsive documents.

Unique Hits: We have agreed to your search term modifications, so it is not clear why you need this information. Nonetheless, we will provide the unique hits to you as soon as we obtain them from our e-discovery vendor. We understand that counsel for Norfolk Southern will send their own.

Responsiveness Criteria: As we explained, in an effort to consolidate the various overlapping requests, we articulated broad responsiveness criteria that applies across categories of requests and that we think reasonably addresses your requests. For example, addressing the specific categories of documents sought in BNSF's motion to compel, we've agreed to search for documents and communications regarding the Committed Gateway Pricing program (Applicants' proposals re BNSF 2nd, Request No 8); documents and communications regarding integration planning, including risks to integration (*id.* at BNSF 2nd, Request No. 34); documents and communications regarding pricing, quality, and cost efficiencies related to interline arrangements (*id.* at BNSF 2nd, Request No. 55); documents and communications regarding UP's offers to customers opening new facilities (*id.* at BNSF 2nd, Request No. 59), documents and communications regarding UP's railroad-wide or commodity-wide pricing strategies and documents and communications regarding the impacts of the Proposed Transaction, including on pricing (*id.* at CPKC 1st, Request No. 20); and the projected synergies resulting from the Proposed Transaction (*id.* at BNSF 2nd, Request No. 6). Similarly, for CPKC's requests subject to the meet and confer, our responsiveness criteria track the language of the requests.

But if there are specific revisions you believe are necessary, we remain willing to consider your proposals.

Production Deadlines and TAR: As discussed during the meet and confer, we think that discussions of a production schedule and TAR protocol are premature. We cannot take positions on either until we know the universe of documents that we will need to review. That universe of documents will expand as we add more custodians. That said, we are committed to producing documents as quickly as possible and on a rolling basis, and we will be prepared to set deadlines once we know the scope of data we need to review.

We are willing to work on a schedule that would allow us to substantially complete productions 10 business days before depositions, which we anticipate will begin this summer. We would prioritize custodial review based on the ordering of depositions. We will also provide additional information on TAR once we resolve the remaining issues regarding the scope of custodial searches. As we explained, any use of TAR will be validated in accordance with best practices and will include human review.

Non-Custodial and Centralized Sources: We explained during the meet and confer that we are also searching non-custodial locations, such as SharePoint/Teams channels.

Beginning Date Range: You stated that there may be transaction-related documents back to 2023. You also proposed that we review a sample of 500 documents from 2023 for these search terms to determine responsiveness. We continue to be confused as to why you think there will be documents created in connection with the Proposed Transaction dating back to January 1, 2023. Nevertheless, in an effort to be cooperative, we are willing to consider your proposal for an earlier start date. We also explained that if we agree to a reasonable time period, we would be willing to apply all search terms to all custodians.

Ending Date Range: You stated you will further consider potential ending dates, including whether the end date proposed by Applicants (and adopted by the Board in Decision No. 13) would be acceptable with limited ongoing production of certain categories of documents.

Best,

Kevin

Kevin Kelly

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AGREED TO CUSTODIANS

<u>Name</u>	<u>Title</u>	<u>Reporting Structure</u>	<u>Dates of Employment (approx.)</u>
Mark George	President and CEO	N/A	In Position: Sept. 2024 to Present
John Orr	Chief Operating Officer	Reports to CEO	At NS since 2019
Claude E. "Ed" Elkins	Executive Vice President & Chief Commercial Officer	Reports to CEO	In Position: March 2024 to June 2026
Michael Barr	Vice President Treasurer, Investor Relations & Integrated Resource Planning	Reports to Jason Zampi	In Position: Dec. 2021 to Present
Anil Bhatt	Executive Vice President & Chief Information & Digital Officer	Reports to CEO	At NS since 1988
Edward Boyle	Vice President Engineering	Reports to COO	In Position: Jan. 2025 to Present
Felismina de Oliveriera	Vice President Enterprise Resources	Reports to COO	In Position: Aug. 2024 to Present
Jacob Elium	Vice President Financial Planning & Analysis	Reports to Jason Zampi	In Position: May 2019 to Present
John Fleps	Vice President Safety	Reports to COO	At NS since 1994
Stefan Loeb	Vice President Business Development & First and Final Mile Markets	Reports to Claude Elkins	In Position: Dec. 2024 to June 2026
Michael McClellan	Senior Vice President & Chief Strategy Officer	Reports to Jason Zampi	At NS since June 2024
Kathleen Smith	Vice President Industrial Products	Reports to Claude Elkins	In Position: Nov. 2024 to Present
Dwayne Swindall	Vice President Intermodal & Automotive Operations	Reports to COO	At NS since 2012
Yannik Thomas	Vice President, Network Design & Optimization	Reports to COO	In Position: March 2024 to Present
Shawn Tureman	Vice President Intermodal & Automotive Marketing	Reports to Claude Elkins	At NS since 2006
Jason Zampi	Executive Vice President & Chief Financial Officer	Reports to CEO	In Position: April 2024 to Present

