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Office of Chief Counsel
July 21, 2026
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CSXT-15

July 21, 2026

By E-Filing

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

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

Dear Judge Soulikias:

CSX Transportation, Inc. (“CSXT”) submits this letter in opposition to Applicants’ premature and misleading motion to compel. *See* UP-75/NS-73, Applicants’ Motion to Compel (July 16, 2026). Applicants move to compel CSXT to produce car and train event, reciprocal switching, and interchange data—wrongly claiming that CSXT has “refused” to produce such data. But CSXT has already agreed to reciprocal production of its car and train event data and to investigate the burden and feasibility of producing the rest. Applicants’ motion is premature and unnecessarily burdens this process.

Applicants’ argument also relies on a misguided premise that all discovery in these proceedings should be “reciprocal.” But it is only Applicants who are seeking clearance from the Board to merge. They bear the burden to prove that the Proposed Transaction is not anticompetitive and is in the public interest. That affects what information is relevant to the Board’s decision-making. Relying exclusively on the premise that the data they seek is relevant because another railroad asked for similar data from them, Applicants have failed to establish why the data they move to compel from CSXT is relevant. In fact, their motion concedes that they do not know whether it will be relevant, acknowledging they only need it because of arguments non-Applicant railroads “may” make or conditions that non-Applicant railroads “may” propose. CSXT thus asks that Applicants’ motion be denied.

I. Applicants’ Motion Is Premature, And CSXT Already Agreed To Provide Some Of The Data.

Applicants’ motion to compel CSXT to produce car and train event data (Requests 18 and 19) and reciprocal switching and interchange data (Requests 20 and 21) is premature—

particularly since CSXT has *already agreed* to produce the car and train event data and has already agreed to investigate burdens associated with collecting the reciprocal switching and interchange data. The timeline of the parties' discussions shows how needlessly rushed Applicants' motion is. On June 16, 2026, CSXT timely objected to all four data requests. *See* UP-75/NS-73, Ex. I at 27-32. On July 8, 2026, Applicants and CSXT met and conferred for the first time about these data requests. *Id.* at 2. CSXT and the other non-Applicant railroads asked Applicants to explain the data's relevance, and Applicants agreed to do so in writing. *See* Ex. 1 at 1, 4-5. Applicants provided that explanation nearly a week later, on July 14. *Id.* at 1-2. This explanation acknowledged that some of the information on interchanges sought by Request 21 may be found in the traffic data that CSXT had already produced, which was "a question that each nonapplicant railroad should answer based on its own data." *Id.*

On July 16, CSXT responded that "[i]n light of [Applicants'] explanation," CSXT was willing to produce the car and train event data (Requests 18 and 19), and was "evaluating" the burden and relevance of the other data requests, including by investigating those requests' "relation to CSXT's traffic tapes," *i.e.* whether some of the requested interchange information could be found in the data that CSXT has already produced—as Applicants had themselves suggested two days earlier. *Id.* at 1. While CSXT expressed doubt regarding the ultimate relevance of CSXT's reciprocal switching data, CSXT agreed to investigate the burden of producing this data as well. *See id.* Applicants' motion, filed just hours later, ignores this chain of events. It misrepresents CSXT's position, asserting that "CSX refuses to produce data in response to Requests 20 and 21." *See* UP-75/NS-73 at 2 n.7. Applicants' motion cuts short the meet and confer process and manufactures a dispute where none yet exists. For this reason alone, Applicants' motion should be denied.

Even if CSXT had not already agreed to produce or investigate the data requested, Applicants' own motion underscores its prematurity. There is no special urgency or justification for Applicants to have cut the meet and confer process short. Applicants themselves admit that they only want the data to respond to comments or analyses that non-Applicants *might* make: Applicants say they need this data to "respond to any criticisms or alternative analyses that Non-Applicant Railroads *may* present." UP-75/NS-73 at 3 (emphasis added). They also argue they "cannot compare, contextualize, or benchmark the analyses that the Non-Applicant Railroads *may* present in any responsive filings" and that the data "*may* become critical for the Board's evaluation of any *potential* conditions or remedies that Non-Applicant Railroads *may* seek." *Id.* (emphasis added). But those comments and analyses have not yet been filed, and the STB has not yet even set a deadline for them.¹

