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Office of Chief Counsel  
July 21, 2026  
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Public Record

BNSF-43

July 21, 2026

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

*Re: STB Docket No. FD 36873 – Opposition to UP’s Motion to Compel (UP-74)*

Dear Judge Soulikias:

UP sought discovery regarding BNSF’s strategic responses to UP’s merger. *See* Ex. A (Applicants’ First Set to BNSF at Nos. 1–3). BNSF answered these requests by explaining that BNSF’s in-house legal team led and directed any such internal analyses, so the information is privileged. UP now asks the Your Honor to compel BNSF to “substantiate” BNSF’s privilege assertions. *See* UP-74.

BNSF investigated and then properly supported its privilege claims. When Applicants served the discovery, BNSF’s outside counsel spoke directly with the internal personnel involved in BNSF’s merger response. In-house counsel was involved from the beginning as rumors of potential mergers began to circulate in 2025. When UP announced its merger, BNSF was not seeking to merge with another railroad. BNSF focused on opposing the merger because it is bad for shippers, bad for competition, and bad for America. Given the various regulatory and antitrust issues that the merger creates, the extensive regulatory review required, and the likelihood of substantial litigation about them, BNSF’s in-house Law Department (quickly supported by outside counsel) led and directed BNSF’s response to UP’s merger.

BNSF’s lawyers have explained this fact to UP’s lawyers. UP understands that fact. Nonetheless, BNSF gave UP multiple opportunities to identify what specific, additional “substantiation” UP believes it needs to assess BNSF’s privilege claims. UP identified nothing. UP then filed a motion that asks Your Honor to order more “substantiation” from BNSF—again without defining what that would look like or what specific, unanswered questions UP has about BNSF’s privilege assertions.

For its part, UP has done little-to-nothing to date to support its blanket claims of privilege. UP has redacted and withheld documents for privilege without further explanation. It is surprising then that UP is asking for a roving, undefined “substantiation” principle to apply to privilege assertions in this case. Notably, NS, which suffers from the same deficiencies as UP, declined to

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join this motion. BNSF objects to being asked to do more to further substantiate its privilege claims.

### **I. UP Wants BNSF to Buttress Applicants' Amended Application.**

The Board has asked UP and NS pointed questions about its views of the “end game” or downstream effects of its merger—a centerpiece of the 2001 Major Merger Rules. *See* 49 C.F.R. §§ 1180.1(i), 1180.6(b)(12). The rules require UP and NS “to explain how additional Class I mergers would affect the eventual structure of the industry and the public interest,” including by discussing “the likely impact of such future mergers on the anticipated public benefits of their own merger proposal.” *Id.* § 1180.1(i).

UP and NS have largely shrugged off this requirement. Following the filing of the Amended Application, the Board expressed concerns about the fulsomeness of the information UP and NS provided on this element of their case; the Board directed UP and NS to answer three, multi-part questions about their downstream effects analysis. *See* Decision No. 21 at 31.

The very next day, UP and NS tried to enlist BNSF and other Class I railroads to answer these questions for them through discovery. They issued four requests, each targeted at information related to downstream effects. *See* UP-74 at 2. Although those requests had borderline relevance (at best) to the requirement that UP submit its own analysis of downstream effects, BNSF answered them consistent with the Rules.

### **II. BNSF Stated – and then Provided the Basis for – a Valid Privilege Objection.**

In response to requests for information about potential control transactions and the downstream effects of the merger, BNSF said that within the last 12 months, it “analyzed the characteristics of other Class I railroads. Any such analyses were conducted at the direction of counsel and are privileged.” Ex. B (BNSF’s Resp. & Obj. to Applicants’ First Set of Discovery Requests). BNSF also told UP that “BNSF’s in-house Law Department led and directed those analyses.” *See* Ex. C (June 25, 2026 Email from M. Thompson). UP also asked BNSF to “confirm that [it] did not undertake any business consideration of a potential control transaction in response to the Proposed Transaction.” BNSF responded that “it did not undertake business consideration of a potential control transaction in response to UP-NS merger.” *Id.*

BNSF complied with the rules. BNSF asserted a privilege claim and gave UP information to test that privilege claim. UP has not claimed that it is unable to understand or assess BNSF’s privilege claims. It does not appear UP is directly challenging the privilege assertion either.<sup>1</sup>

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<sup>1</sup> UP cites only two cases (other than for basic statements about the scope of privilege). Those two cases are inapposite. *In re Lindsey* is distinguishable because counsel asserted privilege over certain conversations where there was

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BNSF's assertion is not complex or controversial. Indeed, it is not all that different from NS's privilege assertions that Your Honor affirmed at the last conference. There, Your Honor addressed a dispute between CPKC and NS where NS claimed privilege over information regarding its views on UP's compliance with the merger agreement. It was accepted—without additional substantiation—when NS's outside counsel said there were no non-privileged NS documents in response to CPKC's motion. NS did not describe the basis for this assertion, nor did it identify the custodial and non-custodial sources searched in response to the request (let alone specific documents or information it identified). Nor was it asked to do so.

In asking BNSF to go further than NS, UP argues that BNSF should collect and review every potentially responsive document to assess the applicability of BNSF's claims of privilege. This is nonsensical and inefficient. BNSF conducted a reasonable investigation into what types of responsive information may exist. In conducting that investigation, BNSF determined that any responsive information was the result of work that was conducted at the direction of counsel. In light of that, it would be inefficient for BNSF to nonetheless collect and review all potentially responsive information, because it will be privileged. The Rules do not require anything further.

