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Via Electronic Mail

July 7, 2026

311739

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

ENTERED
Office of Chief Counsel
July 7, 2026
Part of

Re: STB Docket No. FD 36873 – Discovery Status Public Record

Dear Judge Soulikias:

Applicants in the referenced matter write in response to BNSF's letter of July 2, 2026 (BNSF-36).

BNSF's request for further intervention rests on an incomplete account of discovery in this proceeding and overlooks Applicants' significant discovery efforts. BNSF again seeks omnibus production deadlines by manufacturing a discovery dispute, notwithstanding Your Honor's guidance that such deadlines will not be imposed until the Board sets a schedule. In reality, the pace of discovery reflects not a lack of diligence by Applicants, but the substantial burden of responding to expansive and evolving requests by BNSF and others. In any case, Applicants remain committed to continuing to make rolling productions.

Applicants have been working quickly and transparently to respond to the hundreds of requests served by the other parties. BNSF alone has served more than one hundred and fifty requests. Nor is BNSF the only party imposing significant discovery burdens on Applicants. This week, Applicants received an additional 23 discovery requests—54 including subparts—from Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively, "CN"). As Your Honor has made clear, the parties "must work to avoid duplication and to streamline discovery to be as efficient as possible." Decision No. 23 at 2.¹ Yet CN's latest requests substantially overlap with the

¹ In addition to discovery requests from other Class I railroads, Applicants were also served with 16 discovery requests from a commuter railroad and 8 discovery requests from labor organizations since the most recent discovery conference, and received 18 discovery requests (continued...)

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Hon. Jenifer J. Soulikias
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hundreds of requests previously served on Applicants.² Accordingly, the continued service of duplicative requests, and the lack of coordination among parties seeking discovery, undermine Your Honor's directive to conduct discovery efficiently.

BNSF also attempts to discount Applicants' significant progress by suggesting that recent production volumes are indicative of Applicants' overall discovery efforts. That characterization ignores the substantial work required to collect, review, and produce responsive materials. Applicants have engaged in multiple meet-and-confers with the other Class I railroads to narrow disputes and develop reasonable protocols. But those efforts cannot lead to meaningful progress when BNSF repeatedly seeks to reopen issues that Applicants reasonably understood to be resolved. For example, after Applicants indicated that they would adopt wholesale the modified search terms proposed by the other Class I railroads, BNSF responded by asserting that those counter-proposed terms were merely a "starting point" and sought to further expand discovery. Att. 1 (June 19, 2026 Email from M. Thompson). On the same day it filed its motion, BNSF once again indicated that it will propose expansions of its own search parameters. Att. 2 (July 2, 2026 Email from M. Thompson). Such conduct undermines the parties' efforts to reach agreement on reasonable discovery parameters and delays the completion of discovery.

As Your Honor is well aware, all search parameters now apply to 36 custodians for Union Pacific and 30 custodians for Norfolk Southern. Applicants are in the process of exporting data for the 34 new custodians, and anticipate that it will take weeks to export the data due to its size. Once the export is complete, Applicants will proceed with processing and reviewing that data. And this is occurring as Applicants diligently work to comply with Your Honor's production schedule regarding BNSF's Second Motion to Compel.

With respect to Applicants' use of technology-assisted review ("TAR"), Applicants have been transparent regarding their proposed TAR methodology. BNSF does not identify any respect in which Applicants have been insufficiently transparent. Use of TAR makes discovery more efficient and productions more expeditious. As communicated in recent correspondence, Applicants welcome any reasonable additional questions regarding

from a short line railroad just before the conference. Applicants respect the rights of parties to seek discovery, particularly for non-duplicative information, but want to highlight the sheer volume of production requests being addressed concurrently.

² For example, in its latest set of requests, CN seeks documents concerning the proposed transaction's impact on "competition with CN," *see* Att. 4 (CN's Fourth Set of Discovery Requests to Applicants, served July 1, 2026), while BNSF previously sought all documents concerning the proposed transaction's impact on competition generally, including corridor, source, and intermodal competition, *see* Att. 5 (BNSF's First Set of Discovery Requests to Applicants, served October 1, 2025). The former is simply a narrower subset of the latter.

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TAR. Att. 3 (July 3, 2026 Email from M. Georges). But Applicants' willingness to provide transparency regarding the use of TAR should not be misconstrued as an invitation for BNSF to relitigate previously negotiated search parameters, further expand discovery, or manufacture discovery disputes. Instead of BNSF embracing a commonly used discovery tool, it is attempting to leverage it to reopen discovery parameters rather than promote an efficient review process.

Applicants remain committed to complying with Your Honor's discovery directives and continuing to make rolling productions. Applicants are prepared to further discuss the issues raised in BNSF's July 2, 2026 letter at the upcoming conference.

Sincerely,

/s/Laura Flahive Wu

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

cc: All Parties of Record
ALJ Soulikias

ATTACHMENT 1

From: [Thompson, McClain](#)
To: [Kelly, Kevin](#); [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.](#); [*AFellis@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 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: Friday, June 19, 2026 10:05:07 AM
Attachments: [image001.png](#)

[EXTERNAL]

Kevin –

We write in response to UP's June 16 email following our meet-and-confer. It was slanted and inaccurate in part.

Custodians. It appears that we are at an impasse on custodians. To correct the record, you did not request that we articulate our basis for including the custodians we have identified. We were ready and prepared to do so during our June 16 meet and confer, but Laura said that she wanted to set aside the question of relevance. All that we heard on our call was UP's same (unsupported) concern about duplication and the (unsupported) need for caps on custodians. You did not contest the relevance of our proposed additions, nor did you claim that any of those individuals were unlikely to have case-relevant information. You have not identified any specific burden associated with searching the additional custodians we have proposed, nor have you identified any specific evidence or data that the proposed additions would, in fact, duplicate existing custodians. We considered the proposed 20-custodian cap, but have determined it is artificial, arbitrary, and finds no basis in the case law or the Board's rules. Given timing issues, we need to file a letter brief today with the ALJ seeking relief on these issues. But we are happy to have further discussions over the weekend or early next week in the hope of resolving these issues before the Wednesday status letter to the ALJ is due.

Predecessor/Successor Custodians. Among the 16 employees that UP and NS have included in their custodial searches, many have not occupied their current roles for the entire period that UP and NS have proposed to search. What is your basis for not agreeing to search the files of predecessor and successor employees to ensure that files related to those roles will be searched and reviewed for the full period you have proposed to review?

UP's Export Search Terms. We do not believe it is appropriate to cull UP's custodial data with search terms prior to collection, especially since we are negotiating search terms that are designed to narrow the universe of documents to be searched on the back end. UP should have collected all custodial data for each custodian.

CPKC Search Terms. Please see CPKC's email from June 17.

Data Sources. Did you ask each custodian whether they conduct business using text messages or other messaging apps on their cell phones? What were their responses?

Unique Hits. Thank you for providing the unique hits – information that we have been requesting for over a month. To be clear, and to reiterate, we do not have an agreement on search terms. We counter-proposed search terms as a starting point and have been requesting unique hit counts to assess both (1) the true burden on UP and NS; and (2) whether our proposed search terms are capturing what we would expect. You cannot unilaterally declare an agreement that did not exist. We are reviewing the unique hit count information and will revert with any modifications to the search terms based upon that review.

Responsiveness Criteria. We are considering the criteria you have provided, and we will be in touch shortly about it.

TAR. UP has suggested it may use a TAR methodology to review documents for responsiveness. UP should decide now whether it is using TAR or using search terms. UP should not be permitted to secure favorable search term and custodian limits on the back of arguments about attorney review burden, if UP later intends to use technology assisted review to mitigate or eliminate that burden. In all events and to reiterate, we do not consent to any use of TAR without an agreed-upon protocol. What is NS planning to do?

Non-Custodial and Centralized Sources. Can UP and NS please provide a complete list of non-custodial sources that you are searching, as well as a list of non-custodial sources that you determined may have responsive information but have decided not to search? We have been requesting this information for months. Unless we get it in the coming days, we will assume we are at impasse on this as well.

Beginning Date Range. To be clear, it is not our position that there will be documents created in 2023 “in connection with the Proposed Transaction” (unless you tell us otherwise or we see that in the documents once they are produced). Our position is that UP and NS custodians could have case-relevant information in 2023; you seem to agree, as you are running some searches back to 2019. Based on the existing search terms, how many incremental unique hits are there in 2023?

Ending Date Range. We will get back to you. As of what date did UP and NS collect data from their existing custodians?

Thanks,

McClain

McClain Thompson

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M +1 917 545 6401

mcclain.thompson@kirkland.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>; *Avia.Gridi@stblaw.com <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>; *AEllis@stblaw.com2 <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>; *dludwin@cov.com
<dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza,
Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com
<lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM
<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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From: Kelly, Kevin

Sent: Tuesday, June 16, 2026 12:58 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>; ratkins <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

Joe and David,

Applicants are available from 3:30-4 PM ET to confer with CPKC. Will you circulate an invite?

Best,

Kevin

Kevin Kelly

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From: Korman, Marc <mkorman@sidley.com>

Sent: Tuesday, June 16, 2026 11:58 AM

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEenson@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>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <flahivewu@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

[EXTERNAL]

All,

There were questions on the call regarding Norfolk Southern's HSR custodians. Attached is the email sent on May 21st that contains this information.

The list we provided is also below for your convenience. Please let us know if you have questions on this narrow point. Thank you.

Name	Title
Michael Barr	VP Investor Relations and Treasurer
Anil Bhatt	Executive Vice President & Chief information and Digital
Edward Boyle	Vice President Engineering
Felismina de Oliveira	Vice President Enterprise Resources
Jacob Elium	Vice President Financial Planning & Analysis
John Fleps	Vice President Safety
Stefan Loeb	Vice President Business Development & First and Final Mile Markets
Kathleen Smith	Vice President of Industrial Products
Dwayne Swindall	Vice President Intermodal & Automotive Operations

Shawn Tureman	Vice President Intermodal & Automotive
Jason Zampi	Chief Financial Officer & Treasurer

MARC A. KORMAN

Counsel

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-----Original Appointment-----

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, June 12, 2026 2:52 PM

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; Korman, Marc; Atkins, Raymond; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Georges, Maria; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly

Subject: FD 36873 - Meet & Confer re Custodial Search Framework

When: Tuesday, June 16, 2026 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

From: Kelly, Kevin

Sent: Friday, June 12, 2026 1:59 PM

To: Enson, Eric <EEEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph J. <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](mailto:*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>; Korman, Marc <mkorman@sidley.com>; ratkins <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 <mabenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

10-11 AM ET on Tuesday works for Applicants.

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From: Enson, Eric <EEnson@crowell.com>

Sent: Friday, June 12, 2026 1:23 PM

To: Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Kelly, Kevin <Kkelly@cov.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>; Korman, Marc <mkorman@sidley.com>; ratkins <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 - UP Response to Custodial Search Counterproposals

[EXTERNAL]

CSX will make that work.

Eric

Eric Enson

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From: Gridi, Avia <Avia.Gridi@stblaw.com>

Sent: Friday, June 12, 2026 10:19 AM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

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<LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

For CN, we can do Tuesday before 11 AM of the remaining times below.

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Friday, June 12, 2026 12:25 PM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Kelly, Kevin <Kkelly@cov.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>; Gridi, Avia <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

*** External Email ***

For BNSF, we can do Noon to 3 on Monday, and Joe's windows on Tuesday. We'll send some notes ahead of time on the ESI-related issues that we see as outstanding and that need to be agreed or submitted for decision.

McClain Thompson

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Friday, June 12, 2026 12:23 PM

To: Kelly, Kevin <Kkelly@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.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>; *AEllis@stblaw.com2 <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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

For CPKC:

Monday: before 11 or 12 to 3

Tuesday: before 11 or after 3

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, June 12, 2026 12:17 PM

To: Thompson, McClain <mcclain.thompson@kirkland.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>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>;

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Subject: [EXTERNAL] RE: FD 36873 - UP Response to Custodial Search Counterproposals

Counsel,

Please let us know your availability on Monday and Tuesday to meet and confer consistent with Judge Soulikias's guidance.

Best,

Kevin

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Friday, June 12, 2026 9:12 AM

To: Kelly, Kevin <kkelly@cov.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>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <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 - UP Response to Custodial Search Counterproposals

[EXTERNAL]

Kevin, Matt –

Speaking for BNSF: It is clear we continue to have significant disagreements about the ESI search process – including on custodians and the date ranges that should be applied to searches, among other issues. These issues have been ongoing for months. We'll be proposing near-term deadlines

to complete negotiations on all of these issues, and barring agreement, to have those issues submitted via letter briefing.

We also need to know more about your proposed use of TAR. We're not agreeing to the use of TAR unless and until we see the proposed TAR protocol and have a chance to comment on it. We have other issues, but we wanted to flag those before this morning's hearing.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, June 11, 2026 10:24 PM

To: Thompson, McClain <mcclain.thompson@kirkland.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>;

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Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan

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Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

McClain,

We write to provide a further update regarding the parties' negotiation of a custodial search framework. On behalf of Union Pacific, we are providing hit counts in the attached spreadsheet for the search term parameters that we shared with you on May 19 in response to your counterproposals. These hit counts are globally deduplicated and include email hits, including families, for the custodians we have agreed to search. Additionally, per your request, we have provided broken down hit counts, including families, for all the terms highlighted in yellow in the first tab. Please note that the attached hit report is for emails

collected and processed from Union Pacific's current enterprise email system, which has been in place since 2021. Union Pacific also maintains an archive of its prior enterprise email system, which contains emails from 2019 through 2021, and which we have collected and are still processing and searching. We intend to provide another hit report for emails stored on that prior system shortly. We understand that Norfolk Southern will provide its own hit counts via separate email.

