

June 24, 2026

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

BNSF-35 / CSX-12 / CPKC-29/ CN-21

Re: STB Docket No. FD 36873 – Issues for Resolution at June 26 Conference

Dear Judge Soulikias:

Pursuant to Decision No. 24, BNSF, CSX, CPKC, and CN write regarding the upcoming June 26 discovery conference. The conference will be necessary to resolve certain disputes below that are pending between movants and UP/NS, although the parties expect to continue to confer tomorrow.

LIVE DISPUTES

I. BNSF's Second Motion to Compel (BNSF-28)

The dispute regarding this motion has not changed since the last discovery conference. UP and NS raised no relevance, burden, proportionality, or privilege concerns to the four requests identified in BNSF's motion. The requests have been pending since December. UP and NS should be ordered to produce the requested information in the near term. A proposed schedule is outlined in BNSF's Motion to Set Production Deadlines. *See* BNSF-33 / CSX-11 / CPKC-27 at 3.

II. Motion to Set Production Deadlines for UP and NS (BNSF-33 / CSX-11 / CPKC-27)

On June 18, movants filed a motion to set document production deadlines for UP and NS. *See* BNSF-33 / CSX-11 / CPKC-27. Movants believe production deadlines are necessary to ensure the process moves forward. *See id.* at 1. CN filed a letter in support of movants' motion. *See* CN-20. UP and NS oppose the motion. *See* UP-66 / NS-64.

III. Motion to Compel Additional UP and NS Custodians (BNSF-34 / CSX-12 / CPKC-28)

On June 19, BNSF, CSX, and CPKC filed a motion to compel UP and NS to search the files of certain document custodians. *See* BNSF-34 / CSX-12 / CPKC-28.¹ UP and NS are currently searching 16 custodians each. Movants proposed additional specific custodians for UP and NS to search. In response, UP and NS proposed a 20-custodian cap for UP and NS. In their reply, UP and NS increased those caps. *See* UP-66 / NS-64 at 3. Although the issues have narrowed, the parties still have a fundamental dispute: Movants oppose entry of numerical caps,

¹ As of the filing of the motion to compel, CN had not yet served custodial discovery requests on UP and NS, so CN did not have standing to join the letter motion. CN anticipates serving additional discovery requests on UP and NS shortly, however, certain of which may call for custodial searches. CN has therefore been participating in custodial discussions to ensure an efficient discovery process.

because the question is whether custodians have responsive information. The custodians that movants are currently asking to be added are identified on Exhibit A to the letter motion. Movants will confer with UP and NS further to see if agreement can be reached.

MATTER REQUESTED TO BE HELD IN ABEYANCE

IV. CPKC's Motion to Compel (CPKC-24)

Consistent with Your Honor's directive at the June 12 discovery conference, CPKC and Applicants conferred regarding Applicants' responses to CPKC's First Set of Discovery Requests on June 16. On June 17, CPKC sent Applicants a counterproposal regarding search terms, and on June 18, CPKC sent Applicants additional follow-up questions. Applicants have said they are reviewing CPKC's search term proposal and are investigating the follow-up questions CPKC raised. Accordingly, although there remains a live dispute regarding the issues raised by CPKC's Motion to Compel (CPKC-24), those issues are not ripe for resolution at the June 26 discovery conference.

LIST OF ATTENDEES

A. BNSF

1. Daniel Donovan
2. McClain Thompson
3. Tim Strafford

B. CSX

1. Eric Enson
2. Luke van Houwelingen
3. Eric Fanchiang
4. John Scheib

C. CPKC

1. Joseph J. Matelis
2. David L. Meyer
3. Noah Stern

D. CN

1. Abram Ellis
2. Avia Gridi

E. Union Pacific

1. Michael Rosenthal
2. Laura Flahive Wu
3. Kevin Kelly

F. Norfolk Southern

1. Matthew Warren
2. Marc Korman
3. Carrie Mahan
4. Stephen Laudone
5. William Mullins
6. Spencer Naake

Respectfully,

/s/ Dan Donovan

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/s/ Abram Ellis

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SIMPSON THACHER & BARTLETT LLP
Counsel for CN

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

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