### **III. BNSF Has Done More than UP to Support Its Privilege Claims.**

Applicants have asserted broad privilege claims in response to dozens of document requests. In making those claims, Applicants have offered no details about their privilege claims and have instead made blanket, boilerplate privilege objections. For example, UP objected to BNSF's request for materials relating to potential joint ventures between UP and NS other than the proposed merger as “seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other privileges or immunities.” Ex. D (UP's Resp. & Obj. to BNSF's First Set of Discovery Requests at No. 17). UP made this same objection to BNSF's request for documents concerning any discounts offered to customers in connection with their support of the merger. *Id.* at No. 8.

Both UP and NS have also withheld discovery and redacted dozens of documents on privilege grounds. *See, e.g.*, UP-0025343-348; UP-0010054; UP-0008868-869; UP-0020309. (BNSF reserves its right to challenge these redactions.) For example:

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indisputably no attorney-client relationship and made no showing supporting privilege. 158 F.3d 1263, 1270-71 (D.C. Cir. 1998). By contrast, in this letter and in separate correspondence, BNSF clearly explained that any analysis was done at direction of its in-house legal team and is privileged. *Burlington Northern* is likewise off point because it concerned the timeliness and substance of a privilege log, and whether privilege was waived. *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142, 1149-50 (9th Cir. 2005). Neither issue is relevant to the “substantiation” request UP is making here. BNSF promptly provided Applicants with information sufficient to demonstrate the existence of attorney-client privilege in response to specific requests.

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BNSF has done far more to substantiate its claims of privilege than both UP and NS. BNSF has identified the legal counsel involved, the privileged nature of the communications, and the general timing of those communications. That is precisely the type of information necessary to adequately evaluate a claim of privilege. Yet UP and NS have provided none of that information for any of the redactions or privileged documents they have withheld from their responses to discovery requests (other than for their narrow slice of HSR productions where the Board specifically ordered a log). Equity would reject Applicants from seeking more information than they themselves have provided.

## CONCLUSION

BNSF has appropriately asserted privilege objections to the discovery requests at issue and explained the bases for those privilege assertions. Your Honor should reject UP's motion to compel further "substantiation," whatever that may be.

/s/ Daniel T. Donovan

Daniel T. Donovan, P.C.

cc: Counsel of Record

# **EXHIBIT A**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36873

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

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**APPLICANTS' FIRST SET OF DISCOVERY REQUESTS  
TO BNSF RAILWAY COMPANY**

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May 29, 2026

Pursuant to 49 C.F.R. §§ 1114.21-.31, Union Pacific Railroad Company, Union Pacific Corporation, Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively “Applicants”) request that BNSF Railway Company (“BNSF”) respond to and produce Documents responsive to the following discovery requests in accordance with the Surface Transportation Board’s rules and the definitions and instructions set forth below.

Responses should be served as soon as possible, and in no event later than June 15, 2026, unless otherwise agreed to by the parties. Please 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.

### **DEFINITIONS**

1. “Applicants” means Union Pacific Railroad Company, Union Pacific Corporation, Norfolk Southern Corporation, and Norfolk Southern Railway Company.

2. “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.

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. “Produce” means to make legible, complete, and exact copies of responsive Documents and send them by expedited delivery to the undersigned counsel.

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

6. “You” and “Your” refer to BNSF and its predecessors and successors in interest, as well as its 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 its behalf.

### **INSTRUCTIONS**

1. References to railroads, shippers, consultants, or companies (including Applicants) include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.

2. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

3. If any information or Document is withheld on the ground that it is privileged or otherwise not discoverable: (a) identify the type of Document (*e.g.*, letter, memorandum, report, chart); identify the author, each addressee and each

recipient; state the number of pages, title and date of the Document, and (b) state the basis for the claim that it is privileged or otherwise not discoverable.

4. To the extent materials called for herein are confidential, Applicants will treat them in accordance with the Protective Order entered in this proceeding in the Decision served August 5, 2025.

5. Unless otherwise specified, these requests cover the period January 1, 2019 and to the present.

6. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

### **REQUESTS**

1. Describe all railroad mergers, acquisitions, or other control transactions involving You and any other Class I railroad that You are considering or have considered within the last 12 months, whether in response to the Proposed Transaction or otherwise.

2. Produce all Documents and Communications relating to all railroad mergers, acquisitions, or other control transactions involving You and any other Class I railroad that You are considering or have considered within the last 12 months, whether in response to the Proposed Transaction or otherwise.

3. Produce all Documents and Communications relating to the Proposed Transaction's impacts or potential impacts on potential future mergers involving Class I railroads, including but not limited to any mergers You have considered executing with any other Class I railroads.

4. Produce all Documents and Communications relating to any potential or actual transaction, combination, joint venture, alliance, partnership, initiative, other form of cooperative arrangement or other strategic response that You have considered or implemented, or are considering or are implementing, as a result of the Proposed Transaction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of May, 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/ Molly Brown

# **EXHIBIT B**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

**DOCKET NO. FD 36873**

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

**BNSF RAILWAY COMPANY'S  
RESPONSES AND OBJECTIONS TO APPLICANTS' FIRST SET OF  
DISCOVERY REQUESTS**

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**BNSF Railway Company designates these responses  
and objections Confidential pursuant to the Protective Order.**

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Pursuant to 49 C.F.R. § 1114 and other applicable rules and authority, BNSF Railway Company ("BNSF") hereby provides responses and objections to Applicants' First Set of Discovery Requests to BNSF ("Requests") served by Union Pacific and Norfolk Southern (together, "Applicants") on May 29, 2026.