Nonetheless, having reviewed the updated hit counts, and in the interest of moving discovery forward as efficiently as possible, Union Pacific accepts the modifications to the search terms requested by non-Applicant Class I railroads and identified in Column F of the attached. Now that the Parties have an agreed upon set of search terms, Union Pacific will move forward with conducting the searches described in the attached spreadsheet and reviewing the resulting documents consistent with the responsiveness criteria set forth in Union Pacific's initial proposal (as modified by my June 3 email below). Union Pacific intends to utilize additional advanced technology, including email threading and TAR, during its review. As noted, Norfolk Southern will provide its own hit counts, but I have been authorized to inform you that Norfolk Southern also accepts the modification to the search terms as requested by non-Applicant Class I railroads.

We intend to promptly proceed with review of these documents.

Best,

Kevin

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From: Kelly, Kevin

Sent: Wednesday, June 3, 2026 5:53 PM

To: 'Thompson, McClain' <mcclain.thompson@kirkland.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>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstraftford@steptoe.com <tstraftford@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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek

<dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <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 - UP Response to Custodial Search Counterproposals

McClain,

We write in response to the non-Applicants Class I railroads' May 26 email regarding the parties' negotiation of a custodial search framework. Please see the below responses. Counsel for Norfolk Southern has authorized me to state that these responses are on their behalf as well.

Rolling Searches and Productions. Applicants are committed to reviewing and producing documents on a rolling basis as soon as we resolve the below dispute regarding the responsiveness criteria.

Non-Custodial Searches. Applicants have conducted targeted collections of responsive materials where the non-Applicant railroads' requests are sufficiently narrow that such collection is reasonable. Where your requests are so overbroad that such collections are unreasonable and impractical, we have frequently proposed targeted collections that are reasonable and practical to implement, which you have rejected. We have determined that the only practical way forward is through custodial searches and productions. To the extent there are specific requests for which you contend targeted collections are necessary, we are willing to confer regarding those requests.

Centralized Sources. Applicants, as the producing parties, are in the best position to determine how to locate responsive documents stored on their systems in response to these requests. While Applicants' investigations into which non-custodial sources will be searched for responsive information are ongoing, we can confirm the Applicants are searching locations within non-custodial sources that are most likely to contain responsive information, including locations within SharePoint sites, data rooms, and other central repositories. Your request that we provide the "specific non-custodial data sources searched for response [sic] information (e.g., the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched), as well as the name and a description of all data storage systems maintained by the departments" is unreasonable and unduly burdensome.

Additional Custodians. While your proposal to add 21 Union Pacific custodians and 11 Norfolk Southern custodians is overbroad, unduly burdensome, and disproportionate to the needs of this proceeding, Applicants are willing to discuss adding a reasonable number of incremental custodians to address an actual need.

Union Pacific previously proposed searching 10 custodians who provided the verified statements supporting the claims in the Amended Application, and agreed to add 6 additional custodians (to the extent the overall scope of review is appropriately tailored to avoid undue burden). Norfolk Southern previously proposed searching three custodians who provided the verified statements supporting the claims in the Amended Application, and agreed to add 13 additional custodians.

Your only explanation for why 32 additional custodians are needed—on top of those identified above—is speculation that the additional custodians might possess some additional day-to-day communications not possessed by the custodians Applicants have already agreed to search. The types of unique documents you assert the additional custodians might possess demonstrate your overreach. Documents regarding the day-to-day implementation of PSR from eight years ago, the negotiation of individual customer contracts over a period of more than seven years, or the technical coordination of interline initiatives have little relevance to the merits of the Amended Applications. The key materials addressing any of these topics are likely to rise to the level of custodians that we have already proposed searching.

Nonetheless, to the extent you can articulate a basis for concluding that individual custodians among the 32 you propose possess documents that are material to the merits analysis of the Board and non-duplicative of those likely to exist in the files of the existing custodians, we are willing to confer on their addition.

Custodial Data Sources. For custodians, we are collecting from enterprise sources, including Email, Teams, and OneDrive, and will run agreed-upon search terms to identify potentially responsive documents. To the extent Applicants identify other custodial sources that are likely to contain responsive information, we will collect from these sources and run agreed-upon search terms to identify potentially responsive documents.

Date Range. For your requests that seek documents regarding Applicants' evaluation of the proposed transaction or its impacts, the time period proposed by Applicants—beginning July 30, 2024—is more than fair. The period begins one year before the execution of the merger agreement and months before the first event in the timeline of negotiations between Applicants (as contained in the public S-4 filing). The fact that 2023 was used as the base year for the application has no bearing on the question of when documents evaluating the proposed transaction were likely to have been created. For your requests that are not tied to evaluation of the proposed transaction or its impacts, Applicants have agreed to conduct searches for earlier time periods (going back to January 1, 2019 in most cases) to identify documents responsive to those requests. We are available to further confer on this issue if helpful, but we need a reasonable basis for extending the time period.

Search Terms. We will provide you with updated search term hit reports that are globally deduplicated and include hits with families and unique hits for the custodians we have proposed to search. For the sake of efficiency, we encourage you to propose revised search terms based on the hit counts we have provided to date. Based on the search term reports Union Pacific has provided, some of the searches are facially overbroad and not reasonably targeted to identify responsive documents.

Response-by-Response Approach. You have misunderstood our proposal. We will review each document for responsiveness to any of the RFPs included in the proposal regardless of which search term it hits on.

Responsiveness Criteria. In our custodial search proposal, we identified the reasonable scope of documents for which we would search in response to each request, which is

standard practice for responding to objectionably overbroad requests. In doing so, we have identified broad responsiveness criteria intended to account for the fact that the non-Applicant Class I railroads have issued hundreds of discovery requests that seek overlapping material and articulate their requests in inconsistent terms (even within a single railroad's requests).

Nonetheless, to address a specific concern that you have raised, Applicants are willing to modify the responsiveness criteria set forth in their custodial search proposals to remove the limitation to "studies, analyses, and reports," except insofar as the request itself is so limited. Instead, Applicants will search for "documents and communications" regarding the topics identified.

Responsiveness Evaluation. We think a discussion about technology or AI-assisted review to further cull documents for review is premature at this stage as we are still negotiating custodians, search terms, and data sources to be included in the review. Nonetheless, once Applicants have the opportunity to assess the data culled by the negotiated search terms, we expect to disclose whether they intend to use any technology or AI tools to further cull documents.

As always, we are available to discuss.

Best,

Kevin

Kevin Kelly

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www.cov.com

COVINGTON

From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Tuesday, May 26, 2026 2:50 PM

To: Kelly, Kevin <kkelly@cov.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>; [*AEllis@stblaw.com](mailto:AEllis@stblaw.com) <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; [*pdenton@steptoe.com](mailto:pdenton@steptoe.com) <pdenton@steptoe.com>; [*tstrafford@steptoe.com](mailto: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>; [*Avia.Gridi@stblaw.com](mailto:Avia.Gridi@stblaw.com) <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J.

<mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <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>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

[EXTERNAL]

Kevin, Matt –

We write on behalf of BNSF, CSX, CN, and CPKC regarding UP's and NS's custodian search proposals. Please let us know your position on the following:

Rolling Searches and Productions. UP and NS have already identified tens of thousands of email-based documents that will be a part of any search criteria. While our discussions continue on the overall parameters, UP and NS should be reviewing those documents and making rolling productions. Do you agree to do so?

Gating Issue / Non-Custodial Searches. While we attempt to find agreement on the parameters to be used for custodial searches, we want to be clear that custodial searching is not a substitute for all the non-custodial and off-the-shelf pulls that UP and NS still need to do. The custodial searching will need to run in parallel with those other discovery efforts. For example, custodial searches are not a substitute for UP and NS going to their commercial teams, including the employees you proposed as custodians plus those identified below, and asking them to pull their strategy decks, procedures related to pricing, and other categories of records responsive to the pending requests. Once UP and NS provide the non-custodial information, it may inform follow-up requests or help us identify supplemental search terms and/or custodians (once we see the language used internally to discuss those issues and who internally discussed these issues).

Centralized Sources. In addition to these custodians, UP and NS should be collecting documents from centrally stored locations, such as sharepoint sites and other central repositories, and searching those records alongside the files of these specific custodians. To that end, what centralized sources have UP and NS searched and what off-the-shelf pulls have UP and NS conducted? On January 6, to avoid motions practice, UP and NS said they were "willing to provide additional information regarding the sources from which they have collected responsive materials." See 1/6/26 K. Kelly Eml. To inform the overall search process, we need to know the specific non-custodial data sources searched for response information (e.g., the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched), as well as the name and a description of all data storage systems maintained by the departments referenced in your January 30 emails. If UP and NS intend to answer that question the same way UP and NS answered it on January 30 (e.g., "Accounting" and "Commercial"), please just let us know, as we'll need to notice depositions to learn this information and identify what repositories of responsive data exist.

Additional Custodians. In addition to collecting and searching the files for the custodians UP and NS identified in your initial proposal plus those you identified on May 21 as part of the review to comply with Decision No. 13 (excluding the lawyers), please see below for our position on the necessary additional custodians. This includes executives and key personnel who based on their roles would have information relevant to topics such as pricing and marketing strategies, customer negotiations, interline and intermodal initiatives, strategic planning and growth strategies, overseeing operations and evaluating potential mergers. The list of proposed custodians that UP

and NS initially provided is far too narrow. By way of example, actual negotiations with customers are not led by the senior executives of UP or NS. Likewise, UP's and NS's efforts and alleged potential struggles to modernize through implementation of PSR, to coordinate interline initiatives, and to grow their railroads short of a merger will likely be reflected primarily in the files of employees several levels below the C-suite.

To the extent that these individuals did not hold their current position for the time period covered by the requests, the files of their predecessors and successors should be collected to cover the full period. The list below is preliminary and subject to modification or expansion based on the review of the records that you have thus far withheld from discovery.

UP:

- Brad Moore (VP CC&S)
- Jennifer Bailey (AVP Operating Integration)
- Mike Santa Maria (VP HDC & Network Ops)
- Carl Garrison (VP Network Planning & Ops)
- Jamie Peters (AVP Operating Services)
- David Hughes (AVP Joint Facilities & Interline Ops)
- Steven Bybee (SVP-Ops, Southern Region)
- Erin Batt (VP-Dispatching)
- Elise Gosch (VP LOUP)
- Hunsdon Cary IV (VP-Premium)
- Jacque Bendon (SVP M&S Industrial)
- Jason Hess (SVP M&S Bulk)
- Kari Kirchhoefer (SVP M&S Premium)
- Ryan Steinbach (AVP-Premium Marketing)
- Laura Heisterkamp (AVP-Premium Marketing)
- Jason Steele (Sr. AVP-Automotive)
- Andrew Brady (VP External Relations)
- Jeff Pincock (VP-Strategy & Corporate Development)
- Dan McLaughlin (AVP M&S)
- Rebecca Gregory (SVP Administration)
- UP to Identify UP Person with Most Responsibility for TRRA

NS:

- Randolph St. Claire (AVP Operations)
- Tim Livingston (SVP Transportation)
- Rodney Moore (VP Transportation)
- Craig Hudson (VP, Industrial Development)
- Rob Jones (Director, Northern Region)
- Mike Grim (Director, Southern Region)
- Marybeth Flourney (Director, Strategic Partnerships)
- Christine Traubel (Group Vice President)
- Frank Voyack (VP Government Relations)
- Elizabeth Talton-Buck (Chief Communications Officer)
- NS to Identify NS Person with Most Responsibility for TRRA

Data Sources. What data sources have UP and NS collected – and are collecting – from each custodian?

Date Range. As a compromise, we'd be willing to agree to start custodian searches (i) that begin on January 1, 2023 for most requests and (ii) that begin on January 1, 2019 for certain search strings tied to pricing strategy, merger strategy, growth strategy, and interline initiatives.

Regarding (i), UP and NS selected 2023 as their base year, so we need to know what was being discussed internally that year. Please let us know if you are agreed in concept with (i) and (ii). If we need to have motions practice about the date range, we reserve the right to seek a broader time period.

Search Terms. Once we have your position on the above, we can re-engage on the necessary search terms and overall burden assessments. (We need to know de-duplicated, unique counts on a search term-specific basis in order to have that discussion in an informed way.)

Response-by-Response Approach. We do not agree to the request-specific approach that UP and NS have proposed. All of the filtered custodial data (meaning filtered by search terms and date) should be evaluated against the overall body of the requests. Doing it on a request-by-request basis risks unnecessary gaps. For example, it risks Document X being withheld where Document X is non-responsive to Request A but it is responsive to Request B, and Document X is only picked up by the searches designed for Request A (but not by the searches designed for Request B). That balkanized approach is not only foreign to us, but it would also create additional work for your respective teams. Please confirm you agree that a single universe of data should be evaluated against the overall body of the requests.

Responsiveness Criteria. We do not agree to your rewriting of the text of the requests in limiting the responsiveness criteria that your reviewers will apply. The custodians, search terms, and date limiters are all concessions to address UP and NS's burden concerns. We expect you to produce all non-privileged documents within those review parameters if they are responsive to one or more requests.

Responsiveness Evaluation. Do either UP or NS intend to rely on any technology- or AI-assisted review to cull the data further? If so, we need to know what that program is, so we can negotiate the necessary parameters and protections.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, May 21, 2026 10:25 PM

To: Thompson, McClain <mcclain.thompson@kirkland.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>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.

<Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstraftford@steptoe.com <tstraftford@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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mabenov@COV.COM <mabenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

McClain,

The aggregate number of hits for UP's proposal was 108,561 families (using the hit metric defined in my past emails and subject to the same limitations). The aggregate number of hits including the updated searches we ran in response to the counterproposals was 520,119 families. Please note that the updated aggregate continues to include the searches that UP proposed that were not subject to counterproposals (including searches related to CPKC requests). As a rough estimate, we expect the email families to contain 2.5 documents on average, for a total of roughly 270K documents for UP's proposal and 1.3 million documents for the updated searches prior to global de-duplication.

We are running separates searches to break down the terms in the highlighted search strings. We do not currently have an estimate on when we'll be able to provide those hit counts.

For the date ranges, we have provided responses addressing the time periods from your counterproposals, and do not believe they are reasonable for the most part. For example, you have proposed extending the search period for terms related to the Proposed Transaction back to July 30, 2023, but do not provide any basis for why that is reasonable or likely to identify additional responsive documents. We've already proposed a time period that begins a full year before the announcement of the merger, and aligns with the period that the Board has identified for merger-related searches performed in the context of Decision No. 13. If you have a further explanation for why this search period is tailored to identify responsive documents, please let us know.

As noted in my prior email, we have not yet globally de-duplicated the potential universe of documents.

As for the additional custodians pulled from the HSR set of custodians, we have provided search hit reports including those custodians to further the conferral process in response to your request, but their inclusion is subject to agreement on an appropriately tailored set of overall search terms. For your awareness, the additional custodians (beyond the 10 from our original proposal), and excluding the three lawyers I referenced in my prior email, are identified in the below table.

Last Name	First Name	Current Title / Last Title
Rynaski	Todd	SVP Strategy
Hamann	Jennifer	EVP & Chief Financial Officer
Miller	Mike	VP Finance and Real Estate
Jalali	Rahul	EVP & Chief Information Officer
Schumaker	Corrie	General Director Business Development and Planning
Whited	Beth	Special Advisor

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Thursday, May 21, 2026 10:18 AM

To: Kelly, Kevin <kkelly@cov.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>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <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>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

[EXTERNAL]

Kevin – Following up here. What is your position on providing the information requested below? Also, it appears that UP is willing to include as custodians those individuals that UP searched for purposes of responding to Decision No. 13 minus the lawyers. To our knowledge, we're not aware of who those custodians are. Can you please provide a list of all the custodians that UP is

proposing to search, so that we can evaluate? Thanks, McClain

McClain Thompson

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From: Thompson, McClain

Sent: Wednesday, May 20, 2026 9:57 AM

To: 'Kelly, Kevin' <Kkelly@cov.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>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.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>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mabenov@COV.COM <mabenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

Kevin –

To meaningfully respond and evaluate this, we need the information that we have been requesting. All the information we are requesting is standard and easily accessible for your e-discovery consultants. To reiterate, we need:

- The number of unique hits (with and without family) for UP's proposal and our counter-proposal;
- A hit report listing the number of hits for each term within your highlighted search strings;
- The number of incremental hits that would be generated if our proposed date ranges were used instead of UP's; and
- Has the collected data been de-duplicated?

We have other issues with the below, but we need that information to even begin to have a conversation of whether UP's burden concerns have any validity. And if you all are not going to provide that information, please just let us know, so we can move forward.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Tuesday, May 19, 2026 11:46 PM

To: Fanchiang, Eric <EFanchiang@crowell.com>; Thompson, McClain

<mcclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>;

*AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.

<Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J.

<matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>;

*tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.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>; *Avia.Gridi@stblaw.com

<Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F.

<hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric

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<wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline

<CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>;

Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>;

*lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>;

*mabenov@COV.COM <mabenov@COV.COM>

Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

Counsel,

Thank you to the parties that provided counterproposals in response to UP's custodial search proposal in this proceeding. We've prepared the attached chart that shows the new search terms from your counterproposals with family hits counts run across emails only. Please note that we have applied time periods consistent with our original proposal and added responsive notes regarding the appropriate time periods.

For each search term, we identify the total family hits from our original set of ten proposed custodians. For search terms that are related to UP's analysis of the proposed transaction, we have also identified the total family hits for the original set of proposed custodians *and* the fourteen individual custodians that UP searched in response to Decision No. 13 (as described in UP-49 at 5-6). To the extent we can agree on appropriately tailored terms, Union Pacific is willing to search both sets of custodians for these searches, except that Union Pacific will exclude from review documents from the following three custodians: Christina Conlin, Michael Schmidt, and John Menicucci. These custodians are all lawyers in UP's Law Department. Any non-privileged documents they possess are likely also in the custodial files

of the remaining custodians. Please note that certain HSR custodians were already included in the original set of custodians proposed by UP. Consistent with our prior report, the hit count for each search reflects the total number of email families containing the search terms during the identified time period without global de-duplication.

While we have run these reports to aid in the parties' further conferral process, we do not concede that the proposed searches are reasonable or consistent with the Board's merger rules or its past practice in merger proceedings, and maintain that any search will need to be guided by the responsiveness criteria identified in our original proposal. In the attached spreadsheet, we have highlighted search terms that appear overbroad or only loosely tied to a pending discovery request, and that are likely to draw in a large volume of irrelevant material, the review of which is disproportionate to the needs of this proceeding. Additionally, even for the terms/custodians that UP is likely agreeable to, UP reserves the right to come back and ask for additional modifications should the terms hit a larger than anticipated volume of material once all email is through final processing and UP has the final total of globally de-duplicated email hits, including family members and other non-email custodial sources.

Nonetheless, we are hopeful that the parties can further confer to resolve any remaining issues. For the requests that Union Pacific has highlighted, please let us know by Friday at 12 PM ET whether you intend to stand on your counterproposal or will provide a revised position, and explain which specific pending discovery request each individual proposed term is tailored to address. If you would like to confer regarding these terms, the time periods, or custodians, please let us know.

Best,

Kevin

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COVINGTON

From: Fanchiang, Eric <EFanchiang@crowell.com>

Sent: Wednesday, May 13, 2026 9:03 PM

To: Thompson, McClain <mccclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.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>; *Avia.Gridi@stblaw.com>; Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

[EXTERNAL]

Covington team,

Please see below for a combined counterproposal that includes CSXT's counterproposals layered on top of BNSF's counterproposals. Again, we reserve all rights until we receive the organizational charts and the standard types of hit reporting that should have been provided already.

UP Custodians: Our position on custodian lists is reserved pending receipt of the organizational charts that we have been asking UP to provide since last fall. UP's custodian list, however, should at least include the following:

- Eric Gehringer
- Matthew Graham
- Grant Janke
- Katherine Novak
- Marqi Parkerson
- Joshua Perkes
- Carrie Powers
- Kenny Rocker
- John Turner
- Jim Vena
- All other custodians that UP searched in response to HSR order. If UP has reasons why it would have searched a particular individual for responsive competition-related information in response to the Board's order but believes that person's files are not relevant for a broader set of discovery requests, please provide your person-specific position.

Date Range: July 30, 2023 to Present

Search Strings: For each string, from July 30, 2023 to Present – unless otherwise noted.

- (Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby OR Pegasus OR Cobalt OR Basalt) AND (merg* OR transaction OR combination OR acqui* OR control)
- (BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National") /10 AND ("cooperative agreement" or "joint venture" or alliance)

o Search is January 1, 2015 to present.

-

"capital budget" or "capital spending" or "capital program" **OR "capital forecast"** or "annual operating plan" or "long range plan"

- Search is January 1, 2024 to present

- (fail* **w/5 W/25** interline)

- Search is January 1, 2019 to present

- ((yard* or shop* or facilit*) **w/3/ W/25** (closing* or closure* or rationalize)) AND (price* or cost*)

- Search is January 1, 2019 to present

- interline **w/5 W/25** (pric* OR quality OR efficien*)

- Search is January 1, 2019 to present

- (facilit* **w/3 W/25** new) W/20 (offer OR bid)

- Search is January 1, 2019 to present

- (Buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive))

- Search is January 1, 2019 to present

- ((invest* OR improv*) **w/5 W/25** (interline or interchange))

- Search is January 1, 2019 to present

- **(Committed /2 Gateway) OR ((BNSF OR CSX) /5 rate)**

- ("single line" AND interline AND compet*)

- Search is January 1, 2020 to present

- interchange W/5 (alternat* OR compet*)

- Search is January 1, 2020 to present

- (pricing **w/5** (formula OR model OR polic* OR strateg* or system))

- Search is January 1, 2020 to present

- (negotiat* or strateg*) W/10 (bundl* OR tying OR tie OR link* OR leverag* OR **multi* OR refun* or discount* or waiv***)

- Search is January 1, 2019 to present

- (((**amtrak**) AND (sedalia OR "jefferson city" OR "river subdivision" OR chicago)) AND (complain* **OR disput***)

- Search is January 1, 2020 to present

- “Service Assurance”
- (Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby OR Pegasus OR Cobalt OR Basalt)
AND
 - **Operational Terms:** integ* OR operat* OR diver* OR safety OR "rail service" OR labor OR employment OR ((passenger OR commuter) /5 service) OR (yard /2 control) OR (train /2 build*) OR (transport* /2 manag*)
 - **Financial Terms:** debt OR revenue OR earning* OR EBITDA OR leverage OR (operating /2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth
 - **Board Terms:** (Board /5 Director*) OR (Board /10 Committee)
 - **Gateway Terms:** (gateway* /10 traffic OR I-5)
 - **Divestment Terms:** share* and (TRRA OR (Terminal /2 Railroad) OR PPU OR TTX OR (Peoria /2 Pekin))
 - **Analyst/Earnings Call Terms:** (rail /2 rail) OR watershed or (lane* /2 traffic) OR (cross /2 town /2 move) OR (data /2 integ) OR (technolog* /2 cutover)
 - **Application Contention Terms:** (single /2 (carrier OR line)) OR “parallel route*” OR defens* OR Amtrak OR “partnership agreement” OR (transition* /2 service) OR freight OR port* OR trade OR “vertical effect*” OR (negot* /s contract*) OR (traffic /2 (manifest or level*)) OR “principal route*” OR (truck /2 rail) OR IT or tech* OR (service* /2 disrupt*)

Questions and Comments:

- Please provide the organizational charts that we have requested.
- Please confirm the data sources that UP is collecting from each custodian.
- Please provide hit reports that also include the number of unique hits (plus family).
- Please provide hit reports that also include the number of hits (plus family) on a custodian-by-custodian basis.
- Please provide hit reports that also include the number of hits (plus family) by search term.

Best,

Eric Fanchiang

Eric Fanchiang

Pronouns: he/him/his
Crowell & Moring LLP
efanchiang@crowell.com
+1.949.798.1338 direct

From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Tuesday, May 12, 2026 6:47 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

Covington Team – Please see below for BNSF’s counter proposal, with rights reserved until we receive the organizational charts and the standard types of hit reporting that should have been provided already. Please see the questions and notes at the bottom of this email.

UP Custodians: Our position on custodian lists is reserved pending receipt of the organizational charts that we have been asking UP to provide since last fall. UP’s custodian list, however, should at least include the following:

- Eric Gehringer
- Matthew Graham
- Grant Janke
- Katherine Novak
- Marqi Parkerson
- Joshua Perkes
- Carrie Powers
- Kenny Rocker
- John Turner
- Jim Vena
- All other custodians that UP searched in response to HSR order. If UP has reasons why it would have searched a particular individual for responsive competition-related information in response to the Board’s order but believes that person’s files are not relevant for a broader set of discovery requests, please provide your person-specific position.

Date Range: July 30, 2023 to Present

Search Strings: For each string, from July 30, 2023 to Present – unless otherwise noted.

- (Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control)
- (BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or

CN or "Canadian National") ~~/10~~ **AND** ("cooperative agreement" or "joint venture" or alliance)

- o Search is January 1, 2015 to present.

- "capital budget" or "capital spending" or "capital program" **OR "capital forecast"** or "annual operating plan" or "long range plan"

- o Search is January 1, 2024 to present

- (fail* ~~w/5~~ **W/25** interline)
- ((yard* or shop* or facilit*) ~~w/3/~~ **W/25** (closing* or closure* or rationalize)) AND (price* or cost*)
- interline ~~w/5~~ **W/25** (pric* OR quality OR efficien*)
- (facilit* ~~w/3~~ **W/25** new) W/20 (offer OR bid)
- (Buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive))
- ((invest* OR improv*) ~~w/5~~ **W/25** (interline or interchange))
- (Committed /2 Gateway) OR ((BNSF OR CSX) /5 rate)
- "Service Assurance"
- (Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND
 - o **Operational Terms:** Integ* OR operat* OR diver* OR safety OR "rail service" OR labor OR employment OR ((passenger OR commuter) /5 service) OR (yard /2 control) OR (train /2 build*) OR (transport* /2 manag*)
 - o **Financial Terms:** debt OR revenue OR earning* OR EBITDA OR leverage OR (operating /2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth
 - o **Board Terms:** (Board /5 Director*) OR (Board /10 Committee)
 - o **Gateway Terms:** (gateway* /10 traffic OR I-5)
 - o **Divestment Terms:** share* and (TRRA OR (Terminal /2 Railroad) OR PPU OR TTX OR (Peoria /2 Pekin))
 - o **Analyst/Earnings Call Terms:** (rail /2 rail) OR watershed or (lane* /2 traffic) OR (cross /2 town /2 move) OR (data /2 integ) OR (technolog* /2 cutover)
 - o **Application Contention Terms:** (single /2 (carrier OR line)) OR "parallel route*" OR defens* OR Amtrak OR "partnership agreement" OR (transition* /2 service) OR freight OR port* OR trade OR "vertical effect*" OR (negot* /s contract*) OR (traffic

/2 (manifest or level*)) OR "principal route*" OR (truck /2 rail) OR IT or tech* OR (service* /2 disrupt*)

Questions and Comments:

- Please provide the organizational charts that we have requested.
- Please confirm the data sources that UP is collecting from each custodian.
- Please provide hit reports that also include the number of unique hits (plus family).
- Please provide hit reports that also include the number of hits (plus family) on a custodian-by-custodian basis.
- Please provide hit reports that also include the number of hits (plus family) by search term.

