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By E-Filing

July 21, 2026

Hon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

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

Dear Judge Soulikias:

Applicants oppose BNSF's motion to compel production ("Motion") of *all* materials presented to Applicants' board of directors from 2019 to the present that touch on "competition, consolidation, growth, market shares, and alternatives to consolidation." BNSF-40 at 1. The discovery BNSF seeks is vague, overbroad, and disproportionate to the needs of this proceeding. To be clear, Applicants have already agreed to conduct broad searches of their board materials for documents regarding the proposed transaction and have substantially completed these productions. BNSF now seeks to push beyond Applicants' reasonable discovery commitments to conduct a fishing expedition into the deliberations of the boards of two competitors. BNSF's Motion should be denied, as the request for documents is vague, overbroad, and disproportionate to the needs of this proceeding.

If Your Honor determines that discovery of board materials unrelated to the proposed transaction is relevant and proportional to the needs of this proceeding, then reasonable limits should be placed on BNSF's request to address Applicants' relevance and overbreadth concerns. Further, if Your Honor determines that such discovery is proper, then reciprocal discovery of non-applicant Class I railroads on the same terms should be required in order to provide a full picture of the state of the railroad industry with respect to "competition, consolidation . . . market shares, and alternatives to consolidation."

As of the filing of this response, Applicants remain willing to resolve this discovery dispute. Through the conference process, Applicants have offered to produce excerpted sections of board materials related to competition, consolidation, market shares, and alternatives to consolidation, *provided* these highly sensitive materials are appropriately subject to heightened access restrictions (including single-attorney reviewer access to a data room), and BNSF agrees

to reciprocal discovery of BNSF and Berkshire Hathaway materials in its possession. As of this time, BNSF has not agreed to reciprocal discovery of its board materials.

1. The Requested Discovery is Overbroad.

BNSF seeks all board materials discussing “competition, consolidation, growth, market shares, and alternatives to consolidation” regardless of whether those discussions relate to the proposed transaction. BNSF-40 at 1. This request ignores the Board’s directive that “[d]iscovery requests must be narrowly drawn, directed toward a relevant issue, and not used for a general fishing expedition.” *Duke Energy Corp. v. Norfolk Southern Railway Co.*, NOR 42069, slip op. at 4 (STB served July 26, 2002). BNSF’s request would require Applicants to review board materials over an eight-year period for any discussion of sweeping concepts—such as “growth” and “competition”—and produce any documents that touch on those topics (as well as anything else contained in those documents). BNSF seeks to compel production of board materials regardless of whether they relate to the proposed transaction, the claimed transaction benefits, the relevant markets, the asserted alternatives, or any contention actually advanced in Applicants’ submissions.

BNSF’s invocation of Decision No. 13 does not justify its overreach. Decision No. 13 specifically ordered production of certain board-level materials connected to the proposed transaction and its effects. Decision No. 13 at 5 (ordering the production of “certain *transaction-related* documents”) (emphasis added). It did not hold that all board materials addressing broad subjects over an eight-year period are relevant merely because they were presented to a board of directors. *See Trailer Bridge, Inc. v. Sea Star Lines, LLC*, WCC 104, slip op. at 6 (STB served Oct. 27, 2000) (“While there could arguably be admissible evidence contained in [the requested] reports, again there are less intrusive means to obtain it and we will not facilitate an unnecessary fishing expedition into Sea Star’s corporate structure and operations.”). In other words, a discussion of competition by a board of directors in the context of considering the proposed transaction may be relevant, but that does not mean every document presented to a board of directors related to efforts to grow revenues is also relevant.

It is for this reason that Applicants repeatedly informed BNSF (and other non-applicant railroads) that their requests for these board materials were overbroad and needed to be tailored to the needs of this proceeding. *See, e.g.*, Ex. A, Jan. 6, 2026 Email from K. Kelly to M. Thompson (noting BNSF’s “limited explanation” of relevance for its broad request for board materials and offering to “consider[] appropriately narrowed requests”); Ex. B, Mar. 5, 2026 Letter from K. Kelly to D. Aluise (“[I]t is not clear how the requested documents—including documents reflecting considerations of proposed rail combinations as far back as 2000—are relevant to this proceeding. Union Pacific further notes that the requested materials and documents containing those materials may contain other proprietary and highly competitively sensitive information.”).