All responses set forth herein are subject to and without waiver of (i) BNSF's General Objections and Specific Responses, (ii) any objections to the relevance, materiality, or admissibility for any purpose of the information sought, (iii) the right to object on any ground at any time to a demand for further responses to the Requests; or (iv) the right to revise, correct, add to, supplement, or clarify any of its responses.

**SPECIFIC RESPONSES AND OBJECTIONS**

**REQUEST 1:**

Describe all railroad mergers, acquisitions, or other control transactions involving You and any other Class I railroad that You are considering or have

considered within the last 12 months, whether in response to the Proposed Transaction or otherwise.

**RESPONSE TO REQUEST 1:**

Subject to and without waiving its objections, BNSF states the following:

Within the last 12 months, BNSF analyzed the characteristics of other Class I railroads. Any such analyses were conducted at the direction of counsel and are privileged. Within the last 12 months, BNSF did not take steps to acquire another Class I railroad.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, as it seeks information about transactions that BNSF or any of its employees “are considering or have considered within the last 12 months.” BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, including information subject to existing or continuing confidentiality agreements or obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

**REQUEST 2:**

Produce all Documents and Communications relating to all railroad mergers, acquisitions, or other control transactions involving You and any other Class I

railroad that You are considering or have considered within the last 12 months, whether in response to the Proposed Transaction or otherwise.

**RESPONSE TO REQUEST 2:**

Subject to and without waiving its objections, BNSF states the following:

Within the last 12 months, BNSF analyzed the characteristics of other Class I railroads. Any such analyses were conducted at the direction of counsel and are privileged. Within the last 12 months, BNSF did not take steps to acquire another Class I railroad. BNSF has not identified any responsive, non-privileged documents responsive to this request after a reasonable search.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, as it seeks information about transactions that BNSF or any of its employees “are considering or have considered within the last 12 months.” BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

**REQUEST 3:**

Produce all Documents and Communications relating to the Proposed Transaction’s impacts or potential impacts on potential future mergers involving

Class I railroads, including but not limited to any mergers You have considered executing with any other Class I railroads.

**RESPONSE TO REQUEST 3:**

BNSF conducted a reasonable search for documents and has not identified any non-privileged documents responsive to this request after that reasonable search. BNSF may provide expert disclosures and other evidence and argument in opposition to the merger at the agreed time(s).

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, including to the extent it seeks “all Documents and Communications” related to any “impact” the Proposed Transaction may have on any future merger involving Class I railroads, without limitation. BNSF further objects to the term “impacts” as vague in this context and not subject to a common understanding. BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

**REQUEST 4:**

Produce all Documents and Communications relating to any potential or actual transaction, combination, joint venture, alliance, partnership, initiative, other form of cooperative arrangement or other strategic response that You have considered or

implemented, or are considering or are implementing, as a result of the Proposed Transaction.

**RESPONSE TO REQUEST 4:**

BNSF regularly evaluates on-going commercial relationships with other railroads and other entities. BNSF has engaged in such commercial relationships recently and over time. BNSF will search for and produce final, non-privileged analyses related to commercial relationships it has entered into since July 29, 2025. To do so, BNSF will conduct a reasonable search of the files of the principal individuals responsible for evaluating such commercial relationships.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, including to the extent it seeks “all Documents and Communications relating to any potential or actual transaction, combination, joint venture, alliance, partnership, initiative, other form of cooperative arrangement or other strategic response that” BNSF or any of its employees have ever considered or implemented, or are considering or implementing. BNSF further objects to this Request to the extent that it is vague and ambiguous, including as to the terms “considered” and “considering”, as well as “combination,” “alliance,” “initiative” and “other form of cooperative arrangement or other strategic response,” which are all undefined and may not be subject to a common understanding. BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or

obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

### **GENERAL OBJECTIONS AND SPECIFIC RESPONSES**

BNSF makes the following additional responses to Applicants' First Set of Discovery Requests to BNSF.

1. BNSF objects to the Requests, including the instructions and definitions, to the extent they seek to impose upon BNSF duties and/or responsibilities greater than those imposed by 49 C.F.R. § 1114.21, 49 C.F.R. § 1114.26, 49 C.F.R. § 1114.30, any applicable orders of this proceeding, or any stipulation or agreement between BNSF and the Applicants.

2. BNSF objects to these Requests to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, and/or any other applicable constitutional, statutory, or common law privilege. No privileged information, Document, or Communication will intentionally be provided in response to these Requests. By responding to any particular Request, BNSF does not intend to nor does it waive any applicable privilege that it may have, and BNSF specifically intends to assert the same. Inadvertent production of any document that is privileged or was prepared in anticipation of litigation shall not constitute waiver of any privilege or of any other ground for objection of discovery of such document, the information

contained therein, the subject matter thereof, or of BNSF's right to object to the use of that Document or the information contained therein.

3. BNSF objects to each Request to the extent it seeks proprietary or confidential business information, trade secrets, other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or obligations with third parties.

4. BNSF objects to the Requests to the extent they request documents or seek information already known to the Applicants, in the Applicants' possession, or that is published, publicly available, or otherwise generally accessible to all parties.

5. BNSF objects to the Requests to the extent they presume facts. BNSF does not agree to the Applicants' characterizations of any documents, facts, theories, or conclusions, and its responses shall not be construed as an admission that any definition or characterization provided by the Applicants is either factually accurate or legally binding. BNSF responds to the Requests without waiving any right to object to any requested discovery, and without affirming any conclusory or argumentative statements made by the Applicants in the Requests.