Applicants also acknowledge they lack an understanding of the burden these requests would impose, instead claiming that the burden is "likely" minimal and would "likely" require minimal processing. *Id.* CSXT agreed to assess that burden, which could have informed further discussion of that burden weighed against Applicants' need for the data. But by prematurely filing their motion, Applicants have undercut the meet and confer process, which could have resulted in either no dispute at all or in a much sharper, more informed one. Applicants say they filed their motion "to ensure discovery proceeds in an efficient and timely manner" and claims to

¹ As explained below, Applicants have already submitted their affirmative case, so can have no need for such information from CSXT other than to reply to any responsive arguments and evidence presented by non-Applicants.

reflect a “willingness to engage in good-faith discussions,” UP-75/NS-73 at 2-3, but their conduct embodies the opposite.

II. Applicants Admit They Cannot Establish the Relevance of the Data They Seek.

Applicants’ motion also fails to establish that the data they seek from CSXT is relevant. Applicants rely instead on their assertion that non-Applicant railroads should be subject to identical discovery as Applicants—*i.e.*, that all discovery should be “reciprocal.” *See* UP-75/NS-73 at 2.

Applicants point to 49 C.F.R. § 1180.4(b)(4)(iii) to argue that the STB regulations establish a framework that favors “reciprocal” data exchanges. *Id.* at 3. But section 1180.4(b)(4)(iii) is expressly limited to traffic tapes, permitting Applicants to condition their production of 100% traffic tapes on a requesting party’s production of *its* traffic tapes. This reflects the Board’s recognition that traffic tapes are an important part of consolidation proceedings. It says nothing about any other types of data or discovery. Indeed, the exclusion of other data demonstrates that the Board does not expect production of other data should be strictly reciprocal. Applicants must demonstrate that the particular CSXT data they seek is relevant, not rely on an assumption of reciprocal discovery exchange.

With respect to the relevance of CSXT’s data at issue, Applicants’ own motion admits that they cannot even claim it is relevant. Applicants seek car and train event, reciprocal switching², and interchange³ data. As explained above, Applicants’ own motion explains that they want this data to respond to arguments and analyses non-Applicants might make in their responsive comments and applications. Until non-Applicant railroads file such comments or request any particular conditions, it is unknown what, if any, of the requested data will be relevant. Until that is known, it will not be clear whether any relevance of the requested data would be proportionate to the burden of producing it. And as explained above, Applicants chose to cut short the process before CSXT had even evaluated that burden.

Applicants’ only other argument for the relevance of this data is that it is pertinent to the Board’s assessments of network effects, competitive access, and service quality. It is not clear why Applicants need non-Applicant railroads’ data for these purposes⁴; they do not explain it. The Board’s rules “require applicants to file with their application all their statements and other materials on which they intend to rely in proving the proposal consistent with the public interest.” *R.R. Consolid. Procs. Expedited Processing*, 363 I.C.C. 767, 769 (1980) (citing the

² Reciprocal switching refers to the practice of one railroad carrying a shipment from a shipper only to a junction point where the shipment can then be transferred to another railroad. The reciprocal switching data Applicants have requested includes: “car-level movement records, switch lists, interchange logs, line-segment level usage data, and any other records or communications reflecting reciprocal switching arrangements or traffic.” *See* UP-75/NS-73, Ex. I at 29.

³ The interchange data Applicants have requested is data sufficient to show all interchange volumes with other rail carriers, broken down by line, location, and counterparty, together with any associated payments, settlements, or charges between carriers for haulage, switching, or other car handling (including waybill identifiers, car initials and numbers, dates and times, service type, payment types, and amounts). *See* UP-75/NS-73, Ex. I at 30-31.