The overbreadth of BNSF’s Motion is astounding, given that BNSF seeks unfettered access to sensitive strategic material contained in its competitors’ board materials, while waging a public relations campaign against the proposed merger. *See CSX Corp. & CSX Transportation, Inc., Norfolk S. Corp. & Norfolk S. Ry. Co.—Control & Operating Leases/Agreements—Conrail Inc. & Consol. Rail Corp.*, FD 33388, slip op. at 2 n.9 (STB served Sept. 18, 1997); *see also*

“UP/NS Merger Update: The Facts Remain the Same,” BNSF.COM (last accessed Jul. 21, 2026), <https://www.bnsf.com/ship-with-bnsf/preserve-rail-competition/bnsf-whitepaper-up-ns-merger.pdf>. Instead of tailoring its requests, BNSF brought the instant motion seeking broad production of board materials.¹ Having failed to remedy the overbreadth of its request, BNSF’s motion should be denied.

2. The Requested Discovery is Disproportionate to the Needs of the Proceeding.

The Board measures proportionality by comparing the likely value of information sought against the burden imposed. 49 C.F.R. § 1114.21(c); *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, slip op. at 3 (STB served July 25, 2025). A large transaction may justify meaningful discovery into genuinely probative materials. Indeed, Applicants have recognized as much by engaging in discovery of an unprecedented scope in STB proceedings. But a large transaction does not excuse parties’ responsibility to tailor their requests to the issues in dispute. Otherwise, every major merger proceeding would become an invitation to demand entire categories of ordinary-course board materials on broad business topics, without regard to whether those materials have any concrete connection to the transaction, the claimed benefits, or the competitive issues before the Board. The Board should not permit BNSF to use the transaction’s size as a basis to expand discovery beyond reasonable limits. Proportionality requires a request calibrated to the information likely to matter—not a broad demand for sensitive board materials that would capture ordinary business planning untethered to this proceeding.

BNSF argues that it is entitled to test contentions in the Application, specifically Applicants’ contention that the proposed merger creates growth that UP and NS “could not achieve independently.” BNSF-40 at 1. The board materials that Union Pacific has already produced bear on this issue, as they relate to Union Pacific’s assessment of the reasons for this proposed merger. *See* UP 35-2 (Documents Produced in Response to Decision No. 13). By contrast, board materials from 2019 that might report on the then-state of the rail industry do not bear on Applicants’ contentions. That said, as described below, if the Board determines such a broad swath of material is relevant, the board materials of other Class I carriers (and their parent organizations) would also be relevant.

As to burden, BNSF asks for director-level materials across two large public companies from 2019 to the present, using search concepts that could sweep in large volumes of highly sensitive and competitively significant materials unrelated to the proposed transaction. Board-level documents include confidential and privileged content. Reviews of this type require careful, individualized review to determine whether any portions require redaction. This may be an acceptable cost for valuable information. But requiring such work for irrelevant materials would impose a burden disproportionate to the likely benefit of the information sought.

¹ The other non-applicant Class I railroads have issued requests for all materials produced by Applicants in response to any discovery requests in this proceeding, and to the extent BNSF’s motion is granted will receive the resulting productions from Applicants.

3. If BNSF's Motion is Granted, Reasonable Limits Should Be Established and Reciprocal Discovery of Non-Applicant Class I Railroads Should Be Compelled.

While BNSF's Motion should be denied, if the Board elects to grant BNSF's Motion, Applicants propose that Your Honor impose two reasonable limits on production. First, BNSF's request for materials related to "growth" should be carved out. This term is extremely vague and could be read to include any discussion of revenue-generating activity. Furthermore, Applicants have already agreed to produce custodial documents related to Applicants' "strategies for growing rail traffic." See Ex. C, 2026.07.09 Email from K. Kelly to M. Thompson & Attachment "2026.07.09 Class Is Proposed Edits to UP Responsiveness Criteria (UP Responses) (STB).docx." This criterion, though still broad, provides at least some reasonable limit that Applicants may apply in their review.