6. BNSF objects to these Requests to the extent they request BNSF to provide information not in its possession, custody, or control, including any documents from any third parties. Any such Request is overbroad, unduly burdensome, and inconsistent with (and imposes obligations beyond) the obligations required under 49 C.F.R. § 1114.21, 49 C.F.R. § 1114.26, or 49 C.F.R. § 1114.30.

7. BNSF objects to these Requests to the extent they require BNSF to create, compile, or develop new documents or data compilations not maintained in the ordinary course of business.

8. BNSF's responses are based upon the knowledge, information, and belief that it has acquired to present. BNSF reserves its right to amend these responses, assert additional objections, and supplement any information.

9. BNSF objects to the definitions of "You" and "Your" as overly broad and unduly burdensome, irrelevant, and not proportional to the needs of this proceeding, because the definitions encompass "present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, [and] affiliates," including those that are not involved in the proceeding. BNSF further objects to the definitions of "You" and "Your" to the extent they purport to require BNSF to provide information from persons or entities outside of its possession, custody, or control. BNSF will construe "You" and "Your" to mean BNSF Railway Company and responds to the Requests on behalf of BNSF Railway Company only.

10. BNSF objects to the definition of "Communication" as overbroad and unduly burdensome insofar as it encompasses any "transmission or receipt of information" and communications that are outside of BNSF's possession, custody or control, or that cannot be located with a reasonably diligent search, or that exceed the scope of permissible discovery pursuant to 49 C.F.R. § 1114.21 and 49 C.F.R. § 1114.30.

11. BNSF objects to the definition of “Document” as overbroad and unduly burdensome insofar as it encompasses documents that are outside of BNSF’s possession, custody or control, or that cannot be located with a reasonably diligent search, or that exceed the scope of permissible discovery under 49 C.F.R. § 1114.21 and 49 C.F.R. § 1114.30. In responding to Requests that incorporate this term, unless otherwise specified, BNSF will construe the term “Documents” to be synonymous in meaning and equal in scope to the term as defined under 49 C.F.R. § 1114.30.

12. BNSF objects to Instruction 1 because extending references to “railroads, shippers, consultants, or companies (including Applicants)” to “include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof” makes the requests overly broad and unduly burdensome; they encompass persons and entities not relevant or proportional to this proceeding; and they refer to unknown persons and entities. BNSF further objects to the extent that Instruction 1 purports to require BNSF to provide information from persons or entities outside of its possession, custody, or control.

13. BNSF objects to the definition of “Produce” as well as Instruction 3 to the extent that Applicants seek to impose on BNSF any discovery obligation greater than or different from those imposed by 49 C.F.R. § 1114.21, 49 C.F.R. § 1114.26, 49 C.F.R. § 1114.30, or any other governing law or rule, or the Protective Order entered August 5, 2025.

14. Regarding Instruction 5, BNSF responds to Request No. 1 from May 29, 2025 to May 29, 2026; responds to Request No. 2 from May 29, 2025 to May 29, 2026;

responds to Request No. 3 from July 29, 2025 to May 29, 2026; and responds to Request No. 4 from July 29, 2025 to May 29, 2026.

Respectfully submitted,

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*Counsel for BNSF Railway Company*

June 15, 2026

## CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June 2026, I caused the foregoing *BNSF Railway Company's Responses and Objections to Applicants' First Set of Discovery Requests to BNSF* 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*

# **EXHIBIT C**

**From:** [Thompson, McClain](#)  
**To:** [Kelly, Kevin](#); [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [\\*AEllis@stblaw.com](#); [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](#); [Matelis, Joseph \(NON-SIDLEY @SULLCROM.COM\)](#); [Fanchiang, Eric](#); [\\*Avia.Gridi@stblaw.com](#)  
**Cc:** [\\*dludwin@cov.com](#); [\\*lflahivewu@cov.com](#); [Rosenthal, Michael](#); [Magcale, Jamie Dominique U](#); [Brown, Molly](#); [Damitio, Daniel](#); [Harrison, Caroline](#); [Krovoza, Charlotte](#); [Warren, Matthew J.](#); [ratkins](#); [Korman, Marc](#); [Laudone, Stephen S.](#); [William Mullins](#); [Spencer Naake](#)  
**Subject:** RE: FD 36873 - Applicants' 1st Set of Discovery Requests  
**Date:** Thursday, June 25, 2026 3:44:20 PM  
**Attachments:** [image001.png](#)

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Kevin –

We write for BNSF in response to UP's June 22 letter.

**First**, as to Request No. 1, UP says that BNSF did not “adequately substantiate” its claim that BNSF’s analyses “were conducted at the direction of counsel and are privileged.” We disagree. BNSF’s response speaks for itself: BNSF’s analyses as to the characteristics of other Class I railroads were conducted at the direction of counsel. Specifically, BNSF’s in-house Law Department led and directed those analyses. They are privileged. UP also asked BNSF to “confirm that [it] did not undertake any business consideration of a potential control transaction in response to the Proposed Transaction.” BNSF confirms that it did not undertake business consideration of a potential control transaction in response to UP-NS merger.

**Second**, as to Request No. 4, UP asked BNSF to provide “detailed information regarding BNSF’s document search methodology” for BNSF’s search for “final, non-privileged analyses related to commercial relationships it has entered into since July 29, 2025.” Given the nature of this request and our response to it, we are conducting targeted collections from the management team members involved in those analyses. This is based on our discussions with knowledgeable personnel at BNSF and our resulting understanding of the universe of potentially responsive documents that are available.