McClain Thompson

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Washington, D.C. 20004
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M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Thursday, May 7, 2026 10:57 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>;
*AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.
<Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J.
<matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>;
*tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>;
Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>;
Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>;
Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke
<LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise,
Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan
H. <goldenn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>;
Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>;
*dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman,
Marc <morkman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte
<CKrovoza@cov.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

We have completed a review of the 181 files you identified. We provide specific responses in the attached table.

As reflected in the table, most of the files are not workpapers. Rather, they are temporary files generated in the process of producing workpapers from underlying data. Our consultants generally provided the underlying data and the instructions and programs needed to process the data to create the workpapers that support their statements. To the extent you wish to retrace their work, including recreating the temporary files, the readme files included with the consultants' workpaper productions provide detailed instructions for running the programs that generate those files during the process of producing the workpapers. If you encounter any difficulty with the instructions, we would be happy to connect you with our consultants for further assistance.

As also reflected in the table, a number of other files on your list were not missing from the production, but some could have appeared to be missing because they were placed in the wrong folder or because a script contains an outdated reference. In some cases, we recognized that files were mistakenly listed in our index as workpapers. We identified 19 workpapers that arguably should have been included in the original upload but were not. We expect to provide those workpapers, updated scripts, relocated workpapers, and an updated index through Covington's Kiteworks FTP site on Friday.

If you have any questions about specific files or our specific responses, please let us know, and we will do our best to address them.

Regards,

Mike

Michael L. Rosenthal

Covington & Burling LLP
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www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Tuesday, May 5, 2026 9:03 PM

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; [*AEllis@stblaw.com](mailto:AEllis@stblaw.com)2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; [*pdenton@steptoe.com](mailto:pdenton@steptoe.com) <pdenton@steptoe.com>; [*tstrafford@steptoe.com](mailto:tstrafford@steptoe.com) <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; [*Avia.Gridi@stblaw.com](mailto:Avia.Gridi@stblaw.com) <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

[EXTERNAL]

Sidley, Covington Teams – Although our review is ongoing, we have identified 181 missing work

papers, intermediate datasets, and files that are needed to re-run applicant's backups and verify output. All should have been provided with the application last Thursday morning. Please see attached for a summary chart. Please let us know your position by this Thursday, so we can evaluate next steps. Thanks, McClain

McClain Thompson

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mcclain.thompson@kirkland.com

From: Thompson, McClain

Sent: Tuesday, April 14, 2026 8:48 AM

To: 'Kelly, Kevin' <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

Kevin – Can you please let us know your position on the highlight below? Thanks, McClain

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mcclain.thompson@kirkland.com

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Wednesday, March 11, 2026 3:02 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>;

[*AEllis@stblaw.com](mailto:AEllis@stblaw.com)2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

I write in response to the various issues raised in your March 5 email.

Ordinary Course Materials

-
Applicants' March 4, 2026, submission to the Board accurately describes Applicants' conduct and approach to discovery in this proceeding. During the current pre-application phase of discovery, Applicants have voluntarily produced a substantial volume of documents created and maintained in the ordinary course of their businesses. These documents are in addition to the thousands of pages of application and hundreds of gigabytes of supporting workpapers that Applicants have submitted. Applicants have also agreed to produce additional ordinary course documents in the future, including board and banker materials.

Of course, it is true that Applicants have objected to specific requests that seek sweeping production of broad categories of documents, including ordinary course documents, but Applicants did not object to those requests because they seek "ordinary course" documents. Applicants objected to those requests on other grounds, including that they are over broad, unduly burdensome, and not proportional to the needs of the proceeding. Nonetheless, Applicants continue to confer with other parties regarding specific requests with the hope of identifying workable solutions for conducting targeted collections of relevant documents, including ordinary course documents. Applicants have recently proposed compromises to resolve certain requests from CPKC, and expect to make additional proposals in the future, including with respect to requests from BNSF.

To address your specific questions, Applicants expect to make additional productions of ordinary course documents during the pre-application phase of this proceeding, but there is no deadline that is imposed on these voluntary productions under the Board's rules. Applicants have coordinated with appropriate personnel at each company to conduct searches for responsive documents, including documents stored in email systems, consistent with Applicants' objections. Applicants have taken steps to preserve relevant documents in their possession.

Board Materials

To clarify the record, on February 4, I informed you that Union Pacific was engaged in a process to scope the Board materials addressing the proposed transaction that were

potentially responsive, had collected certain materials consistent with that process, and had begun its review process. On March 4, I confirmed the parameters that Union Pacific was employing to identify responsive material, that Union Pacific's review process was ongoing, and that due to the ongoing nature of the review I could not provide a date certain for production. Those representations remain accurate and consistent with Union Pacific's representations to the Board. Notwithstanding the foregoing, I expect Union Pacific's voluntary production of Board materials will occur prior to the submission of its revised Application, and Norfolk Southern expects to produce some Board materials this week.

BNSF Set 1, Request No. 8

Addressing the substance of this dispute first, and consistent with our discussions on March 4, I can confirm that there are no responsive documents for the period July 29, 2025, to December 19, 2025 (*i.e.*, from the merger announcement to Applicants' submission of letters in support). I am not aware of any additional responsive documents for the period December 20, 2025, to present, but still confirming for this later time period.

As for the remaining mischaracterizations in your email, I will reiterate the points that I made on our March 4 call. When BNSF identified an improper blanket time period in its requests, Applicants objected and clearly indicated that they would employ a different time period for their responses—a standard practice in discovery. Applicants have consistently maintained that the time period they are employing is a reasonable default while remaining open to discussing exceptions for specific requests. For certain requests, Applicants have already agreed to apply a different time period.

Transearch and DAT Freight & Analytics Data

We are continuing to review your February 24, 2026, request for a copy of Applicants' contracts with Transearch, and your further explanation of that request during our discussion on March 4, including your additional request for a description of the data sets that other parties would need to request from Transearch. I expect to have an update on these requests shortly.

We are also reviewing your March 4 request for the same information for the DAT Freight & Analytics data.

Other Data Follow-Ups

We are looking into the follow-up questions you had regarding various data requests and will respond separately on most of those requests. For now, I can confirm that Applicants object to collecting and producing additional data for the year 2025. Applicants are using 2023 as the base year for their impact analysis, and the Board specifically required Applicants to produce 100% traffic tapes only for the period 2019 to 2024. BNSF's request for 2025 data is overly broad, unduly burdensome, disproportionate to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Kelly, Kevin

Sent: Monday, March 9, 2026 5:02 PM

To: 'Thompson, McClain' <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

We are available 3-5 PM ET on Wednesday to discuss BNSF's 2nd set of discovery requests.
We will respond separately to the other parts of your email.

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Thursday, March 5, 2026 7:03 PM

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

EXTERNAL

Mike, Kevin, and Matt –

We write regarding various issues discussed on yesterday's meet and confer.

Ordinary Course Materials

Yesterday, UP and NS represented to the STB that UP / NS will produce ordinary course documents. *See* UP-31/NS-30. That representation is inconsistent with Applicants' actions to date. Applicants have produced no board materials, no banker materials, no strategic plans, no growth forecasts, and none of their employees' communications about actual integration plans (or any other subject). UP and NS continue to shield ordinary course documents, as well as their internal assessments and conversations about merger-specific issues. Yesterday, UP and NS refused to commit to produce these documents on any particular timeline.

So that the record is clear: What ordinary course documents will UP/NS voluntarily produce? And what is the deadline by which UP/NS will make those productions?

Meanwhile, our understanding is that UP and NS still have not collected (let alone searched) emails from any custodian. If we have that wrong, please let us know.

Please also detail the steps that UP and NS have taken to preserve potentially relevant ordinary course materials. Are you able to represent that they have been preserved?

Board Materials

Board materials are one example of what UP and NS continue to withhold. On February 4, UP and NS both explained how they had scoped their board material production – that is, they had already identified the board materials that they were agreeing to produce. Counsel for NS said that NS would produce its board materials the week of February 9. One month later, none have been produced. Yesterday, UP and NS said they are moving with “all deliberate speed,” but would not

provide a date by which they will produce any board materials. Counsel for UP and NS also declined to commit to produce any board materials before an application is accepted. That is inconsistent with the representations UP and NS made to the Board that they are voluntarily advancing the production of ordinary course materials.

BNSF Set 1, Request No. 8

We also write to memorialize our discussion regarding UP's response to BNSF Set 1, Request No. 8. It seeks documents "sufficient to show any discounts, contract extensions, or any other economic value or concession offered in connection with or related to any discussion with a customer or stakeholder related to its support or non-opposition of the Proposed Transaction." UP responded "Union Pacific has not identified any such materials." We learned on yesterday's call that UP's response was date-limited to inducements / discounts offered on or before July 29, 2025 – *i.e.*, before UP and NS executed their merger agreement, such that the discovery response would almost certainly yield a null set. There is no logical explanation for UP selecting that cut-off, except to shield responsive information from stakeholders and the STB. UP's limitation flies in the face of Jim Vena's promises of "transparency" in this process. In league with UP's efforts to shield Schedule 5.8 under a baseless privilege assertion, UP's response to Request No. 8 is emblematic of the difficulties stakeholders face in trying to get to the bottom of the application and the contentions that support it. We assume UP will revise its response to Request No. 8 to reflect all economic concessions offered to customers and stakeholders since the merger announcement.

Transearch and DAT Freight & Analytics Data

Regarding Transearch, we renew our request (now pending for nearly a month) that UP provide an excerpt of UP's contract with Transearch that shows any information-sharing restrictions, so we can assess the parameters of any such restrictions. Please also identify the specific data sets (databases queried, date range, etc.) that stakeholders would need to request from Transearch to receive the same information that UP / NS received and used to prepare their application. Please also provide the same information for the DAT Freight & Analytics data that Applicants received or had access to in connection with preparing their application (see App. Vol. II at 454).

Other Data Follow-Ups

On our call, we also said that we would follow up on certain data requests. Please see below:

- BNSF Set 1, No. 9: We asked for car and container movement data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025? Also, the car event data produced by UP does not report train symbol information for ~20% of the records. The lack of consistent reporting of train symbols in this data diminishes the utility of this data and opens the possibility for misinterpreting or overlooking important trends and patterns. Please either confirm these are data anomalies that may be disregarded, or please explain what these records represent. Next, the car event data produced by UP does not contain fields sufficient for identifying the sequence of cars within a train at a given event. Car sequencing information is part of standard car event data and is necessary for understanding how different types of interchange and other train events affect blocking and train build activities and assessing what potential there is for incremental improvement under combined operations.
- BNSF Set 1, No. 10: We asked for system-wide train event data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the

information through 2025? Also, UP has produced computer readable density data for only 2024 (and not for 2019-2023). Additionally, the computer readable density data that UP produced for 2024 does not identify foreign densities (i.e., densities for other railroads operating by trackage rights or other joint agreements over UP segments). Density data broken out by owner vs foreign densities is necessary for evaluating pre- and post-merger volumes relative to capacity and the impact that UP/NS's anticipated growth traffic may have on foreign traffic operating via trackage rights or joint use agreements on UP/NS segments.

- BNSF Set 1, No. 12: We asked for density information based on specific parameters from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025? Also, does UP agree to break out computer readable density data by passenger, foreign, and UP volumes?
- BNSF Set 1, No. 25: We asked for reciprocal switch data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025?

Next Meet-and-Confer

Can you please let us know your availability on Monday, Tuesday, or Wednesday to walk through BNSF Set 2?

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, February 27, 2026 3:21 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEenson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise,

Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

Tuesday doesn't work on our end, but we could do Wednesday 3-5 PM ET if that works for you.

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Thursday, February 26, 2026 6:46 AM

To: Kelly, Kevin <kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; AEllis@stblaw.com <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; pdenton@steptoe.com <pdenton@steptoe.com>; tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

[EXTERNAL]

Kevin – Could you please provide alternative availability on Tuesday? Thanks, McClain

McClain Thompson

SEE THE BOTTOM OF THIS MESSAGE FOR THE FULL LIST OF ATTACHED FILES

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Tuesday, February 24, 2026 8:51 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

We are available to confer on Friday between 1 and 3 PM ET. If that time does not work on your end, we can propose additional times early next week.

Much of the rest of your email simply recycles the same talking points (and mischaracterizations) that you have previously raised and that Applicants have previously addressed. We remain committed to voluntarily engaging with BNSF (and other parties) regarding the appropriate scope of discovery in this proceeding, and believe the most productive way to do that is in the context of specific discovery requests. We will be prepared to discuss the specific requests in BNSF's 1st and 2nd sets of discovery requests on Friday.

We will also consider your request for a copy of Applicants' contracts with Transearch.