Second, Applicants propose that their production be limited to only excerpts of those *sections* of materials presented to their board of directors from 2019 to the present that touch on "competition, consolidation . . . market shares, and alternatives to consolidation," and that heightened access restrictions be in place. As stated above, board materials often contain competitively sensitive strategic material. The relevance of such material should be judged in light of its sensitivity. See *CSX Corp. & CSX Transportation, Inc., Norfolk S. Corp. & Norfolk S. Ry. Co.—Control & Operating Leases/Agreements—Conrail Inc. & Consol. Rail Corp.*, FD 33388, slip op. at 2 n.9 (STB served Sept. 18, 1997) ("[T]he standard against which the relevance of commercially sensitive information should be judged may well be higher than the standard against which the relevance of less sensitive information should be judged."). Producing relevant sections, rather than entire documents, protects sensitive but irrelevant information without impairing the production of responsive information.

Finally, if the Board determines that discovery of non-transaction board materials is relevant and proportional to the needs of this proceeding, then reciprocal discovery obligations—including any reasonable limitations thereof—should be imposed on the other participating non-applicant Class I railroads. Each of the non-applicant Class I railroads has "made specific claims about the state of the rail industry—including claims about competition, consolidation, growth, market shares, and alternatives to consolidation," BNSF-40 at 3—to express their concerns about the Proposed Transaction.² BNSF insists that Applicants' own statements regarding the merger cannot provide a reliable, "unfiltered view" of their true thoughts regarding the railroad industry. Yet it and the other non-applicant Class I railroads have simultaneously refused to produce materials related to the same broad topics in response to a reciprocal request from Applicants.

² See, e.g., Tom G. Williams, EVP & Chief Marketing Officer of BNSF, "Important Update: Refiled UP-NS Merger Application and Your Next Steps," BNSF.COM (May 14, 2026), <https://bnsf.com/news-media/customer-notifications/notification.page?notId=important-update-refiled-up-ns-merger-application-and-your-next-steps>; "CPKC CEO Keith Creel statement on UP-NS merger application refiling," CPKC.COM (May 11, 2026), <https://www.cpkcr.com/en/media/UPNS-May2026>; "Staying on Track: CSX's Position on the Proposed UP/NS Merger," CSXSTAYINGONTRACK.COM (last accessed Jul. 20, 2026), <https://csxstayingontrack.com/>; "CN Says STB Was Right to Freeze the UP-NS Merger and Demand More Information," CN.CA (May 8, 2026), <https://www.cn.ca/en/news/2026/05/cn-says-stb-was-right-to-freeze-the-up-ns-merger-and-demand-more/>.

See, e.g., Ex. D, BNSF’s Responses & Objections to Applicants’ Second Set of Discovery Requests at No. 11. If Applicants’ non-transaction board materials discussing these topics are relevant, then the views expressed by the other non-applicants are relevant as well.³

* * *

For the foregoing reasons, Applicants respectfully request that the Board deny BNSF’s Third Motion to Compel. If Your Honor grants BNSF’s Motion, Applicants request that Your Honor hear argument—to the extent necessary—regarding reciprocal production of the same categories of board materials from non-applicants at the next regularly scheduled discovery conference, and hold in abeyance setting a deadline for production until that hearing.