**Third**, as to General Objection No. 9, BNSF confirms that its responses to Applicants’ First Set of Discovery Requests were made on behalf of entities within BNSF’s possession, custody, and control.

Thanks,

McClain

**McClain Thompson**

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

**Sent:** Monday, June 22, 2026 5:26 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 <mclain.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:** FD 36873 - Applicants' 1st Set of Discovery Requests

**This message is from an EXTERNAL SENDER**

Be cautious, particularly with links and attachments.

Counsel,

Please see the attached correspondence.

Best,

Kevin

**Kevin Kelly**

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# **EXHIBIT D**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36873

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

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**UNION PACIFIC'S RESPONSES AND OBJECTIONS  
TO BNSF RAILWAY COMPANY'S  
FIRST SET OF DISCOVERY REQUESTS**

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*Attorneys for Union Pacific  
Corporation and Union Pacific  
Railroad Company*

October 16, 2025

Union Pacific Railroad Company and Union Pacific Corporation (collectively, “Union Pacific”) respond to the first set of discovery requests of BNSF Railway Company (“BNSF”) served on October 1, 2025 (“BNSF’s Requests” or “Discovery Requests” or “Requests”), as follows.

### **GENERAL RESPONSES**

The following General Responses apply to each of BNSF’s Requests:

1. Union Pacific is conducting a reasonable search for information and documents responsive to BNSF’s Requests. Where Union Pacific states that it will produce documents, Union Pacific will conduct a reasonable search for responsive, non-privileged documents, subject to the specific and general objections stated below.

2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

3. Union Pacific’s responses and objections to these Requests are based on Union Pacific’s present knowledge, information, and belief. Union Pacific reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

### **GENERAL OBJECTIONS**

Union Pacific’s General Objections, as set forth herein, are to be considered objections to each of the specific Discovery Requests (including subparts) that follow. These general objections are not exhaustive and, where appropriate, Union Pacific

will also state specific objections. Union Pacific's objections shall not waive, limit, or prejudice any objections that it may later assert.

1. In providing these responses, Union Pacific reserves all objections as to competency, relevancy, materiality, authenticity, and admissibility of the use of any information requested in the BNSF's Requests and in any responses or productions Union Pacific may provide thereto, in any subsequent proceeding, or further proceedings in this matter. To the extent that Union Pacific provides responsive information or documents, Union Pacific does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of Union Pacific's objections to any of BNSF's Requests.

2. Union Pacific objects to each and every Discovery Request as unduly burdensome and premature, to the extent it seeks discovery of information, documents, or communications prior to Union Pacific submitting its application and accompanying workpapers and seeks discovery of information documents, or communications that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

3. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to impose upon Union Pacific burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board rules or

precedents or are not proportional to the needs of the above-captioned proceeding and impose an undue burden on Union Pacific.

4. Union Pacific objects to each and every Discovery Request requesting that Union Pacific produce “all” responsive documents, communications, or information as unduly burdensome to the extent it requests that Union Pacific engage in an unreasonably broad collection and review in order to identify each and every document that may possibly be responsive. For those Requests to which it is obliged to respond, Union Pacific will produce such responsive documents or information as it is able to locate or identify in a reasonable search and which are not otherwise subject to an applicable privilege or other protection.

5. Union Pacific objects to the Discovery Requests and to each Definition, Instruction, and Request contained therein to the extent they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding, in whole or in part.

6. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein that request information, documents, or communications that are: (a) already in the possession of BNSF; (b) publicly available or otherwise readily available or accessible to BNSF from other sources; (c) unreasonably cumulative or duplicative of documents already in BNSF’s possession, custody, or control; or (d) otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific.

7. Union Pacific objects to each and every Discovery Request and to each

Definition, Instruction, and Request contained therein as unduly burdensome to the extent they seek production from the files of all current and former Union Pacific employees, including those who are not reasonably likely to possess non-duplicative relevant documents. Unless specifically stated otherwise, by stating that it will produce documents responsive to these Requests, Union Pacific represents that it will produce documents from files most likely to contain materials responsive to the Request without undue burden.

8. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they purport to require Union Pacific to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to BNSF's Requests, Union Pacific will conduct a reasonable search of those accessible files in its possession in which information responsive to BNSF's Requests, as limited by Union Pacific's Objections, is likely to be located.

9. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to prohibit Union Pacific from redacting information that might reveal Union Pacific's commercially sensitive or long-term corporate strategies and is not relevant to this proceeding. Union Pacific will redact any such information, and reserves the right to redact any non-responsive information, from otherwise responsive documents produced to BNSF.

10. Union Pacific objects to the production of, and is not producing,

documents or information subject to any attorney-client privilege, work-product doctrine, or other applicable privilege or protection. Union Pacific reserves the right to redact privileged information from materials that it produces in response to the Requests. Any production of privileged documents or information is inadvertent and should not be deemed as a waiver of any privilege. Union Pacific reserves all rights under applicable law, including the Protective Order to be entered in this case, to demand or require the return of all copies thereof and non-use by BNSF or by any other person or entity in this or any other proceeding.

11. Union Pacific objects to the production of documents that constitute or disclose confidential, proprietary, or commercially or competitively sensitive information. Union Pacific will produce such information, if not otherwise objectionable, designated “Confidential” or “Highly Confidential,” subject to the terms of the Protective Order entered in this case. Union Pacific reserves the right to seek additional protections as needed.

12. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they seek or may result in the use, disclosure, or dissemination of any confidential, proprietary, or commercially or competitively sensitive information produced in response to the Discovery Requests for the purpose of training, fine-tuning, evaluating, or otherwise interacting with artificial intelligence (AI) models or systems in a manner that violates the terms of the Protective Order entered in this case. This objection includes, but is not limited to, any use of such materials in connection with large

language models (LLMs), machine learning algorithms, or generative AI tools, regardless of whether such use is direct or indirect, manual or automated, or anonymized or de-identified. Union Pacific does not consent to the use of any of its discovery materials for purposes unrelated to this proceeding, including but not limited to AI training.

13. Union Pacific objects to Definition No. 1, “Communication” to the extent this Definition seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific objects to Definition No. 1 as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it seeks production of information on “telephone conversations” or “in-person conversations.” Union Pacific further objects to Definition No. 1 as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it would require production of text messages, instant or direct messages on any platform and electronic communications other than emails, and to the extent that it purports to require production of material that was not reduced to writing. Union Pacific is not searching for and will not produce these categories of “Communications.”

14. Union Pacific objects to Definition No. 3, “Document” to the extent this Definition seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to Definition No. 3 as unduly burdensome and as seeking information that is not proportional to the probative value the information

sought may have in this proceeding to the extent that it would require production of draft electronic communications, electronic meeting invites, meeting change or cancellation notices, text messages, communications by or with internet-connected applications (other than emails), electronic messages (other than emails), and Communications to the extent addressed in General Objection 13. Union Pacific is not searching for and will not produce these categories of “Documents.”

15. Union Pacific objects to Definition No. 4, “Identify,” to the extent that it seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to Definition No. 4 as overly broad, unduly burdensome, and as seeking information that is neither relevant nor proportional to the needs of this proceeding. Union Pacific further objects Definition No. 4 to the extent that it would require Union Pacific to provide information that is not reasonably accessible to Union Pacific, or is publicly available or otherwise readily available or accessible to BNSF from other sources, or to provide information in a form not kept in the regular course of business or to undertake anything more than a reasonable search for responsive information.

16. Union Pacific objects to Definition No. 5, “NS” as overly broad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requires Union Pacific to respond to the Requests with respect to Norfolk Southern Corporation’s “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.” Union Pacific will respond to the Requests only with respect to Norfolk Southern Corporation and Norfolk Southern Railway Company.

17. Union Pacific objects to Definition No. 8, “UP,” as overly broad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to require Union Pacific to respond to the Requests with respect to Union Pacific’s “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.” Union Pacific will respond to the Requests only with respect to Union Pacific Corporation and Union Pacific Railroad Company.

18. Union Pacific objects to each and every Instruction as unduly burdensome to the extent the Instruction seeks to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

19. Union Pacific objects to Instruction No. 1 to the extent it purports to require Union Pacific to complete its production of documents, if any, within fifteen days after service of the Requests. Union Pacific will produce any documents

identified in response to the Requests on a reasonable timeframe and on a rolling basis, and consistent with the procedural schedule for this proceeding.

20. Union Pacific objects to Instruction No. 2 to the extent it purports to impose obligations on Union Pacific to respond to the Requests in a manner not required by 49 C.F.R. Part 1114, Subpart B. Union Pacific will respond to the Requests as provided in the regulations.

21. Union Pacific objects to Instruction No. 3 to the extent it purports to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

22. Union Pacific objects to Instruction No. 4 to the extent it purports to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to this Instruction as overly broad, unduly burdensome, and as seeking information that is neither relevant nor proportional to the needs of this proceeding to the extent this Instruction, in conjunction with other Definitions and Instructions, purports to require Union Pacific to provide the history of Documents that “[were] but [are] no longer” in Union Pacific’s possession, custody, or control.

23. Union Pacific objects to Instruction No. 5 to the extent it would require Union Pacific to provide information not required by 49 C.F.R. Part 1114, Subpart B or information that would be unduly burdensome to provide.

24. Union Pacific objects to Instruction No. 6 as overly broad and unduly burdensome to the extent this Instruction purports to impose obligations on Union

Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B. For those Requests to which it is obliged to respond, Union Pacific will conduct a reasonable search for responsive, non-privileged documents or information subject to its specific and general objections to the Requests.

25. Union Pacific objects to Instruction No. 7 to the extent it purports to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B, and to the extent it would require Union Pacific to provide information not required by 49 C.F.R. Part 1114, Subpart B or information that would be unduly burdensome to provide.

26. Union Pacific objects to Instruction No. 9 to the extent it purports to require Union Pacific to collect documents or information for an unduly burdensome period of time and “until present.” Except as more specifically objected to below, where Union Pacific agrees to produce responsive documents or information, Union Pacific will only search for and provide documents or information from January 1, 2019 up to July 29, 2025.