Best,

Kevin

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Tuesday, February 24, 2026 3:17 PM

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

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Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

[EXTERNAL]

Kevin –

We write to again request that Applicants engage in discovery so that we can advance the process.

To date, Applicants have produced no board materials, no strategic plans, no growth forecasts, and none of their employees' communications about actual integration plans (or any other subject). UP and NS continue to shield ordinary course documents, as well as their internal assessments and conversations about merger-specific issues.

To date, UP has produced only 1,719 documents and has made no productions in 26 days. In its last production, UP produced only 323 documents, most of which are routing, leasing, and trackage rights agreements.

NS has also produced only 998 documents and has made no productions since December. In addition, on February 4, counsel for NS stated that NS board materials would be produced the week of February 9. None have been produced.

Please let us know when UP and NS are available to further discuss these issues, as well as reconvene on BNSF Set 1 and BNSF Set 2, as we were prepared to do on February 11. (Regarding the requests we have served: UP's summary of Decision No. 10 mischaracterizes the scope and substance of Decision No. 10, including for the reasons identified in our appeal.)

Further, BNSF renews its request from February 1 for the following information:

- Please confirm that UP and NS have not collected or searched any emails, for any custodians, as part of their discovery efforts.
- To the extent UP and NS have engaged in custodial searches, please identify: (i) the custodians; (ii) the search terms used; (iii) the data parameters used; and (iv) any criteria (other than privilege or work product) used to shield documents from searching or production.

- The specific non-custodial data sources searched for response information (e.g., the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched).
- To the extent UP and NS have engaged in non-custodial searches for each source, please describe with specificity UP and NS's search and collection protocol (i.e., search terms and data parameters, "go-get" productions by UP or NS employees, another tool or strategy, etc.).
- The name and a description of all data storage systems maintained by the departments referenced in your emails.
- The name of any UP or NS employee that drafted, reviewed, or provided factual information that fed into (or supported) the verified statements supporting UP and NS's 12/19 application.

Finally, please let us know if UP and NS are willing to produce its contract with Transearch, so we can see any sharing restrictions.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, February 20, 2026 4:06 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

McClain,

I was traveling outside the office this week, but will follow up separately with times when we

are available to meet and confer next week.

While Applicants remain committed to voluntarily engaging with BNSF (and other parties) regarding the appropriate scope of discovery in this proceeding, we are concerned that you are not taking seriously the holding of the Board in Decision No. 10. Specifically, your unsupported assertion that the “vast majority of discovery has not been provided” assumes a level of pre-application discovery that the Board has clearly stated is not required under the Major Merger Rules. Contrary to your assertions, Applicants have already provided *all* of the pre-application discovery that they are required to provide, and have also produced enormous volumes of additional discovery on a voluntary basis.

Nonetheless, we are hopeful that by continuing to engage in the discovery process prior to submission of a revised application, Applicants and the other parties will be able to resolve many discovery issues well before the post-application discovery process actually commences.

Regarding the board and banker materials, I informed you on our last call that I could not provide a date of production because we were still engaged in the process of collecting and reviewing potentially responsive materials. I can confirm that we have *not* paused our review of these materials pending the filing of the revised application, and that review is ongoing.

Best,

Kevin

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Monday, February 16, 2026 11:16 AM

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>;

Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

[EXTERNAL]

Kevin, Matt –

When are UP and NS available to reschedule the meet and confer that UP/ NS took down last week?

While there is still time, we should continue discussions regarding our pending requests and see where compromises can be reached and where we're at impasse on others. We expect productions will continue in parallel with those discussions; the vast majority of discovery has not been provided.

When will UP and NS be producing the board and banker materials that they promised were forthcoming last week (NS) and shortly thereafter (UP)?

If Applicants' position is that discovery (not only productions, but also efforts to find compromises or run searches) is on pause until Applicants re-file their application, please just let us know.

Thanks,

McClain

McClain Thompson

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From: Thompson, McClain

Sent: Wednesday, February 11, 2026 2:00 PM

To: 'Kelly, Kevin' <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise,

Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

Kevin – We should keep the call. The ALJ's denial without prejudice changes nothing about the meet-and-confer process or the various follow ups on which we need answers from UP and NS. The decision was purely about timing, not scope. We need to keep the process moving, so there is not further delay. Thanks, McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Wednesday, February 11, 2026 11:54 AM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

McClain,

We need to reschedule this afternoon's meet and confer. We are digesting the decision that the Board just issued denying BNSF's motion to compel and will need to confer with our clients before we reconvene.

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Friday, February 6, 2026 5:43 PM
To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

[EXTERNAL]

Thanks. For BNSF Set 1 and Set 2, I'll send an invite for 2 ET on Wednesday.

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Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke

<LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

McClain, we could do:

- Wednesday – 2-3:30 ET
- Thursday – 2:30-3:30 ET

Eric, I'll circle back with you next week.

Kevin Kelly

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Sent: Thursday, February 5, 2026 12:13 PM

To: Enson, Eric <EEnson@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

[EXTERNAL]

Matt, Kevin – What are some good windows for you next week, and then we can schedule around that? Thank you, McClain

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Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com2>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

Subject: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

Counsel,

As I mentioned on yesterday's call, we would like to meet and confer on Applicants' Responses and Objections to CSXT's document requests. It's probably most efficient to do so after we complete the meet and confers on BNSF's specific requests, but we would like to connect shortly thereafter. Once we get dates for the BNSF meet and confers, please let me know what works for you in terms of scheduling. Thanks.

Eric

Eric Enson

eenson@crowell.com

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ATTACHMENT 2

From: [Thompson, McClain](#)
To: [Korman, Marc](#); [Georges, Maria](#); [Kelly, Kevin](#); *[AEllis@stblaw.com2](#); [Matelis, Joseph \(NON-SIDLEY @SULLCROM.COM \)](#); [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); *[pdenton@steptoe.com](#); *[tstrafford@steptoe.com](#); [Cunningham, Rich](#); [Scheib, John M.](#); [Gardiner, Kent](#); [van Houwelingen, Luke](#); [Aluise, Dylan M.](#); [Hynes, Samantha F.](#); [Golden, Nathan H.](#); [Joseph, Neil](#); [Volbrecht, Tate D.](#); [Enson, Eric](#); [Fanchiang, Eric](#); *[Avia.Gridi@stblaw.com](#); [Vaidya, Tushar](#)
Cc: [Ludwin, Derek](#); [Flahive Wu, Laura](#); [Rosenthal, Michael](#); [Magcale, Jamie Dominique U](#); [Brown, Molly](#); [Damitio, Daniel](#); [Harrison, Caroline](#); [Krovoza, Charlotte](#); [Warren, Matthew J.](#); [ratkins](#); [Laudone, Stephen S.](#); [William Mullins](#); [Spencer Naake](#); [OpalDisco](#)
Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests
Date: Thursday, July 2, 2026 2:21:07 PM
Attachments: [image001.png](#)

[EXTERNAL]

Marc, Maria –

Speaking for BNSF:

We will be sending a list of questions and issues. To be clear, there is not an agreed upon set of search terms or date limiters. (Among other issues, we have been standing by for 15 days for UP and NS to provide hit counts in response to the CPKC search terms.) There is certainly no agreement that UP and NS can apply search terms (that were being negotiated for a linear review) before dumping that filtered set into a TAR process. If we were to agree to any pre-TAR search terms, it would not be close to the set of terms that were being discussed for a linear review.

We will follow up with additional questions and issues.

Thanks,

McClain

McClain Thompson

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain,

Below is Norfolk Southern's disclosure related to TAR.

Norfolk Southern TAR Disclosure

Norfolk Southern intends to apply the parties' agreed-upon search terms and date filters to its electronically stored information ("ESI"), including emails, OneDrive, and Teams data for all agreed custodians. Norfolk Southern works with Redgrave LLP and Troutman Pepper Locke ("Troutman") on eDiscovery. Troutman is providing the eDiscovery technology services with RelativityOne, and processes ESI using industry-standard methods, including global deduplication, deNISTing, and date filtering. Global deduplication will remove exact duplicates across custodians based on family-level hash values. Norfolk Southern also intends to utilize standard email-threading technology.

In addition, Norfolk Southern will use TAR via Relativity Review Center to cull documents for review and production. Files that are not suitable for analysis by TAR will be set aside for potential manual review. Norfolk Southern can provide a list of file types not suitable for TAR (e.g., multimedia files, system files, empty/zero byte files, empty container files) once they have been identified.

After Norfolk Southern's custodial productions are substantially complete, if parties have reasonable questions regarding Norfolk Southern's validation methodology, we are willing to meet and confer and provide reasonable TAR-related metrics.

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<pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich

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Cc: Ludwin, Derek <dludwin@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain - Please see UP's disclosure regarding the use of TAR.

UP TAR Disclosure:

As previously discussed, UP intends to apply the parties' agreed-upon search terms and date filters to its electronically stored information ("ESI"), including emails, OneDrive, and Teams data for all agreed custodians. UP has retained Lighthouse as its eDiscovery vendor. Lighthouse will process ESI using industry-standard methods, including global deduplication, deNISTing, and date filtering. Global deduplication will remove exact duplicates across custodians based on family-level hash values. UP also intends to utilize Lighthouse's standard email-threading technology.

In addition, UP intends to use Lighthouse's proprietary TAR tool, IQ Review, to cull documents for review and production. Files that are not suitable for analysis in IQ Review will be set aside for potential manual review. UP can provide a list of file types not suitable for IQ Review (e.g., multimedia files, system files, empty/zero byte files, empty container files) once they have been identified.

After UP's custodial productions are substantially complete, if the Parties have reasonable questions regarding UP's validation methodology, UP is willing to meet and confer and provide reasonable TAR-related metrics, including estimated recall and/or precision at the selected cutoff score.

All the best,

Maria

Maria Georges

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Sent: Monday, June 29, 2026 11:34 AM

To: Kelly, Kevin <Kkelly@cov.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

Cc: Ludwin, Derek <dludwin@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

Kevin –

For BNSF:

On data rooms and diligence trackers, here is what you said on May 29: “UP and NS are willing to conduct searches and review the contents of the virtual data rooms that the Applicants used to share due diligence materials related to the proposed transaction consistent with the custodial search framework that the parties are currently negotiating.” Respectfully, I don’t know what that means – what would be left behind? Are you willing to produce the contents of all data rooms and the diligence trackers in full or not? Based on your May 29 response, I don’t believe UP and NS are willing to produce the contents of all data rooms and the diligence trackers.

On TAR, I struggle to see how you can simultaneously tell the ALJ that you want to complete productions in the “summer months” and yet don’t have a crystallized thought process for whether you are using TAR (and if so, how) by the end of June. Please see below for our initial questions:

- 1) Do you agree that we should have input in any TAR process that UP and NS propose to run?
- 2) Do you have a draft protocol to share?
- 3) What TAR programs are you intending to use? Will TAR be used for culling? Or only prioritization?
- 4) Do you intend to apply search terms or other filtering/exclusionary criteria prior to running

TAR?

5) What types of documents will not be run through TAR? Please provide a specific list.

Thanks,

McClain

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Monday, June 29, 2026 10:49 AM

To: *AEllis@stblaw.com <AEllis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

It seems we have a critical mass for tomorrow afternoon to discuss Applicants' discovery requests. We'll update the invite for 1:30-3 PM ET tomorrow. CN, if you're not available until 2:30 PM ET, you can join then.

McClain, we expect to respond to your proposed edits to Applicants' responsiveness criteria by tomorrow morning, and we think it's likely our responses will resolve any remaining issues. On BNSF's request for due diligence materials exchanged between UP and NS, we previously confirmed that UP and NS were collecting responsive documents for review and production in my May 29 email. I understand that NS has already made a production of those materials, and UP intends to do so in the future. On TAR, we've previously provided our position, which is that we will

be able to provide additional information on Applicants' use of TAR once the remaining issues regarding the scope of custodial searches are resolved and we know the total universe of documents for review.

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Sent: Monday, June 29, 2026 8:16 AM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEEnson@crowell.com>; Fanchiang, Eric <EFfanchiang@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

We cannot do the 1-2:30 ET slot on Tuesday (as we communicated to the UP team separately). As we also told the UP team, we're not sure it's necessary for all Class 1s to be on to discuss each Class 1s R&Os. We can address CN's R&Os at the end of the 11 am call if that's applicants' preference, or do the window we communicated tomorrow (after 2:30 pm ET).

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Sent: Monday, June 29, 2026 7:19 AM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; 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>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

*** External Email ***

We can join a call today at 11, and as I said last night we'll be prepared to address the discovery directed to CPKC during the window tomorrow.

From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Monday, June 29, 2026 5:56 AM

To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <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>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

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Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

Either works for BNSF. But we should keep today's call. We need to hear what UP and NS are planning as to TAR and receive your proposed protocol. We also need to discuss the responsiveness criteria – UP has had our edits for 10 days. And we need to know if UP and NS agree or not to produce the contents of data rooms and diligence trackers shared between UP and NS in connection with the Proposed Transaction.

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Sunday, June 28, 2026 9:43 PM
To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

If 1-2:30 ET on Tuesday works for all of the Class Is, we're willing to switch times. If not, we'll proceed at 11 ET tomorrow.

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Sunday, June 28, 2026 6:45 PM

To: Kelly, Kevin <kkelly@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

Kevin – CPKC can meet Tuesday 1 to 2:30. I continue to think it would be helpful if you could point us to precedent from the Board or the federal courts relating to the relative discovery obligations of applicants and non-applicants during the Board's merger reviews. A view about that issue seems to underlie your correspondence, and it would be useful if we could have the chance to consider it.