Sincerely,

/s/ Laura Flahive Wu

Laura Flahive Wu

Kevin M. Kelly

Attorneys for Union Pacific
Corporation and Union
Pacific Railroad Company

cc: All Parties of Record

³ BNSF should also be ordered to produce responsive board materials in its possession from its parent company, Berkshire Hathaway. Berkshire Hathaway, BNSF’s parent company, has also made public statements on the nature of rail mergers and interline relationships, demonstrating the scope of discussions are not limited to BNSF’s executive staff. *See* Spencer Kimball, “Warren Buffett just told CNBC his plan for trains. The stocks are moving,” CNBC.COM (Aug. 25, 2025) <https://www.cnbc.com/2025/08/25/warren-buffett-is-not-in-market-to-buy-another-railroad-but-he-met-with-csx-ceo-about-greater-cooperation.html>. BNSF should also be ordered to produce any responsive Berkshire Hathaway board materials in its possession, as well as any responsive materials it provided to Berkshire Hathaway that supported Berkshire’s public statements on “competition, consolidation . . . market shares, and alternatives to consolidation” in the rail industry.

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of July, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Daniel Damitio

EXHIBIT A

From: [Kelly, Kevin](#)
To: [Thompson, McClain](#); [Rosenthal, Michael](#); [Ludwin, Derek](#); [Harrison, Caroline](#); [Korman, Marc](#); [Atkins, Raymond](#); [Warren, Matthew J.](#)
Cc: [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [Fanchiang, Eric](#); [van Houwelingen, Luke](#); [Enson, Eric](#); [*AEllis@stblaw.com2](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); [Joseph J. Matelis](#); [Dylan M. Aluise](#); [*pdenton@steptoe.com](#); [*tstrafford@steptoe.com](#); [Reilly, Matt](#); [Cunningham, Rich](#)
Subject: RE: FD 36873 - Request for Discovery Meet and Confer
Date: Tuesday, January 6, 2026 9:10:58 PM
Attachments: [image001.png](#)

McClain,

I write to memorialize Applicants' positions with respect to the items you raised in your December 28 email and that we discussed on our December 30 call. Please let me know if you have any questions or would like to discuss further.

Before addressing the specific issues raised in your email, I will reiterate two overarching points:

- First, contrary to BNSF's assertions, Applicants' discovery efforts at this early stage in the proceeding are both significant and unprecedented in STB merger proceedings. Although Applicants submitted their Application to the STB less than three weeks ago, they have already produced or otherwise made available ***hundreds of gigabytes*** of expansive data sets, agreements, workpapers, and other documents that are at the core of STB proceedings. These materials include, but are not limited to:
 - 100% Traffic Tapes
 - System-Wide Car and Train Event Data
 - Reciprocal Switch Data
 - Interchange Volume Data
 - Intermodal Train Schedules
 - Agreements containing Interchange Commitments
 - Trackage Rights and Haulage Rights Agreements
 - Workpapers supporting the Application

On our call, you repeatedly asserted that Applicants' efforts were insufficient because they fell short of what you would expect an applicant to disclose in a Hart-Scott-Rodino ("HSR") merger review. But this proceeding is not governed by HSR review regulations. BNSF's role in this proceeding (as a competing railroad) is not analogous to the role that the FTC and DOJ play in HSR reviews. And any evaluation of Applicants' discovery efforts must be made in reference to STB regulations and based on an understanding of the discovery materials that are core to STB proceedings. Judged by this standard, Applicants' discovery efforts have been exemplary.

- Second, any discussion of the scope of discovery needs to be tied to BNSF's specific discovery requests and Applicants' responses and objections to those requests. Applicants' discovery obligations are born from specific requests and limited by

Applicants' responses and valid objections to those requests. BNSF's effort to manufacture disputes regarding the overall scope of email collections unmoored from its actual requests is counterproductive, especially at this point in the proceedings, when most of BNSF's requests were served so recently that Applicants' responses were not due until a week after our December 30 call. Nonetheless, as we have previously offered, if there are specific requests and responses or objections that BNSF would like to discuss, including Applicants' forthcoming responses and objections, we remain willing to engage with you on the appropriateness of the requested discovery and the reasonable scope of materials that Applicants are required to produce in response.