27. Union Pacific’s Responses and Objections are based upon information presently known to it. Union Pacific reserves the right to rely upon facts, documents, or other evidence that may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

## **DISCOVERY REQUESTS AND RESPONSES**

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request's use of the terms "Documents" and "Communications" for the reasons set forth in its General Objection, and its use of the terms "produce" and "produced" as vague.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will provide BNSF with a copy of or access to Union Pacific's responses to discovery requests in this proceeding that are served by other participants in this proceeding.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials that Union Pacific previously filed with the Surface Transportation Board and which are accessible to BNSF through the proceeding, subject to the

existing Protective Order. Union Pacific further objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to the terms “Documents” and “Communications” for the reasons set forth in its General Objection, and the terms “produce” and “produced” as vague.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged materials in its possession that it made available to a federal government agency, state attorneys general, or any other state government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction in response to the request of such entity or in response to Union Pacific’s legal obligations to provide such information, to the extent such information can be collected and produced without undue burden and can be located after a reasonable search. Union Pacific has not identified any such materials in its possession, other than the materials accessible to BNSF through this proceeding.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected

from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “Produce Documents sufficient to show” information “to secure regulatory approval” prior to Union Pacific submitting its application and accompanying workpapers.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific responds that its proposals regarding conditions it would accept, propose, or agree to if needed to secure regulatory approval for the Proposed Transaction will be addressed in its application and accompanying workpapers.

#### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to the undefined phrases “counter-party,” “designed to facilitate service,” and “between the existing UP ... networks” as vague and ambiguous

when read together. Union Pacific further objects to this Request as unduly burdensome to the extent it seeks production of “all” historical versions of the referenced agreements and for an unspecified period of time. Union Pacific further objects to this Request because it seeks information not in Union Pacific’s possession, custody or control. Union Pacific further objects to the term “Documents” for the reasons set forth in its General Objection, and the terms “produce” and “produced” as vague. Union Pacific understands this as a request for agreements between Union Pacific and a counter-party that are designed to facilitate freight rail service operations between the existing Union Pacific and existing Norfolk Southern networks.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce current versions (in effect) of written terminal agreements, operating agreements, and routing protocol agreements between Union Pacific and a counter-party that are designed to facilitate freight rail service operations between the existing Union Pacific and existing Norfolk Southern networks, to the extent such agreements can be collected and produced without undue burden and can be located after a reasonable search.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected

from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including to the extent it asks Union Pacific to identify “all individuals and/or entities ... from whom ... UP .. has sought, solicited, or discussed a potential letter or statement of support.” Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “Identify” information prior to Union Pacific submitting its application and accompanying workpapers. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed with the Surface Transportation Board and which are accessible to BNSF through the proceeding.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific responds that it has engaged in widespread outreach to customers, labor unions, suppliers, community leaders, public officials, and other stakeholders about the benefits of the Proposed Transaction, including making information regarding the Proposed Transaction available to the public at <https://www.up-nstranscontinental.com>. When individuals or

entities have indicated support, Union Pacific has invited the submission of letters of support to the STB. Union Pacific will provide these letters of support with the application.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as overly broad and unduly burdensome, to the extent it purports to request Union Pacific “Identify” *all* individuals or entities that “have expressed or communicated concern about the Proposed Transaction” to anyone in any form at any time. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed with the Surface Transportation Board and which are accessible to BNSF through the

proceeding.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific responds that information regarding individuals or entities that submit comments, protests, requests for conditions, or any other evidence and argument in opposition to the Proposed Transaction will be accessible to BNSF through the proceeding.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad, to the extent it purports to request *all* “Documents” or “Communications” that “concern or relate” for an undefined time period, undefined scope, and undefined subjects. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed with the Surface

Transportation Board and which are accessible to BNSF through the proceeding.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged information, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search. Union Pacific directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to the phrase “other economic value or concession” as vague and overly broad. Union Pacific objects to the phrase “offered in connection with or related to” *any* discussion as vague, overly broad, and ambiguous. Union Pacific further objects to the term “stakeholder” as vague, overly broad, and ambiguous.

Subject to and without waiving the foregoing objections and its General

Objections, Union Pacific will produce nonprivileged information, to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers. Union Pacific has not identified any such materials.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to the undefined term “movement event data” as vague and ambiguous. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request *all* data “sufficient to identify the sequence of cars within a train for each applicable event” or “sufficient to identify the car conveying the container for each applicable event” for every shipment in which Union Pacific participated as a rail carrier for nearly seven years, which includes *billions* of data line items of commercially sensitive information. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding. Union Pacific further objects to this Request as unduly burdensome to the extent it purports to require Union Pacific to provide information in a form not kept in the regular

course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged car-level event data from January 1, 2019 to December 31, 2024, in forms or formats kept in the normal course of business, to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

## **REQUEST NO. 10**

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

### **Union Pacific Response**

Union Pacific objects to the undefined term “train event data” as vague and ambiguous. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request undefined data for *all* trains for nearly seven years. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding.

Union Pacific further objects to this Request as unduly burdensome to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged train cycle summary data from January 1, 2019 to December 31, 2024, in forms or formats kept in the normal course of business, to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

#### **REQUEST NO. 11**

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

##### **Union Pacific Response**

Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request all “intermodal train schedules” over the course of thirty years. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in

this proceeding. Union Pacific further objects to this Request as unduly burdensome to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged intermodal train schedules information from January 1, 2019 to July 29, 2025, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request “density information” in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged density information from January 1, 2019 to December 31, 2024, in forms or formats kept by Union Pacific in the normal course of business, to the extent such materials can be

collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of Documents relating to “any current or anticipated”

transactions over an unlimited time period, undefined locations, and for undefined purposes. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed by Union Pacific with the Surface Transportation Board.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will provide responsive information about merger-related transactions with the application & workpapers, to the extent any such transactions exist.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports

to request *all* “Communications” between Union Pacific and Norfolk Southern since an undefined date. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to require Union Pacific to search for “all Communications” between interline carriers in the ordinary course of business. Union Pacific objects to the undefined term “merger announcement” as vague and ambiguous. For the purposes of responding to this Request, Union Pacific interprets “merger announcement” to refer to the July 29, 2025 announcement of the merger agreement.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to its forthcoming application for information on operational integration and the future operation of jointly-owned companies.

