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ALJ

SERVICE DATE – JULY 8, 2026

SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY  
—CONTROL—  
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN  
RAILWAY COMPANY

ORDER GRANTING IN PART MOTION TO COMPEL  
ADDITIONAL UP AND NS CUSTODIANS, AND  
GRANTING IN PART AND DENYING IN PART MOTION  
TO SET PRODUCTION DEADLINES

Decision No. 25

Decided: July 8, 2026

Discovery is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision (Aug. 28, 2025). The undersigned scheduled and conducted a discovery conference on June 26, 2026. See Decision No. 22. This decision memorializes the rulings made at that conference.

The Surface Transportation Board regulations provide for broad discovery. These regulations provide that “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). The Board has recognized that this regulation allows for broad discovery. See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery “[b]roadly”). An order may be entered for good cause and which justice requires, to protect from “annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of the issues untimely or inappropriate to the proceeding.” 49 C.F.R. § 1114.21(c). Protective orders may include that discovery not be had or that discovery be had only on specified conditions. 49 C.F.R. § 1114.21(c)(1)-(2).

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

The Motion to Compel Additional UP and NS Custodians is GRANTED in part as follows. UP and NS are ORDERED to include the following individuals as custodians:

<b>Union Pacific</b>	<b>Norfolk Southern</b>
1. Eric Gehringer	1. Mark George
2. Matthew Graham	2. John Orr
3. Grant Janke	3. Claude Elkins
4. Katherine Novak	4. Mike Barr
5. Maqui Parkerson	5. Anil Bhatt
6. Joshua Perkes	6. Ed Boyle
7. Carrie Powers	7. Felisima de Oliveriera
8. Kenny Rocker	8. Jacob Elium
9. John Turner	9. John Felps
10. Jim Vena	10. Stefan Loeb
11. Todd Rynaski	11. Mike McClellan
12. Jennifer Hamann	12. Kathleen Smith
13. Mike Miller	13. Dwayne Swindall
14. Rahul Jalali	14. Yannik Thomas
15. Corrie Schumaker	15. Shawn Tureman
16. Beth Whited	16. Jason Zampi
17. Rebecca Gregory	17. Randolph "Scott" St. Clair
18. David Hughes	18. Tim Livingston
19. Brad Moore	19. Craig Hudson
20. Carl Garrison	20. Rob Jones
21. Jennifer Bailey	21. Mike Grim
22. Mike Santa Maria	22. Marybeth Flournoy

<b>Union Pacific</b>	<b>Norfolk Southern</b>
23. Jamie Peters	23. Christine Traubel
24. Steven Bybee	24. Frank Voyack
25. Elise Gosch	25. Elizabeth Talton-Buck
26. Hunt Cary	26. Alan Shaw
27. Kari Kirchoefer	27. James Squires
28. Jacque Bendon	28. Paul Duncan
29. Ryan Steinbach	29. Cindy Sanborn
30. Laura Heisterkamp	30. Michael Wheeler
31. Jason Hess	
32. Jason Steele	
33. Andrew Brady	
34. Jeff Pincock	
35. Dan McLaughlin	
36. Lance Fritz	

Applicants' request for a numerical cap on custodians is DENIED without prejudice. If the non-Applicant Class I railroads seek to add additional predecessor custodians in the future, they must have a good reason for doing so (i.e., show good cause), subject to the approval of the Administrative Law Judge.

BNSF's request for an order disallowing UP from applying search terms before collecting UP custodial data is HELD IN ABEYANCE. UP is ORDERED to provide the non-Applicant Class I railroads further information regarding the number or proportion of documents that UP's pre-culling process has filtered out from UP's custodial collections. Following the review of that information, the parties can seek further guidance as needed.

UP's request to restrict the collection of the 20 additional custodians to January 1, 2022, based on technical collection issues forward is HELD IN ABEYANCE. UP is ORDERED to provide the non-Applicant Class I railroads further information regarding those technical issues. Following the review of that information, the parties can seek further guidance as needed.

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

The Motion to Set Production Deadlines is GRANTED IN PART AND DENIED IN PART. The following deadlines are ordered:

A. Applicants are to continue making rolling productions, now on a biweekly basis, with the next production by no later than July 10, 2026.

B. Applicants shall substantially complete their **non-custodial** productions in response to BNSF's Second Motion to Compel by July 31, 2026.

C. Applicants shall provide biweekly updates of their progress toward substantial completion of **non-custodial** document productions in response to the full body of then-pending requests. Those biweekly updates shall begin on July 10, 2026. The biweekly updates should be addressed to the ALJ and counsel to the non-Applicant Class I railroads.

The request for biweekly updates for custodial document productions is HELD IN ABEYANCE, and can be raised at the July 10, 2026 conference.

D. The motion did not request an omnibus production deadline. Accordingly, the parties shall further confer regarding additional production deadlines and present an agreed proposal or disputes at the July 10, 2026 conference. Along with any proposed production deadline, the parties should be prepared to discuss a **proposed, corresponding deadline for document discovery requests**.<sup>1</sup>

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

BNSF's Second Motion to Compel (BNSF-28) is HELD IN ABEYANCE.

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

CPKC's Motion to Compel (CPKC-24) is HELD IN ABEYANCE.

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<sup>1</sup> The discovery conference did not discuss setting a corresponding deadline for proposed written discovery requests. Therefore, the undersigned provides emphasis of this additional request. Moreover, such a deadline should include all non-Applicant parties for efficiency.

The undersigned understands that non-Applicant railroads are concerned about Applicants' production of documents in advance of depositions. The undersigned suggests that for efficiency, a proposal should include a deadline for document discovery requests (requests for production of documents, at a minimum). Therefore, Applicants would have the requests to send responses to by the proposed production deadline before depositions.

It is ordered:

1. The Motion to Compel Additional UP and NS Custodians is granted in part as set forth in this decision.
2. The Motion to Set Production Deadlines for UP and NS is granted in part and denied in part as set forth in the decision.
3. BNSF's Second Motion to Compel and CPKC's Motion to Compel are held in abeyance.
4. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.