As for the specific issues raised in your email and discussed on our call:

- **Emails.** Applicants timely responded and objected to BNSF's 1st Set of Discovery Requests. Consistent with their responses and objections, Applicants have been conducting reasonable searches to collect responsive materials and make rolling productions. It is Applicants' position that wholesale collections of custodial emails are not necessary to conduct a reasonable search for the responsive materials that Applicants have agreed to produce. Instead, targeted collections of responsive materials are both more efficient for Applicants to conduct and result in higher quality productions of materials that are relevant to this proceeding. To the extent that BNSF contends that wholesale email collections are necessary to respond to a specific request for production, Applicants would like to understand BNSF's basis for that contention and discuss whether alternative collections would address BNSF's concerns.
- **Custodial and Non-Custodial Sources.** Applicants are willing to provide additional information regarding the sources from which they have collected responsive materials. As we noted on our call, the source of some of the produced materials is self-evident. To the extent BNSF has questions about other materials, Applicants are willing to provide additional information on sourcing.
- **Board of Director Materials and Banker/Financial Documents.** I asked you to clarify which of BNSF's requests seek these materials (observing that the deadline for Applicants to respond to the requests that appeared to seek these materials had not yet passed) and to explain why these materials are relevant to the Board's evaluation of the Application. You did not identify which specific requests were seeking these materials and explained generally that BNSF believed the materials were relevant to evaluating whether the merger will be in the public interest, enhance competition, or is necessary to achieve benefits. Based on the limited explanation provided, Applicants remain skeptical that the requested board of director materials and banker/financial documents are necessary for the Surface Transportation Board's evaluation of the Proposed Transaction, especially considering the information provided in the Application and publicly available in Applicants' SEC filings regarding the merger. Nonetheless, Applicants remain open to considering appropriately narrowed requests

that are directly tied to the factors the Board must consider in evaluating the Proposed Transaction.

- **Substantial Completion.** As I explained on our call, Applicants are not in a position to forecast when they will be substantially complete with document productions in this proceeding because Applicants are still receiving and responding to discovery requests, including BNSF's 2nd Set of Discovery Requests, and no procedural schedule has been set by the Board. Nonetheless, Applicants have been working diligently to produce responsive materials including prioritizing the production of key data sets requested by the parties.

Best,

Kevin

Kevin Kelly

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

Sent: Tuesday, December 30, 2025 6:11 AM

To: Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <rattkins@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEenson@crowell.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>; Joseph J. Matelis <Matelisj@sullcrom.com>; Dylan M. Aluise <aluised@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>

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

[EXTERNAL]

Thank you. I sent a Zoom for 3 PM ET to everyone on this thread, but defer on who plans to join.

McClain Thompson

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

Sent: Monday, December 29, 2025 10:13 PM

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>

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

Hi McClain,

We're available to discuss at 3 PM ET tomorrow. Let me know if that time works for you.

Best,

Kevin

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

Sent: Sunday, December 28, 2025 4:22 PM

To: Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Warren, Matthew J.

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Subject: FD 36873 - Request for Discovery Meet and Confer

[EXTERNAL]

Covington and Sidley Teams –

Can you please let us know your availability tomorrow or Tuesday to meet-and-confer regarding the discovery issues identified below? While we will write separately about the status of productions in response to certain of our pending requests, we need near-term clarity on the following issues to help frame the discovery process.