Matt – I didn't hear back about our offer to discuss NS's objections to CPKC's June 8 requests. We'll be ready to address those Tuesday as well.

Thanks – Joe

From: Kelly, Kevin <kkelly@cov.com>

Sent: Friday, June 26, 2026 4:46 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.

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Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>;
Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain,

You have not provided the information we requested regarding the scope of the searches BNSF is undertaking in response to these requests. We have concerns that those searches are inadequate. We also have questions regarding the broad privilege assertions BNSF has made with respect to responsive documents and information. As we learn more about BNSF's positions, we will likely have additional questions that we can address on the call. We look forward to discussing with you on Monday.

Best,

Kevin

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From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Friday, June 26, 2026 3:18 PM

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

As for BNSF, I directly answered all your questions / issues in writing yesterday. Happy to join at 11 AM ET, but what is it that you specifically want to discuss as to BNSF's responses?

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, June 26, 2026 3:15 PM

To: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

Cc: *dludwin@cov.com <dludwin@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

Counsel,

In response to Applicants' June 22 request for your availability to meet and confer regarding your responses to Applicants' 1st Set of Discovery Requests, only CN has provided availability (indicating Monday and Tuesday of next week would work). We will circulate an invite for the parties to meet and confer at 11 AM ET on Monday. If you cannot be available then, please provide alternative times on Monday or Tuesday when you are all available.

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
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From: Kelly, Kevin

Sent: Wednesday, June 24, 2026 4:54 PM

To: 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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; 'Gridi, Avia' <Avia.Gridi@stblaw.com>

Cc: Ludwin, Derek <dludwin@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; 'Spencer Naake' <snaake@mullinslawgroup.net>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

Counsel,

Following up on the attached correspondence, please provide your availability to meet and confer this week.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin

Sent: Monday, June 22, 2026 5:26 PM

To: 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>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEenson@crowell.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; 'Gridi, Avia' <Avia.Gridi@stblaw.com>

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Subject: FD 36873 - Applicants' 1st Set of Discovery Requests

Counsel,

Please see the attached correspondence.

Best,

Kevin

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ATTACHMENT 3

From: [Georges, Maria](#)
To: [Thompson, McClain](#); [Korman, Marc](#); [Kelly, Kevin](#); [*AEllis@stblaw.com2](#); [Matelis, Joseph \(NON-SIDLEY @SULLCROM.COM\)](#); [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); [*pdenton@steptoe.com](#); [*tstrafford@steptoe.com](#); [Cunningham, Rich](#); [Scheib, John M.](#); [Gardiner, Kent](#); [van Houwelingen, Luke](#); [Aluise, Dylan M.](#); [Hynes, Samantha F.](#); [Golden, Nathan H.](#); [Joseph, Neil](#); [Volbrecht, Tate D.](#); [Enson, Eric](#); [Fanchiang, Eric](#); [*Avia.Gridi@stblaw.com](#); [Vaidya, Tushar](#)
Cc: [Ludwin, Derek](#); [Flahive Wu, Laura](#); [Rosenthal, Michael](#); [Magcale, Jamie Dominique U](#); [Brown, Molly](#); [Damitio, Daniel](#); [Harrison, Caroline](#); [Krovoza, Charlotte](#); [Warren, Matthew J.](#); [ratkins](#); [Laudone, Stephen S.](#); [William Mullins](#); [Spencer Naaake](#); [OpalDisco](#)
Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests
Date: Friday, July 3, 2026 12:01:01 AM
Attachments: [image001.png](#)

McClain –

We are happy to review any additional reasonable questions you may have about TAR. To set the record straight on the agreed search terms, Union Pacific proposed search terms to the non-Applicant railroads at the beginning of May. In response, the non-Applicant railroads proposed certain modifications to those terms, which Union Pacific agreed to in full. These are what we refer to as the agreed-upon search terms. After Union Pacific agreed to your requested modifications, and nearly 6 weeks after we had provided our initial proposal, CPKC then proposed additional broad terms. UP will respond shortly regarding the new CPKC terms, including providing hit reports.

As for your comment that, “If we were to agree to any pre-TAR search terms, it would not be close to the set of terms that were being discussed for a linear review,” we find it disappointing that BNSF is yet again trying to move the goalposts on custodial searches and further delay discovery in this proceeding. Using negotiated search terms that are designated to return responsive documents, instead of dumping irrelevant documents that will produce substantial noise into a TAR model, ensures that we can identify responsive documents in an efficient manner. Regardless, Union Pacific’s willingness to be transparent regarding its search process does not entitle BNSF to interfere with that process.

All the best,

Maria

Maria Georges

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, July 2, 2026 2:21 PM
To: Korman, Marc <mkorman@sidley.com>; Georges, Maria <mgeorges@cov.com>; Kelly, Kevin <Kkelly@cov.com>; [*AEllis@stblaw.com2](#) <AEllis@stblaw.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D.
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Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins
<ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins
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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

Marc, Maria –

Speaking for BNSF:

We will be sending a list of questions and issues. To be clear, there is not an agreed upon set of search terms or date limiters. (Among other issues, we have been standing by for 15 days for UP and NS to provide hit counts in response to the CPKC search terms.) There is certainly no agreement that UP and NS can apply search terms (that were being negotiated for a linear review) before dumping that filtered set into a TAR process. If we were to agree to any pre-TAR search terms, it would not be close to the set of terms that were being discussed for a linear review.

We will follow up with additional questions and issues.

Thanks,

McClain

McClain Thompson

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Sent: Thursday, July 2, 2026 1:40 PM

To: *mgeorges@COV.COM <mgeorges@COV.COM>; Thompson, McClain
<mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; *AEllis@stblaw.com2
<AEllis@stblaw.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>;
Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

Cc: *dludwin@cov.com <dludwin@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain,

Below is Norfolk Southern's disclosure related to TAR.

Norfolk Southern TAR Disclosure

Norfolk Southern intends to apply the parties' agreed-upon search terms and date filters to its electronically stored information ("ESI"), including emails, OneDrive, and Teams data for all agreed custodians. Norfolk Southern works with Redgrave LLP and Troutman Pepper Locke ("Troutman") on eDiscovery. Troutman is providing the eDiscovery technology services with RelativityOne, and processes ESI using industry-standard methods, including global deduplication, deNISTing, and date filtering. Global deduplication will remove exact duplicates across custodians based on family-level hash values. Norfolk Southern also intends to utilize standard email-threading technology.

In addition, Norfolk Southern will use TAR via Relativity Review Center to cull documents for review and production. Files that are not suitable for analysis by TAR will be set aside for potential manual review. Norfolk Southern can provide a list of file types not suitable for TAR (e.g., multimedia files, system files, empty/zero byte files, empty container files) once they have been identified.

After Norfolk Southern's custodial productions are substantially complete, if parties have reasonable questions regarding Norfolk Southern's validation methodology, we are willing to meet and confer and provide reasonable TAR-related metrics.

MARC A. KORMAN
Counsel

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mkorman@sidley.com

From: Georges, Maria <mgeorges@cov.com>

Sent: Thursday, July 2, 2026 1:33 PM

To: Thompson, McClain <mccclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>;
*AEllis@stblaw.com2 <AEllis@stblaw.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM)
<Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J.
<tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.
<Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com
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<tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric
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Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown,
Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline
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<mjwarren@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Korman, Marc
<mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins
<wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco
<OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain - Please see UP's disclosure regarding the use of TAR.

UP TAR Disclosure:

As previously discussed, UP intends to apply the parties' agreed-upon search terms and date filters to its electronically stored information ("ESI"), including emails, OneDrive, and Teams data for all agreed custodians. UP has retained Lighthouse as its eDiscovery vendor. Lighthouse will process ESI using industry-standard methods, including global deduplication, deNISTing, and date filtering. Global deduplication will remove exact duplicates across custodians based on family-level hash values. UP also intends to utilize Lighthouse's standard email-threading technology.

In addition, UP intends to use Lighthouse's proprietary TAR tool, IQ Review, to cull documents for review and production. Files that are not suitable for analysis in IQ Review will be set aside for potential manual review. UP can provide a list of file types not suitable for IQ Review (e.g., multimedia files, system files, empty/zero byte files, empty container files) once they have been identified.

After UP's custodial productions are substantially complete, if the Parties have reasonable questions regarding UP's validation methodology, UP is willing to meet and confer and provide reasonable TAR-related metrics, including estimated recall and/or precision at the selected cutoff score.

All the best,

Maria

Maria Georges

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From: Thompson, McClain <mccclain.thompson@kirkland.com>

Sent: Monday, June 29, 2026 11:34 AM

To: Kelly, Kevin <Kkelly@cov.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

Cc: Ludwin, Derek <dludwin@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

Kevin –

For BNSF:

On data rooms and diligence trackers, here is what you said on May 29: “UP and NS are willing to conduct searches and review the contents of the virtual data rooms that the Applicants used to share due diligence materials related to the proposed transaction consistent with the custodial search framework that the parties are currently negotiating.” Respectfully, I don’t know what that means – what would be left behind? Are you willing to produce the contents of all data rooms and the diligence trackers in full or not? Based on your May 29 response, I don’t believe UP and NS are willing to produce the contents of all data rooms and the diligence trackers.

On TAR, I struggle to see how you can simultaneously tell the ALJ that you want to complete productions in the “summer months” and yet don’t have a crystallized thought process for whether you are using TAR (and if so, how) by the end of June. Please see below for our initial questions:

- 1) Do you agree that we should have input in any TAR process that UP and NS propose to run?
- 2) Do you have a draft protocol to share?
- 3) What TAR programs are you intending to use? Will TAR be used for culling? Or only prioritization?
- 4) Do you intend to apply search terms or other filtering/exclusionary criteria prior to running TAR?
- 5) What types of documents will not be run through TAR? Please provide a specific list.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Monday, June 29, 2026 10:49 AM

To: *AEllis@stblaw.com2 <AEllis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

Cc: *dludwin@cov.com <dludwin@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

It seems we have a critical mass for tomorrow afternoon to discuss Applicants' discovery requests. We'll update the invite for 1:30-3 PM ET tomorrow. CN, if you're not available until 2:30 PM ET, you can join then.

McClain, we expect to respond to your proposed edits to Applicants' responsiveness criteria by tomorrow morning, and we think it's likely our responses will resolve any remaining issues. On BNSF's request for due diligence materials exchanged between UP and NS, we previously confirmed that UP and NS were collecting responsive documents for review and production in my May 29 email. I understand that NS has already made a production of those materials, and UP intends to do so in the future. On TAR, we've previously provided our position, which is that we will be able to provide additional information on Applicants' use of TAR once the remaining issues regarding the scope of custodial searches are resolved and we know the total universe of documents for review.

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Sent: Monday, June 29, 2026 8:16 AM

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

We cannot do the 1-2:30 ET slot on Tuesday (as we communicated to the UP team separately). As we also told the UP team, we're not sure it's necessary for all Class 1s to be

on to discuss each Class 1s R&Os. We can address CN's R&Os at the end of the 11 am call if that's applicants' preference, or do the window we communicated tomorrow (after 2:30 pm ET).

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

*** External Email ***

We can join a call today at 11, and as I said last night we'll be prepared to address the discovery directed to CPKC during the window tomorrow.

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Monday, June 29, 2026 5:56 AM
To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis

<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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
Cc: zzExt-dludwin <dludwin@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

Either works for BNSF. But we should keep today's call. We need to hear what UP and NS are planning as to TAR and receive your proposed protocol. We also need to discuss the responsiveness criteria – UP has had our edits for 10 days. And we need to know if UP and NS agree or not to produce the contents of data rooms and diligence trackers shared between UP and NS in connection with the Proposed Transaction.

McClain Thompson

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Sent: Sunday, June 28, 2026 9:43 PM
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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

If 1-2:30 ET on Tuesday works for all of the Class Is, we're willing to switch times. If not, we'll proceed at 11 ET tomorrow.

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Sunday, June 28, 2026 6:45 PM

To: Kelly, Kevin <Kkelly@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

Kevin – CPKC can meet Tuesday 1 to 2:30. I continue to think it would be helpful if you could point us to precedent from the Board or the federal courts relating to the relative discovery obligations of applicants and non-applicants during the Board's merger reviews. A view about that issue seems to underlie your correspondence, and it would be useful if we could have the chance to consider it.

Matt – I didn't hear back about our offer to discuss NS's objections to CPKC's June 8 requests. We'll be ready to address those Tuesday as well.

Thanks – Joe

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, June 26, 2026 4:46 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

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Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain,

You have not provided the information we requested regarding the scope of the searches BNSF is undertaking in response to these requests. We have concerns that those searches are inadequate. We also have questions regarding the broad privilege assertions BNSF has made with respect to responsive documents and information. As we learn more about BNSF's positions, we will likely have additional questions that we can address on the call. We look forward to discussing with you on Monday.

Best,

Kevin

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

[EXTERNAL]

As for BNSF, I directly answered all your questions / issues in writing yesterday. Happy to join at 11 AM ET, but what is it that you specifically want to discuss as to BNSF's responses?

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Sent: Friday, June 26, 2026 3:15 PM
To: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <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>; 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>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

Counsel,

In response to Applicants' June 22 request for your availability to meet and confer regarding your responses to Applicants' 1st Set of Discovery Requests, only CN has provided availability (indicating Monday and Tuesday of next week would work). We will circulate an invite for the parties to meet and confer at 11 AM ET on Monday. If you cannot be available then, please provide alternative times on Monday or Tuesday when you are all available.