## **REQUEST NO. 16**

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

### **Union Pacific Response**

Union Pacific objects to this request as overly broad, vague, and ambiguous, to the extent it purports to request *all* documents “regarding changes.” Union Pacific objects to the undefined phrase “employee discipline standards or practices” as vague and ambiguous. Union Pacific further objects to this Request because it seeks information that is neither relevant nor

reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged documents responsive to this request to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

#### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome, to the extent it purports to require Union Pacific to produce *all* “Documents” and *all* “Communications” between the carriers for over ten years. Union Pacific objects to the undefined terms “joint ventures,” “marketing alliances,” and “other forms of cooperative agreements” as vague and ambiguous. Union Pacific objects to this Request as vague, ambiguous, and unduly burdensome, to the extent it purports to require Union Pacific to search for Documents and

Communications related to “potential” unspecified non-merger related business relationships “whether or not such agreements were implemented.”

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will provide documents sufficient to show current interline business relationship service products between Union Pacific and Norfolk Southern, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “[d]escribe in detail” information prior to Union Pacific submitting its application and accompanying workpapers, or that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific. Union Pacific further objects to the extent this Request seeks discovery of information documents, or communications that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to information available to the public

at <https://www.up-nstranscontinental.com> and to its forthcoming application.

## **REQUEST NO. 19**

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

### **Union Pacific Response**

Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “[d]escribe in detail” information prior to Union Pacific submitting its application and accompanying workpapers, or that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific. Union Pacific further objects to the extent this Request seeks discovery of information documents, or communications that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>. Union Pacific further responds that provisions it would propose to enhance competition in connection with the Proposed Transaction will be addressed in its forthcoming application.

## **REQUEST NO. 20**

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

## **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to produce information prior to Union Pacific submitting its application and accompanying workpapers. Union Pacific objects to this Request to the extent it seeks discovery of information or documents that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed. Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged documents responsive to this request to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

### **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to produce information prior to Union Pacific submitting its application and accompanying workpapers. Union Pacific objects to this Request to the extent it seeks discovery of information or documents that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

Subject to and without waiving the foregoing objections and its General

Objections, Union Pacific directs BNSF to its filings with the Securities and Exchange Commission, available at <https://www.sec.gov/Archives/edgar/data/100885/000119312525224307/d908896ds4a.htm> and <https://www.sec.gov/Archives/edgar/data/100885/000119312525226560/d908896d424b3.htm>, and information available to the public at <https://www.up-nstranscontinental.com/> and <https://investor.unionpacific.com/>. Union Pacific also directs BNSF to its forthcoming application and accompanying workpapers.

## **REQUEST NO. 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.

### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of *all* “studies, analyses, and reports” for undefined time periods. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to its filings with the Securities and Exchange Commission, available at <https://www.sec.gov/Archives/edgar/data/100885/000119312525224307/d908896ds4a.htm> and <https://www.sec.gov/Archives/edgar/data/100885/000119312525226560/d908896d424b3.htm>, and information available to the public at <https://www.up-nstranscontinental.com/> and <https://investor.unionpacific.com/>.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information not in Union Pacific's possession, custody or control.

### **REQUEST NO. 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.

#### **Union Pacific Response**

Union Pacific objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific objects to this request as overly broad, vague, and ambiguous, to the extent it purports to request *all* documents "provided to third parties... regarding the Proposed Transaction." Union Pacific objects to Union Pacific further objects to the term "Documents" for the reasons set forth in its General Objection, and

the terms “provided” as vague. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials that Union Pacific previously filed with the Surface Transportation Board and which are accessible to BNSF through the proceeding, subject to the existing Protective Order.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>.

## **REQUEST NO. 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.

## **Union Pacific Response**

Union Pacific objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-

product doctrine, or any other applicable privileges or immunities. Union Pacific further objections to the undefined terms “requested,” “completed,” and “reciprocal switches” as vague and ambiguous. Union Pacific further objects to this Request as unduly burdensome to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information. Union Pacific further objects to this Request to the extent it seeks *all* data for *all* “reciprocal switching” from January 1, 2019 through December 31, 2024. Union Pacific further objects to this Request as unduly burdensome, to the extent it purports to require Union Pacific to provide a subset of information or data which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged data regarding reciprocal switch movements in its possession and responsive to this Request for the period January 1, 2019 to December 31, 2024, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

## REQUEST NO. 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).

### Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of *all* "Documents related to ... capital budgets and forecasts." Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific further objects to this Request because it seeks information regarding Norfolk Southern that is not in Union Pacific's possession, custody or control.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to its Form 10-K filing with the Security Exchange Commission and information available to the public at <https://investor.unionpacific.com/>.

## REQUEST NO. 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.

### Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected

from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of Documents “sufficient to identify all issues or problems” over an unlimited time period and for undefined purposes. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed by Union Pacific with the Surface Transportation Board.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged documents responsive to this request to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

Respectfully submitted,

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October 16, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of October, 2025, I have caused the foregoing Union Pacific's Responses and Objections to BNSF Railway Company's First Set of Discovery Requests to be served electronically on all parties of record in this proceeding.

/s/ Kevin Kelly

## **CERTIFICATE OF SERVICE**

I certify that I caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Onika Williams

Attorney for BNSF Railway Company

July 21, 2026