1. **Emails.** Are UP and NS searching – and do UP and NS plan to produce – email in this proceeding? If yes, then we can negotiate parameters. If not, then we'll need to address with the ALJ.
2. **Custodial and Non-Custodial Sources.** Are UP and NS willing to identify and disclose the custodians, custodial sources, and non-custodial sources that UP and NS are searching to identify case-relevant information?
3. **Board Materials.** Are UP and NS willing to search and produce board materials (agendas, presentations, minutes) that relate to the Proposed Transaction, competition in the rail industry, consolidation in the rail industry, UP's position in the rail industry, NS's position in the rail industry, UP's growth, NS's growth, and/or alternatives to the Proposed Transaction?
4. **Banker / Financial Decks.** Are UP and NS willing to search and produce information and analyses from their bankers, economists, and financial advisors that relate to the Proposed Transaction, competition in the rail industry, consolidation in the rail industry, UP's position in the rail industry, NS's position in the rail industry, UP's growth, NS's growth, and/or alternatives to the Proposed Transaction? This would include the studies, analyses, and reports that UP and NS considered and/or relied upon in developing and evaluating the merger proposal and alternatives to it.
5. **Substantial Completion.** Although UP and NS announced the transaction more than 150 days ago, they have produced just 1,653 documents. Much of the productions to date concern lease agreements and contracts with regional or short line railroads – not the core materials that we will need to test the contentions in the Application. Substantial productions remain. We need those productions before depositions can begin, and we need to complete depositions before our comments are due. Let's please discuss what Applicants have in mind to complete their rolling productions. We are open to a phased approach where productions relevant to particular witnesses are complete before others (allowing for those witnesses' depositions to proceed before others).

Thanks,

McClain

McClain Thompson

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EXHIBIT B

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By Electronic Mail

March 5, 2026

Dylan M. Aluisse
Sullivan & Cromwell LLP
1700 New York Avenue, NW
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Washington, D.C. 20006

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

Dear Counsel:

We write on behalf of Union Pacific Railroad Company and Union Pacific Corporation (collectively, “Union Pacific”) in response to the January 14, 2026, letter from Canadian Pacific Railway Company (“CPKC”) regarding Union Pacific’s responses to CPKC’s first set of discovery requests and our January 13, 2026, meet and confer.

As an initial matter, Union Pacific does not accept your “memorialization” of our meet and confer as complete or accurate.

First, during our meet and confer, Union Pacific repeatedly articulated its objections to many of CPKC’s requests as overly broad, unduly burdensome, and seeking irrelevant material, and asked CPKC to narrow its requests to ensure the burden they impose is proportional to the relevance of the materials sought. It is CPKC’s obligation to craft discovery requests that are “narrowly drawn, directed toward a relevant issue, and not used for a general fishing expedition.” *Duke Energy Corp. v. Norfolk S. Ry.*, NOR 42069, slip op. at 4 (STB served July 26, 2002). Where CPKC’s requests are “burdensome on their face,” CPKC must make a “substantial showing” that the relevance of those materials outweighs the burden of their production. *See FMC Wyo. Corp. v. Union Pac. R.R.*, NOR 42022, slip op. at 5 (STB served Feb. 5, 1998); *Atchison, Topeka & Santa Fe Ry.—Operating Rts.—S. Pac. Transp. Co.*, FD 22218, slip op. at 3 (STB served Feb. 7, 2025); *Norfolk S. Corp., et al.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R.*, FD 36836, slip op. at 3 (STB served July 25, 2025). We understand from your response that CPKC is refusing to narrow *any* of its requests in response to Union Pacific’s explanation of its position during our meet and confer.

Second, with respect to the ranges of discovery requests referenced in your letter, we do not agree that you’ve accurately captured the substance of our meet and confer or Union Pacific’s position with respect to each. We address Union Pacific’s positions with respect to each request below.

It is also worth noting that subsequent to our meet and confer, Judge Soulikias has addressed the argument advanced by CPKC and other parties that they are entitled to broad pre-application discovery, and rejected the argument.¹ Judge Soulikias made clear that Union Pacific's discovery efforts to date are not required by the Board's Major Merger Rules and are entirely voluntary.²

Nonetheless, despite these disagreements, Union Pacific remains willing to engage in pre-application discovery on a voluntary basis, as it has done from the beginning. Consistent with this approach, Union Pacific has further considered each of the requests referenced in your letter, including whether Union Pacific can identify an appropriately narrowed set of non-privileged responsive materials that can be identified without undue burden through a reasonable search. Without waiving any objections in Union Pacific's Responses and Objections to CPKC's First Requests for Discovery, dated January 2, 2026, Union Pacific offers the following response to each of these requests. By offering these compromises, Union Pacific does not concede that the documents or information that might be produced pursuant to the compromises are relevant to or admissible in this proceeding, or that Union Pacific is obligated to produce the requested documents prior to its submission of its revised application.