Best,

Kevin

Kevin Kelly

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Sent: Wednesday, June 24, 2026 4:54 PM

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Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>;
'Spencer Naake' <snaake@mullinslawgroup.net>

Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

Counsel,

Following up on the attached correspondence, please provide your availability to meet and confer this week.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
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COVINGTON

From: Kelly, Kevin

Sent: Monday, June 22, 2026 5:26 PM

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'Spencer Naake' <snaake@mullinslawgroup.net>

Subject: FD 36873 - Applicants' 1st Set of Discovery Requests

Counsel,

Please see the attached correspondence.

Best,

Kevin

Kevin Kelly

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ATTACHMENT 4

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36873

**UNION PACIFIC CORPORATION, ET AL. – CONTROL –
NORFOLK SOUTHERN CORPORATION, ET AL.**

**GRAND TRUNK CORPORATION’S FOURTH SET OF
DISCOVERY REQUESTS TO APPLICANTS**

Pursuant to 49 C.F.R. Part 1114 and the Order Setting Discovery Guidelines, *see* Decision No. 24, Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries¹ (collectively “CN” as defined below) requests that NS (as defined below) and UP (as defined below) respond to the following discovery requests in accordance with the Surface Transportation Board’s rules, and the Definitions and Instructions set forth below.

Responses from NS and UP should be served as soon as possible, and in no event later than five days from the date of service hereof. NS and UP are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

¹ Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

DEFINITIONS

1. “Amended Application” means the application by UP and NS for UP to acquire control of NS filed on April 30, 2026 in Docket No. FD 36873.
2. “CN” means Grand Trunk Corporation; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
3. “Communication” or “Communications” shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible. Requests to produce or identify Communications include, but are not limited to, text messages, emails, instant or direct messages on any platform, voicemails, electronic communications, agendas, notes, talking points, agreements, inquiries, memoranda, reports, face-to-face conversations and meetings, telephone conversations or conference calls, negotiations, and presentation slides, and include information that was displayed or shown to another party without being transmitted in writing to that party.
4. “Concerning” means relating to, referring to, describing, evidencing, constituting, or in any way pertaining to, in whole or in part, directly or indirectly, the subject matter or the Request.
5. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), nonidentical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, including, without limitation: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected applications, Communications, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof,

electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

6. “Identify,”
 - a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
 - b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;
 - c. when referring to a Document, means to give, to the extent known, the (i) type of document (e.g., letter, e-mail, memorandum, report, chart); (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) or recipient(s). Documents may be produced in lieu of being Identified;
 - d. when referring to information, means to list or produce Documents containing the specified information;
 - e. when used in relation to an oral Communication or statement means to: identify the person making the Communication or statement and the person, persons, or entity to whom the Communication or statement was made; state the date and place of the Communication or statement; describe in detail the contents of the Communication or statement; and identify all Documents that refer to, relate to or evidence the Communication or statement.
7. “Including” means “including, but not limited to.”
8. “Midcontinent Gateway” means Chicago, Kansas City, Omaha/Council Bluffs, St. Louis/East St. Louis, Memphis/West Memphis, Shreveport, Meridian, Myrtlewood, Birmingham, and New Orleans.
9. “NS” means Norfolk Southern Corporation and Norfolk Southern Railway Company; their parent companies; subsidiaries; controlled, affiliated, and predecessor firms; departments; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

10. “Operating Plan” means the operating plan submitted in the Amended Application.
11. “Physical Assets” mean assets used for the operation of a railroad network, including all track components, yards, infrastructure, stations, and property.
12. “Proposed Transaction” means the proposed combination of NS and UP for which NS and UP are seeking STB approval in Docket No. FD 36873.
13. “UP” means Union Pacific Corporation and Union Pacific Railroad Company; their parent companies; subsidiaries; controlled, affiliated, and predecessor firms; departments; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
14. “You” and “Your” mean UP and/or NS, whichever is broader in the context in which it is used.

INSTRUCTIONS

1. Responsive Documents to all requests should be produced to the undersigned counsel, not later than twenty-one days after the date of service of these Requests. Production of Documents may be accomplished through electronic means such as a data room or file transfer if You prefer. Rolling production of relevant Documents during that twenty-one-day period is requested.
2. These requests extend to any Documents or Communications in the possession, custody, or control of UP, its present and former directors, officers, employees, attorneys, and any other agents or representatives, or NS, its present and former directors, officers, employees, attorneys, and any other agents or representatives.
3. Unless a different time period is specified, these requests cover the period from January 1, 2019 to the present.
4. If NS and/or UP withhold Documents or Communications on the basis of a claimed privilege or attorney work product, then for each such document, NS and/or UP should Identify the Document or Communication and state the basis for the claim that it is privileged or otherwise not discoverable.
5. NS and/or UP should immediately contact Lindsey Bohl at (202) 636-5908 to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.
6. Following prior discovery practice in merger proceedings, these requests are presented in a single list of requests. Requests that ask NS and/or UP to produce Documents shall be responded to in accordance with 49 C.F.R.

§ 1114.30. Requests that ask NS and/or UP to Identify or describe information or that otherwise pose questions shall be responded to in accordance with 49 C.F.R. § 1114.26.

7. If NS and/or UP believe that information responsive to a particular discovery request has been already presented in their workpapers, Identify the specific workpaper or workpapers that they believe provides the requested information, including the specific sheets and cells where applicable.
8. Pursuant to 49 C.F.R. § 1114.29, NS and UP are under a duty to supplement their responses with respect to any Request.

DOCUMENT REQUESTS²

15. Produce all Documents and Communications supporting Your contention that the Proposed Transaction is in the public interest.
16. Produce all Documents and Communications concerning the Proposed Transaction's impact on competition with CN.
17. Produce all Documents studying, analyzing, discussing, or otherwise relating to the impacts of the Proposed Transaction on traffic that is currently, or may in the future be, interchanged through and between CN and either UP or NS, including documents sufficient to show all current and future traffic that UP and NS have or may interchange with CN.
18. Produce all Documents and Communications concerning how the Proposed Transaction will enhance competitiveness with international ports and railroads, including lane level diversion analyses, targeted shippers, price and service assumptions, expected volume recapture by corridor, and any related marketing or pricing plans.
19. Produce all Documents and Communications concerning any potential "golden share" or other proposal for ownership in or control of the Proposed Transaction by the federal government of the United States.
20. Produce all Documents and Communications concerning transportation plans (train schedules, blocking plans, etc.) for services involving a Midcontinent Gateway.

² For clarity, the numbering of the below corresponds to the number of each Request in this proceeding. CN previously served Request Nos. 1-8 on September 23, 2025 as part of its First Set of Discovery Requests for Applicants, Request Nos. 9-10 on October 23, 2025 as part of its Second Set of Discovery Requests for Applicants, and Request Nos. 11-14 on February 19, 2026 as part of its Third Set of Discovery Requests for Applicants.

21. Produce all Documents and Communications concerning Your proposed commitment to resolve 2-to-1 shippers and Your identification of 3-to-2 shippers, including any documents and analyses measuring the proposed commitments' effect(s) for the shippers identified by Dr. Elizabeth Bailey and Katherine Novak in the Amended Application, as well as any Communications with those shippers concerning the Proposed Transaction and any remedy proposals.
22. Produce all Documents and Communications Concerning rail competition in Mt. Vernon, Illinois; Des Moines, Iowa; and Danville, Illinois, including competition with short lines.
23. Produce all Documents and Communications Concerning agreements with the Iowa Interstate Railroad (IAIS) Concerning Des Moines, Iowa.
24. Produce all Documents and Communications supporting each of the following contentions from Dr. Elizabeth Bailey in the Amended Application:
 - a. "However, if the changes associated with the Optimized Plan could be easily implemented outside of the proposed merger, one would expect UP and NS to have already done so. They have not." Am. App. Vol. 2, p. 39 ¶68.
 - b. "Analyzing access at the BEA level captures potential changes in the number of options available to customers that use truck to deliver freight to an access point, so that the geographic scope of competitive rail alternatives includes more than just the customer location. It can also capture some aspects of potential competition for customers that are expanding or relocating within an area and are choosing where to site their facility." Am. App. Vol. 2, p. 60 ¶117.
 - c. "[I]f a route is a viable option for one commodity, then it is a viable option for other commodities when the focus is linehaul service between BEAs." Am. App. Vol. 2, p. 64 ¶127.
 - d. "Some customers within a flagged corridor are protected from potential horizontal anticompetitive harm because they have other [non-rail] competitive alternatives." Am. App. Vol. 2, p. 68 ¶136.
 - e. "Potential harm from the loss of destination competition must be persistent to be a concern." Am. App. Vol. 2, p. 83 ¶176.
25. Produce all Documents and Communications supporting the exclusion by Dr. Elizabeth Bailey of each of the following from her analysis of the horizontal effects of the Proposed Transaction in the Amended Application:

- a. “However, the final carloads in Exhibit 12 exclude traffic that is carried in intermodal containers and motor vehicles (commodity code STCC 3711) and motor vehicle parts (commodity code STCC 3714).” Am. App. Vol. 2, p. 70 ¶140.
 - b. “[C]ertain commodity codes group together many miscellaneous and potentially unrelated products that do not represent a distinct ‘product.’” Am. App. Vol. 2, p. 83 ¶174.
26. Produce all Documents and Communications supporting the inclusion of truck and water alternatives to railroads when analyzing geographic competition in the Amended Application.
27. Produce all Documents and Communications supporting the use by Dr. Elizabeth Bailey of additional interline options for her analysis of the horizontal effects of the Proposed Transaction in the Amended Application. Am. App. Vol. 2, p. 74-75.
28. Produce all Documents and Communications supporting the use by Dr. Elizabeth Bailey of the critical loss analysis used to assess the horizontal effects of the Proposed Transaction in the Amended Application.
29. Produce all Documents and Communications supporting each of Dr. Mark Israel’s contentions in the Amended Application that:
 - a. “Pricing is non-linear when the price terms are conditioned on volume in some way, e.g., when price reflects an understanding about expected volumes, or when there are volume discounts (i.e., when prices decline with volume), or in cases where there are volume commitments (i.e., price is available for achieving a specific volume).” Am. App. Vol. 2, p. 193 ¶20, n. 22.
 - b. “That said, my experience in the industry, the complexity of the contracts, and the fact that even private quotes often take the form of a given quantity at a given price—which is a form of non-linear pricing since it specifies both price and quantity, rather than a per-unit price at which any amount can be shipped—all indicate that a very large percentage of these cases reflect negotiated non-linear contracts.” Am. App. Vol. 2, p. 195 ¶22.
 - c. “When shippers receive price quotes under Rule 11 but treat the offers as take-it-or-leave-it and do not negotiate with the railroads—the situation at issue in this section, since I dealt with the negotiated case above—they face what are known as Cournot Complements externalities.” Am. App. Vol. 2, p. 199 ¶35. This includes any Documents or Communications that

support or concern the proposition that shippers treat Rule 11 quotes as “take-it-or-leave-it.”

- d. “[R]ecent economic literature has raised the counterintuitive possibility that the improved information resulting from a merger could enable a form of foreclosure, through which railroads harm shippers by extracting more value from them. However, even the published literature on this topic finds that more information is efficient, meaning that it increases total output and total welfare.” Am. App. Vol. 2, p. 214-15 ¶65.
30. Produce all Documents and Communications supporting the market definitions used by David Hunt in the Amended Application, including each use of:
- a. “[C]ity-to-city” for “[m]erchandise and bulk (service types 1 and 3) markets” to “capture local competition and station access.” Am. App. Vol. 2, p. 489-90.
 - b. “[C]ity to BEA” for “[a]utomotive (service type 4) markets” to “reflect plant origins serving broader regional markets[.]” Am. App. Vol. 2, p. 490.
 - c. “BEA to BEA” for “[i]ntermodal (service type 2) markets” to “represent the broader competitive geographic regions for intermodal origins and destinations.” Am. App. Vol. 2, p. 490.
31. Produce all Documents and Communications supporting each of the following from David Hunt’s Verified Statement in the Amended Application:
- a. That impedance and junction frequency are “practical proxies for the underlying factors that drive shipper preference on price, reliability, and transit time[.]” Am. App. Vol. 2, p. 418.
 - b. The rationale and analytical steps taken regarding classification described, specifically that, “[f]or the purposes of the analysis, all commodities were classified as either likely to ship by carload or intermodal when converted to rail.” Am. App. Vol. 2, p. 422.
 - c. “For longer hauls, door-to-door intermodal can be much closer to truck on transit times than other rail services, particularly once the interchange delay is removed due to single-line service.” Am. App. Vol. 2, p. 450.
 - d. Results for any robustness checks conducted related to diversion model results.
 - e. The assumption that traffic would likely divert to hypothetical routes that have historically had no traffic.