CUSTODIANS SUBJECT TO NEGOTIATION

<u>Name</u>	<u>Title</u>	<u>Reporting Structure</u>	<u>Dates of Employment (approx.)</u>
Randolph St. Claire	AVP Operations	Reports to COO	In Position: Jan. 2025 to Present
Tim Livingston	Senior Vice President Transportation	Reports to COO	At NS since 2010
Rodney Moore	Vice President Transportation	Reports to COO	In Position: July 2024 to June 2026
Craig Hudson	Vice President, Industrial Development	Reports to Stefan Loeb through Elkins Organization	In Position: July 2024 to Present
Rob Jones	Director, Northern Region	Reports to Stefan Loeb through Elkins Organization	At NS since 2004
Mike Grim	Director, Southern Region	Reports through Elkins Organization	In Position: Dec. 2022 to Present
Marybeth Flournoy	Director, Strategic Partnerships	Reports to Craig Hudson through Elkins Organization	At NS since 2019
Christine Traubel	Group Vice President	Reports to Elkins	In Position: Feb. 2023 to Present
Frank Voyack	Vice President Government Relations	Reports to CEO through Jason Morris	At NS since 2002
Elizabeth Talton-Buck	Chief Communications Officer	Reports to CEO	In Position: April 2017 to Present

ATTACHMENT 3

From: [Kelly, Kevin](#)
To: [Thompson, McClain](#); [Korman, Marc](#); [Enson, Eric](#); [*Avia.Gridi@stblaw.com](#); [Matelis, Joseph \(NON-SIDLEY @SULLCROM.COM.\)](#); [Fanchiang, Eric](#); [Rosenthal, Michael](#)
Cc: [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [*AEllis@stblaw.com2](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); [*pdenton@steptoe.com](#); [*tstrafford@steptoe.com](#); [Cunningham, Rich](#); [Damitio, Daniel](#); [Scheib, John M.](#); [Gardiner, Kent](#); [van Houwelingen, Luke](#); [Aluise, Dylan M.](#); [Hynes, Samantha F.](#); [Golden, Nathan H.](#); [Warren, Matthew J.](#); [William Mullins](#); [Ludwin, Derek](#); [Harrison, Caroline](#); [ratkins](#); [Krovoza, Charlotte](#); [Joseph, Neil](#); [Flahive Wu, Laura](#); [Georges, Maria](#); [Benov, Matthew](#); [Volbrecht, Tate D.](#); [Brown, Molly](#)
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework
Date: Tuesday, June 23, 2026 5:24:16 PM
Attachments: [image001.png](#)

All,

We write to continue our negotiations regarding custodians. We had previously offered an additional four custodians each for UP and NS. Unfortunately, you rejected that proposal without making any counterproposal. However, we observed from your recently filed letter brief that you reduced your request from 21 additional custodians for UP to 19, and from 11 additional custodians for NS to 9. We appreciate that movement.

Although we think any additional custodians would be unduly burdensome and duplicative, we are willing to further engage in discussions in good faith. To update our position, we offer two proposals.

First Proposal: UP and NS are each willing to search 9 in addition to the already agreed custodians. This would bring the total custodian count to 25 each for UP and NS. To clarify, for UP, this would include the agreed upon 16 custodians plus 9 additional custodians of your choosing, from your proposed list. For NS, this would include the agreed upon 16 custodians plus the 9 “NS Additional Custodians” identified in Exhibit A to your June 19, 2026 letter motion (BNSF-34/CSX-12/CPKC-28).

Second Proposal (UP only): In the alternative, and considering the burden of collecting older emails from UP systems, UP would be willing to increase the number of UP custodians searched in exchange for limiting the date ranges for all the new UP custodians. As we have mentioned, UP used a now-archived email system until late 2021. This email system is highly burdensome to access. In consideration of the burden of collecting from this archived system, we would be willing to instead add 15 custodians but for the time period beginning January 1, 2022. We think searching for 15 custodians starting January 1, 2022 would be roughly the equivalent extra burden as collecting from 9 custodians starting January 1, 2019.

For clarity, we note that this proposal would require all custodians to be identified by name, and the Applicants would collect only for named custodians within the agreed total custodian numbers.

* * *

These proposals show significant attempts to compromise by the Applicants. We are in no way conceding that any additional custodians are necessary for the reasons we have explained to you and which will be in our Reply to your letter brief. However, in the spirit of compromise, we hope you seriously consider our proposals.

Best,

Kevin

Kevin Kelly

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CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of June 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Charlotte Krovoza