⁴ The STB specifically ordered Applicants to turn over their traffic tapes. *See* STB Docket No. FD 36873, Decision Nos. 2 (August 25, 2025) and 20 (May 12, 2026). It did not, however, request traffic tapes from anyone else.

previous version of 49 C.F.R. § 1180.4(c)(3)); *see also id.* at 769 (“[A]pplicants will have submitted ... applicants’ entire direct case at the time the application is filed.”) & at 770 (the Board should “ha[ve], upon the filing of an application, all of the applicants’ supporting evidence”); 49 C.F.R. § 1180.4(c)(3), (4), & (8). Applicants never suggested that they would need to rely on CSXT’s data for their Application. And they have now filed that Application, which must contain their entire affirmative case, including any evidence they rely on to support their arguments regarding network effects, competitive access, and service quality. Thus, they can have no need for CSXT’s data to support their arguments on these issues, until and unless other parties place that data at issue through any responsive comments and applications, as yet to be filed at a later stage.⁵

III. Conclusion.

Applicants’ motion is premature; ignores that CSXT has already agreed to give Applicants much of the data requested and has agreed to actively investigate the rest; and fails to establish that the data requested is even relevant. For these reasons, Applicants’ motion should be denied.

Sincerely,

/s/ Eric P. Enson

Eric P. Enson

Attorney for CSX Transportation, Inc.

cc: Counsel of Record

⁵ In their written justifications to non-Applicant railroads for why the data was necessary, Applicants pointed to the CP-KCS proceedings where applicants in those proceedings requested car and train event data from non-applicant railroads and received it. *See* Ex. 1 at 2. There, however, the data was produced by non-applicant railroads *after* they had filed responsive comments. *See* STB Docket No. FD 36500, Decision No. 11 (Nov. 23, 2021) (setting procedural deadlines and setting the deadline for responsive comments, protests, requests for conditions, and any other evidence and arguments in opposition to the application for February 28, 2022); STB Docket No. FD 36500, CSX-8 (Feb. 28, 2022) (CSXT’s comments and request for conditions filed with the STB on February 28, 2022); and Ex. 1 at 2 (stating that in the CP-KCS proceedings, requests for non-applicant railroad data were served on March 16, 2022). Rather than supporting Applicants’ rushed schedule, the timeline of the CP-KCS proceedings demonstrates that these data requests, let alone Applicants’ motion, are premature.

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of July, 2026, I caused the foregoing document 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/ Eric P. Enson

Eric P. Enson

Attorney for CSX Transportation, Inc.

EXHIBIT 1

Fanchiang, Eric

From: Fanchiang, Eric
Sent: Thursday, July 16, 2026 9:57 AM
To: Kelly, Kevin; Magcale, Jamie Dominique U; Thompson, McClain; *AEllis@stblaw.com2; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM); Donovan, Daniel T.; McCarrick, T.J.; Razi, Sara Y.; Bohl, Lindsey C.; David Meyer; *pdenton@steptoe.com; *tstrafford@steptoe.com; Cunningham, Rich; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Aluise, Dylan M.; Hynes, Samantha F.; Golden, Nathan H.; Joseph, Neil; Volbrecht, Tate D.; Enson, Eric; Lindsey.Bohl@stblaw.com; *Avia.Gridi@stblaw.com; Vaidya, Tushar
Cc: Flahive Wu, Laura; Ludwin, Derek; Rosenthal, Michael; Damitio, Daniel; Warren, Matthew J.; Korman, Marc; ratkins; Laudone, Stephen S.; William Mullins; Spencer Naake; OpalDisco
Subject: RE: FD 36873 - Applicants' 2nd Set of Discovery Requests - Data Requests

Counsel,

Thank you for your email stating your position on the relevance of Request Nos. 18-21 in your Second Set of Discovery Requests. In light of your explanation, CSXT is willing to produce car and train event data for 2019-2025. With respect to your other requests, CSXT is evaluating the burden and feasibility of collecting such data, their relation to CSXT's traffic tapes, and their relevance. In particular, CSXT does not see the relevance of non-Applicants' reciprocal switching data. CSXT is also concerned, like others, about Applicants' deficiencies with their own data productions. We are available to discuss further if needed.

Best,

Eric Fanchiang

Eric Fanchiang

Pronouns: he/him/his
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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Tuesday, July 14, 2026 4:01 PM
To: Magcale, Jamie Dominique U <JMagcale@cov.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Lindsey.Bohl@stblaw.com; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Vaidya, Tushar <tushar.vaidya@kirkland.com>
Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael

<mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 2nd Set of Discovery Requests - Data Requests

Counsel,

At a recent meet and confer, certain non-applicant railroads asked Applicants to explain the relevance of the reciprocal traffic data requests that Applicants have served on the non-applicant railroads (which are numbered 18-21 in each set of requests). In particular, non-applicant railroads asked for an explanation of the relevance of event data requests, which Applicants provide below.