A. Request 3 (Discovery Negotiations)

During our meet and confer, Union Pacific articulated its objections to this request, including that it was practically unworkable and imposed an undue burden on applicants. Applicants explained that they were willing to continue serving copies of their discovery responses on all parties of record and that they would continue to address any questions from CPKC regarding the discovery process in this proceeding, but that requiring formal production of all discovery-related correspondence was impractical. CPKC agreed that it would give further thought to a proposal that would address Union Pacific's concerns. We have not received any further proposal from CPKC.

B. Request 4 (Documents Provided to Third Parties)

Requests 4 seeks "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 previously agreed to produce "the form letters it used for outreach to customers, labor unions, suppliers, community leaders, public officials, and other stakeholders about the benefits of the Proposed Transaction." During the January 13 meet and confer, we reiterated our objections that this request is overbroad and unduly burdensome, and the burden of complying with the request outweighs any marginal relevance of the documents sought.

¹ See Decision No. 10 (served February 11, 2026).

² *Id.* at 4.

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To address CPKC's concerns and resolve this dispute, Union Pacific is willing to supplement its production by conducting a reasonable search for approved materials related to the proposed transaction that Union Pacific has created for use with third parties. By way of further explanation, Union Pacific prepared approved materials, including for its employees' use in communicating externally regarding the proposed transaction. In providing these materials, Union Pacific instructed its employees that they should use the approved materials and not create their own materials to discuss the proposed transaction. Further, Union Pacific employees were instructed that they should direct stakeholders with questions regarding the proposed transaction to Union Pacific's external website.³ As part of its proposal, Union Pacific will conduct a reasonable search for the approved materials used for external communications as referenced herein, and produce non-privileged responsive materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

C. Request 5–7 (White House Materials)

CPKC made several requests seeking documents related to Union Pacific's communications with the White House. During our meet and confer, we reiterated our objections that these requests are overbroad and seek irrelevant materials. First, communications with the White House and documents relating to such communications are irrelevant to the Surface Transportation Board's evaluation of the proposed merger. Second, even assuming documents related to communications with the White House about the proposed transaction would be relevant, the requests are overbroad because they are not limited to documents related to the proposed transaction.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for (i) documents provided to the White House regarding the proposed transaction between January 20, 2025, and December 18, 2025, and (ii) summaries of the September 2025 meeting between President Donald J. Trump and Union Pacific CEO Jim Vena, and produce non-privileged responsive materials to the extent they exist. As for your request for documents reflecting communications between Union Pacific and the "White House" since January 20, 2025, our understanding is that such materials would be limited to logistical communications regarding scheduling and accessing the White House grounds ahead of the September 2025 meeting.

Please confirm that CPKC accepts this proposal.

D. Request 8 (Density Maps)

Request 8 seeks "density charts and/or maps for the UP and NS systems for the period January 1, 2019 to the present." During the January 13 meet and confer, Union Pacific

³ <https://www.up-nstranscontinental.com/>

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reiterated its objections that the request is unduly burdensome and seeks irrelevant materials, as the Application filed December 19 already contains Union Pacific's 2024 density chart.

To address CPKC's concerns and resolve this dispute, Union Pacific has produced copies of responsive density maps. These documents are contained in production volume UP 006.

E. Request 9 (Capacity Diagrams)

Request 9 seeks "maps, charts, or diagrams prepared in the ordinary course by Applicants showing the capacity (maximum, fluid, and available) of rail lines comprising UP's and NS's networks for the period January 1, 2019 to the present." During the January 13 meet and confer, Union Pacific reiterated its objections that the request is unduly burdensome and seeks irrelevant materials, especially to the extent it seeks production of information beyond that provided with the Application filed December 19. By way of further explanation, Union Pacific directs CPKC to the information regarding capacity contained in the "UP Line-Of-Road Volume-Capacity Summary.xlsx" and "NS Line-Of-Road Volume-Capacity Summary.xlsx" workpapers.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for capacity maps, charts, or diagrams prepared in the ordinary course for the year 2023—the year used for merger impact analysis.⁴

Please confirm that CPKC accepts this proposal.