- f. The set of eight criteria to determine non-viable hypothetical routes, including the contention that these criteria are “conservative” with respect to retaining all possible routes. Am. App. Vol. 2, p. 491-92.
 - g. The decision to limit diversion to lanes with more than 4,380 units per year. Am. App. Vol. 2, p. 464-65.
 - h. The decision to exclude the Meridian Speedway Lane from intermodal traffic diversion. Am. App. Vol. 2, p. 464.
 - i. Which locations “do not have active auto ramps in the area to handle traffic” and are therefore excluded from auto diversion. Am. App. Vol. 2, p. 469.
 - j. Your contention that CN’s critique relating to “phantom carloads” “no longer applies to the modeling in the Amended Application” and how “[t]he use of 100% traffic data and other changes made to facilitate reporting of post-merger market share results at a 4-digit STCC level” purportedly “eliminated” phantom carloads. Am. App. Vol. 2, p. 395.
 - k. Your contentions that “automotive manufacturers prefer to consolidate deliveries at a common unloading ramp for the final-mile truck operation” and “[t]he data showed that impedance was not a critical factor in selecting rail routes for automotive shipments.” Am. App. Vol. 2, p. 419.
 - l. Your contention that “align[ment] with the CRA current-state analysis ... reduced addressable rail-to-rail traffic by ~5% (e.g., revenue empties, low-volume traffic flows), which reduced diverted traffic by ~8% and consequently the revenue shift to UP-NS.” Am. App. Vol. 2, p. 591.
32. Produce all Documents and Communications supporting the use of a “lookalike” analysis as an accepted method in transportation or logistics as described in David Hunt’s Verified Statement in the Amended Application, including each of the following:
- a. The contention that “[l]ookalike analysis is a common methodology, used for example in digital marketing to identify potential customers with characteristics similar to those of existing customer profiles. This approach was applied to compare freight markets with improved rail service post-merger to existing freight markets that have comparable levels of rail service already[.]” Am. App. Vol. 2, p. 426.
 - b. The contention that “[a] lookalike analysis is appropriate for estimating diversions of merchandise/bulk trucks because it captures the key features of complex shipper behavior, without relying on false precision from

estimating door-to-door transit times and market-based prices for truck and rail.” Am. App. Vol. 2, p. 426.

- c. Any widely accepted definitions of reliability applicable to “lookalike” methodologies.
 - d. Any criteria used to evaluate the accuracy of findings obtained from a “lookalike” analysis.
 - e. Any methods utilized in the “lookalike” analysis to ensure adequate reliability.
 - f. Any robustness assessment conducted on the diversion estimates derived from the lookalike analysis.
33. Produce all Documents and Communications supporting each of the following from John Orr’s and Eric Gehringer’s Verified Statement in the Amended Application:
- a. The contention “[i]n developing the original Application, we concluded that using 2023 UP and NS traffic, adjusted to account for new and idled facilities, with July 2025 UP and NS blocking and train plans, provided the most realistic and credible way to reflect current and projected operating conditions while using 2023 traffic that can be compared and validated against the most recent data from the Board’s Confidential Waybill Sample. In the Amended Application, we continued using 2023 data but incorporated actual 100% traffic data from all Class I railroads in the diversion study.” Am. App. Vol. 2, p. 622. Including if work was done with the Board’s 2024 Confidential Waybill Sample.
 - b. The operating plans associated with the “Southern California–Kansas City/St. Louis/Chicago Route,” including alternate routing options, use of trackage rights, and impacts of new service offerings on existing traffic. Am. App. Vol. 2, p. 641-44.
 - c. The operating plans associated with the “Mexico/Texas–Memphis/St. Louis/Chicago Route,” including alternate routing, use of trackage rights, and impacts of new service offerings on existing traffic. Am. App. Vol. 2, p. 650-53.
 - d. The planned development of a new intermodal train pair between Southern California and the Northeast via Kansas City, Springfield, and Sidney, Illinois, including assessments of capacity impacts and effects on other traffic along the route. Am. App. Vol. 2, p. 692-96.

- e. Your contention that “... there will be additional opportunities to streamline New Orleans-area operations by shifting NS’s current interchanges with CN and CPKC through Livonia to Baton Rouge, which will further reduce congestion in New Orleans.” Am. App. Vol. 2, p. 716.
 - f. The use of Rail Traffic Controller (RTC) software by Berkeley Simulation Software, LLC, including any assessments of the effects of UP and/or NS’s Growth Operating Plan on dispatching, capacity, transit times, and infrastructure requirements.
34. Produce a copy of the version of MultiRail software or program(s) used in the Application, along with all model inputs necessary, if not provided in the Application workpapers, to replicate the Base, Optimized, and Growth Plans referenced in John Orr’s and Eric Gehringer’s Verified Statement. To the extent that all MultiRail inputs and outputs have been produced as workpapers (*see* Applicants’ response to BNSF third discovery request at document request no. 10), provide the software or program(s) required for replicating MultiRail output using MultiRail inputs.
35. Produce all Documents and Communications concerning Your evaluation of existing capacity on any main lines, yards, and terminals that are expected to experience significant increases in activity from the Proposed Transaction, including analyses concerning whether sufficient capacity exists to implement operating changes intended to optimize current traffic flows and development of any related capital improvement plans.
36. Produce data sufficient to show Your network’s Physical Assets, including stations, yards, and tracks, for the period from January 1, 2023 through December 31, 2024. This production should contain data sufficient to show each Physical Asset’s type, operation, traffic, and capacity.
37. Produce Documents and data sufficient to show each origin-destination lane and customer for which You contend the Proposed Transaction will provide single line service or otherwise eliminate an interchange, and produce Documents sufficient to show the current baseline routings and handoffs, the gateways or interchanges to be removed or altered, the projected distance and transit time changes (including Your asserted saving of 24 to 48 hours), and any expected impacts on gateways and short line connections.

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Dated: July 1, 2026

Respectfully submitted,

/s/ Sara Razi
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Attorneys for CN

CERTIFICATE OF SERVICE

I hereby certify that on this first day of July 2026, I have caused a true and correct copy of the foregoing “Grand Trunk Corporation’s Fourth Set of Discovery Requests to Applicants” to be served electronically or by first-class mail, postage prepaid, on all parties of record for this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew Bernstein

Andrew Bernstein

ATTACHMENT 5

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION, ET AL.
—CONTROL—
NORFOLK SOUTHERN CORPORATION, ET AL.

**BNSF RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS TO
UNION PACIFIC AND NORFOLK SOUTHERN**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, BNSF Railway Company (“BNSF”) hereby requests that UP and NS (as defined below, and together, the “Applicants”) respond to and produce documents responsive to the following discovery requests to Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, no later than October 16, 2025.

DEFINITIONS

1. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

2. “Concerning” means relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

3. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound

recording, image, and other data or data compilation stored in any medium from which information can be obtained.

4. The term “Identify”:

- a. When used in reference to an individual, shall require a statement of the individual’s full name; present and/or last known position, employment, job title and/or business affiliation; and present and/or last known business address and telephone number.
- b. When used in reference to businesses or corporations, shall mean to state the business or corporation’s legal name, the names under which it does business, its form (proprietorship, corporation, partnership, association or business trust, etc.), its present and/or last known address, and its relationship, if any, to each of NS and UP.
- c. When used in reference to Documents, shall require a statement of the date thereof, the type of Document, the author or speaker (and if different, the signer or signers, and the addressee), the substance thereof, its present or last known location or custodian, and all other means of identifying it.
- d. When used in reference to any Communication, meeting, act, occurrence, statement, or conduct (hereinafter collectively “act”) requires you to:

- i. Describe the substance of the event or events constituting such an act;
- ii. Identify each and every person participating in such act;
- iii. Identify all other persons present when such act occurred;
- iv. State whether any minutes, notes, memoranda, accounts, statement, agreements, Documents, or any other record relating to the act was made;
- v. State whether such record now exists; and
- vi. Identify the person presently having possession, custody, or control of such record.

5. “NS” means Norfolk Southern Corporation and Norfolk Southern Railway Company and their predecessors and successors in interest, as well as their present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on their behalf.

6. “Proposed Transaction” means the proposed combination of NS and UP for which NS and UP are seeking STB approval in Finance Docket No. 36873.

7. “STB” or “Board” means the Surface Transportation Board.

8. “UP” means Union Pacific Corporation and Union Pacific Railroad Company and their predecessors and successors in interest, as well as their present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on their behalf.

INSTRUCTIONS

1. Responsive Documents to all requests should be produced to the undersigned counsel, not later than fifteen days after the date of service of these Requests. Production of Documents may be accomplished through electronic means such as a data room or file transfer if NS and/or UP prefer.

2. If NS and/or UP objects to any portion of any Discovery Request, they should identify the portion to which they object, state the basis for the objection, and respond to the remainder. If NS and/or UP has objections, NS and/or UP’s counsel are requested to promptly confer with undersigned counsel for BNSF so that NS and/or UP’s objections can be promptly addressed and resolved.

3. If NS and/or UP asserts a claim of privilege as to Documents sought in these Requests, NS and/or UP should list, for each such Document, the Document’s date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the Document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit BNSF to assess the applicability of the privilege claimed.

4. If any of the requested Documents was but is no longer in NS and/or UP's possession or subject to their control, state what disposition was made of it and when, and explain the reasons for such disposition.

5. If a Document is provided in response to a Request, identify which Document(s) is (are) being provided to answer that Request, including any Bates numbers; if NS and/or UP is asked to identify Documents, provide a brief description of the Documents, including any Bates numbers. If NS and/or UP refers BNSF to workpapers to respond to a Request, please identify the Bates number(s) of the workpapers(s) responsive to the Request.

6. Each Discovery Request should be responded to upon NS and/or UP's entire knowledge from all sources and all information and Documents in NS and/or UP's possession or otherwise available to NS and/or UP, including information from agents, representatives, consultants, or attorneys, and information that is known to each of them.

7. Where a Discovery Request calls for information with respect to "each" one of a particular type of matter, event, Person, or entity, of which there is more than one, separately list, set forth or identify for each thereof all of the information called for in the Request.

8. These Requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or Documents become available.

9. Unless otherwise provided, there is no time period limitation on these Discovery Requests.

FIRST SET OF DISCOVERY REQUESTS

1. Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced in response to discovery requests submitted by other participants in this proceeding.

2. Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.

3. Produce Documents sufficient to show the conditions to STB approval to which NS and/or UP have agreed to accept, propose, or agree to if needed to secure regulatory approval for the Proposed Transaction.

4. Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

5. Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

6. Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the

Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

7. Produce all Documents and Communications with the individuals and/or entities identified in response to Request Nos. 5 and 6 and that concern or relate to the Proposed Transaction.

8. Produce Documents sufficient to show any discounts, contract extensions, or any other economic value or concession offered in connection with or related to any discussion with a customer or stakeholder related to its support or non-opposition the Proposed Transaction.

9. Produce system-wide car and, where applicable, container, movement event data for all NS and UP traffic for each year or partial year from 2019 to the present. Car event data should be sufficient to identify the sequence of cars within a train for each applicable event, and container event data should be sufficient to identify the car conveying the container for each applicable event.

10. Produce system-wide train event data for all NS and UP trains for each year or partial year from 2019 to the present.

11. Produce UP and NS intermodal train schedules from 1995 to present.

12. Produce Documents sufficient to show the density information described below for the entire NS and UP systems for each year or partial year from 2019 to the present in a computer readable database or electronic spreadsheet, including all record layouts, all field descriptions, data definitions, and data dictionaries/decoders required to

utilize the data. The density database should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment and by direction expressed in net ton-miles, or in the alternative, (ii) total density (both directions including empty and loaded trains) by segment and by direction expressed in gross ton-miles, including tare weight, locomotive weight, and non-revenue trains, plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that NS or UP utilize via trackage rights (or other joint facility or joint use agreements) on another railroad, (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over NS or UP

segments, and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

13. Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.

14. Produce Documents relating to any current or anticipated abandonments, leases, grants of trackage rights, or other transactions in which any current line segment of UP or NS would henceforth be operated by another railroad or non-carrier.

15. Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

16. Produce all Documents regarding changes in employee discipline standards or practices from January 1, 2024 to present.

17. Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

18. Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

19. Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

20. Produce all studies and analyses of the impact of the Proposed Transaction on potential future mergers involving any Class I carrier (including Applicants).

21. Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on:

- a. Applicants' current and future debt and debt service obligations.
- b. Applicants' financial metrics including revenue, earnings, EBITDA, leverage, and operating ratio;
- c. Applicants' costs and potential opportunities to reduce costs (synergies);
- d. Railroad intramodal, intermodal, product, and geographic competition;
- e. Potential traffic diversions from truck transportation to rail transportation;
- f. Rail service, including rail service provided by other rail carriers;

- g. Rail safety, including the safety of rail service provided by other rail carriers;
- h. Rail labor and employment, including labor forces at railroads other than Applicants;
- i. Passenger or commuter service;
- j. Rates for rail transportation;
- k. Competition, including corridor competition, source competition, and intermodal competition; and
- l. Applicants' proposed gateway commitment on Applicants' existing traffic and the revenues and profitability of that traffic.

22. Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.

23. Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

24. Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.

25. Produce data from 2019 through present for all reciprocal switches performed by or for UP or NS sufficient to identify:

- a. The date the reciprocal switch was requested;
- b. The date the reciprocal switch was completed;
- c. The switching and receiving carriers involved in the reciprocal switch;
- d. The price authority governing the reciprocal switch;
- e. Revenues paid for the reciprocal switch;
- f. The customer name and SPLC station location where switch was originated or terminated;
- g. The location, including latitude and longitude, where the shipment was physically transferred between switching and receiving carrier; and
- h. The car initial and car number of each rail car involved in the reciprocal switch.

26. Produce all Documents related to UP and NS's planned capital budgets and forecasts for the next five years (as prepared in the 2024 and 2025 period prior to the announcement of the Proposed Transaction).

27. Produce Documents sufficient to identify all issues or problems that UP and NS have had using rights or accessing services required by STB-ordered deal conditions.

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Respectfully submitted,

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Counsel for BNSF Railway Company

Dated: October 1, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2025, I have caused the foregoing *BNSF Railway Company's First Set of Discovery Requests to Union Pacific and Norfolk Southern* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams

Attorney for *BNSF Railway Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 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/ Travis F. Cabbell