Car and train event data is produced as a matter of course in a range of STB proceedings, including prior merger proceedings. For example, in the CP-KCS proceeding the applicants requested that other railroads produce “system-wide car and container event data,” and this data was produced. See, e.g., Request No. 54, Applicants’ First Set of Interrogatories and Second Set of Discovery Requests, STB Fin. Docket 36500 (served Mar. 16, 2022). While waybill data may include basic transportation characteristics like origin and destination, only event data provides operational information on how traffic moves over the network, which is necessary to assess any claims that might be made by nonapplicant railroads about the impact of the proposed transaction on their service and operations or any conditions they may propose. Moreover, event data is maintained and used in the ordinary course of business, and production of those data files is not unduly burdensome, particularly for sophisticated Class I railroads.

Indeed, the STB’s merger rules reflect an expectation of reciprocal traffic data discovery for railroads who choose to participate in the proceeding. Under 49 § 1180.4(b)(4)(iii), applicants are permitted to condition their disclosure of their 100% traffic tapes to other railroads on those railroads’ commitment to do the same. Here, Applicants responded to non-applicant railroads’ request for event data without objection, and non-applicants have no basis to resist production of the exact same forms of traffic data that they have requested and have received.

There was also a question about whether Request 21 asks for information duplicative of previously produced waybill data. This request was directed at information “sufficient to show” the requested information on interchange volumes and associated payments between carriers, and non-applicant railroads are free to point to their waybill data if that data provides a sufficient answer to some or all of the information requested by Request 21. As we discussed on the call, some of the requested information like haulage or switching payments between railroads may not be reflected in waybills. But that is a question that each nonapplicant railroad should answer based on its own data.

As it stands, none of the non-applicant railroads have agreed to produce the reciprocal data that was requested. Please let us know promptly, and by no later than Thursday at 12 PM ET, if that has changed.

Best,

Kevin

Kevin Kelly

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From: Magcale, Jamie Dominique U <JMagcale@cov.com>

Sent: Wednesday, July 8, 2026 3:17 PM

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Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' 2nd Set of Discovery Requests

McClain,

Thank you again for providing your availability to meet and confer. We look forward to discussing Applicants' second set of discovery requests and our July 6 letter further during today's call. To address the points you raised below:

First, we appreciate your confirmation that BNSF has agreed to conduct a reasonable search for Requests Nos. 6–8, 16, and 22, and to meet and confer on Requests Nos. 11–14, 17–21, and 23–30. However, agreeing to take those steps is not the same as actually searching for, let alone producing, responsive documents. Indeed, we do not know whether BNSF has actually conducted any searches in response to these requests and, to date, BNSF has produced zero documents in response to any of Applicants' discovery requests. Has BNSF taken any steps to search in response to the referenced requests? If so, what are those steps for each request?

Second, with respect to BNSF's relevance, proportionality, and burden concerns, our July 6 letter and prior communications address these issues directly. Applicants' requests seek documents on topics that are directly relevant to this proceeding and that, in many cases, BNSF itself has placed at issue through the discovery it has sought from Applicants and its public statements regarding the Proposed Transaction. Any argument on burden or proportionality of burden to relevance is the responsibility of BNSF to make. BNSF has not articulated any specific burden. We disagree that the requests Applicants have made are disproportional or unduly burdensome, but we are hopeful that the parties can address any burden-related issues through the negotiation of appropriate search terms, custodians, and/or de-duplication. We look forward to discussing those with you.

Third, as to the question of reciprocity, we disagree with BNSF's framing. Applicants are seeking relevant, proportional discovery from a voluntary participant in this proceeding. BNSF elected to participate as a party, has launched a robust public relations campaign against the Proposed Transaction, has served extensive discovery requests on Applicants, and has indicated it may submit evidence and argument in opposition to the merger. As we discussed during our meet and confer on June 30, the Board's regulations provide for broad discovery, the Board's discovery rules apply to all parties, and nothing in those rules creates a lower standard for non-Applicant parties. See 49 C.F.R. § 1114.21(a)(1).; see also *Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021); *CSX Transp. & Del. & Hudson Ry.—Joint Use*

Agreement, FD 35348, slip op. at 3 (STB served Aug. 16, 2010). Thus, as parties, BNSF and the other non-Applicant railroads are subject to discovery. To the extent you possess relevant information, we are entitled to obtain it in discovery, subject to proportionality/burden analyses. As noted above, we disagree that the requests Applicants have made are disproportional or unduly burdensome, but any concerns can be addressed through negotiation of custodial search parameters. We look forward to discussing those with you.

Fourth, we recognize that targeted, non-custodial collections and searches may be appropriate for data-specific requests, such as Request Nos. 18-21. However, for all other requests – especially those seeking communications and documents that would not likely be housed in centralized, non-custodial repositories – we believe custodial searches are appropriate. We look forward to discussing this with you further.

Applicants reserve all rights.

Thanks,

Jamie

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

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

Sent: Tuesday, July 7, 2026 9:45 AM

To: Kelly, Kevin <Kkelly@cov.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Vaidya, Tushar <tushar.vaidya@kirkland.com>

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

Subject: RE: FD 36873 - Applicants' 2nd Set of Discovery Requests

[EXTERNAL]

Kevin –

We write for BNSF in response to UP's July 6 letter. We disagree with it on several grounds.

First, UP's letter ignores that we have agreed to conduct a reasonable search in response to five of the requests (Nos. 6-8, 16, and 22) and offered to meet and confer on 17 of the other requests (Nos. 11-14, 17-21, 23-30). We also agreed to provide rolling productions and keep you apprised of the timing of those rolling productions. As a result, much of UP's letter—which is premised on a narrative that we are refusing to search—is not particularly relevant, productive, or even close to being true.

Second, UP's letter fails to specifically respond to any of the relevance, proportionality, and burden concerns that we raised. It would be more productive for UP to engage on the issues we raised rather than ignore them. For example, Applicants seek information from BNSF about how it sets rates for every single one of its routes, for each individual customer, over a multi-year time-period. See Applicants' RFP No. 23; see also, e.g., Applicants RFP No. 25 (seeking all documents relating to BNSF's strategy for pricing rail traffic); No. 26 (seeking all documents relating to BNSF's strategies for growing its rail traffic); No. 28 (seeking "all Documents and Communications relating to instances in which You made offers (such as bids on Request for Proposals) to customers opening new facilities that could be served by a rail carrier"). BNSF explained its relevance and proportionality objections to those requests (and others) in its responses and objections 21 days ago, but UP has not responded to any of those objections. Will UP be doing so, and if so, when?

Third, there is, in fact, a dispute whether some of the documents and information that UP seeks from BNSF are fairly subject to discovery. We note that others have repeatedly asked UP for authority to support its contention that UP and non-Applicant railroads are similarly situated as to all aspects of discovery. UP has never provided it, and there's not a single citation in UP's letter. Simply stated, there is not 1:1 reciprocity between BNSF and UP as to discovery in this proceeding. UP elected to enter into a merger and file a control application in which UP (not BNSF) bears the burden of proof. Further, UP elected to make hundreds of fact-based contentions in its application about the merits of its merger proposal, and BNSF is entitled to test those. UP's choices do not open BNSF up to 1:1 reciprocal discovery. BNSF and the other non-Applicant railroads are differently situated than UP and NS, and the discovery considerations are different.

Fourth, UP claims that for an unidentified set of its requests, BNSF must conduct custodial searches. UP does not identify which requests that UP believes require custodial searches or explain why custodial searches are necessary for those particular requests. What is your request-specific position?

We hope you will provide that information and responses in writing before our discussion. And which specific requests would you like to discuss? I am free most of Wednesday afternoon and before 11 AM ET on Thursday.

Thanks,

McClain

McClain Thompson

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

Sent: Monday, July 6, 2026 10:27 AM

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Subject: FD 36873 - Applicants' 2nd Set of Discovery Requests

Counsel,

Please see the attached correspondence.

Best,

Kevin

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