F. Request 10 (Potential Railroad Combinations)

Request 10 seeks "all UP Executive Level Documents since January 1, 2000 studying, analyzing, or discussing potential railroad combinations involving UP, BNSF, CSX, or NS, or discussing Transcontinental Rail Mergers generally." During the January 13 meet and confer, Union Pacific reiterated its objections that this request is overbroad and seeks irrelevant materials including because it covers a timeframe of a quarter of a century and asks for "all UP Executive Level Documents," which includes documents prepared by, prepared for, or received by any of a large number of management personnel. Additionally, it is not clear how the requested documents—including documents reflecting considerations of proposed rail combinations as far back as 2000—are relevant to this proceeding. Union Pacific further notes that the requested materials and documents containing those materials may contain other proprietary and highly competitively sensitive information.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search of its board materials for the period from January 1, 2025, to July 29, 2025 for materials that address the proposed transaction, including materials that address the

⁴ See Decision No. 3 (served Aug. 28, 2025).

potential effect of the proposed transaction on downstream merger applications, and produce non-privileged responsive portions of those materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

G. Request 13 (Interline Initiative)

Request 13 seeks “all UP Executive Level Documents relating to the initiative described in the UP Press Release dated September 12, 2023, entitled ‘Union Pacific’s Newest Offering Removes Full Day of Transit Between the U.S., Mexico and Canada, Creating Unmatched Service for Customers.’” Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad and seeks irrelevant materials, including because it requests “*all*” documents prepared by, prepared for, or received by a large number of management personnel.

To address CPKC’s concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for final studies, analyses, and reports regarding the initiative described in the UP Press Release dated September 12, 2023, entitled “Union Pacific’s Newest Offering Removes Full Day of Transit Between the U.S., Mexico and Canada, Creating Unmatched Service for Customers,” that are responsive to Request 13.

Please confirm that CPKC accepts this proposal.

H. Request 14 (Intermodal Gateway Initiative)

Request 14 seeks “all UP Executive Level Documents relating to the initiative described in the UP Press Release dated September 15, 2025, entitled ‘New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access.’” Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad and seeks irrelevant materials, including to the extent it requests “*all*” documents prepared by, prepared for, or received by a large number of management personnel.

To address CPKC’s concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for final studies, analyses, and reports regarding the initiative described in the UP Press Release dated September 15, 2025, entitled ‘New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access,’ that are responsive to Request 14.

Please confirm that CPKC accepts this proposal.

I. Request 16 (Strategies for Growth)

Request 16 seeks “all UP Executive Level Documents relating to strategies for growing UP’s rail traffic.” Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad and seeks irrelevant materials, including because it requests “*all*” documents prepared by, prepared for, or received by a large number of management personnel and because of the incredibly broad topic of “strategies for growing . . . rail traffic.” Union

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Pacific also objects because the request seeks access to documents regarding revenue-related plans and strategies covering a period that has no apparent relevance to the issues in this proceeding.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for final studies, analyses, and reports related to specific initiatives for growing railroad-wide (*i.e.*, non-customer- and non-commodity-specific) rail traffic for the period from January 1, 2023, to July 29, 2025, that are responsive to Request 16, and produce non-privileged responsive portions of those materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

J. Request 18 (Traffic Forecasts)

Request 18 asks for "all UP Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP rail network." Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad including because it requests "*all*" documents prepared by, prepared for, or received by a large number of management personnel and that the request is unduly burdensome and seeks irrelevant information. Specifically, Union Pacific has already provided Applicants' study addressing anticipated merger-related traffic diversions, so it is not clear why CPKC requires any additional traffic forecast information.

Union Pacific requests that CPKC explain why production of forecasts for periods pre-dating the merger application and covering a six-year period before the application is sufficiently relevant and proportional to the needs of the proceeding to overcome the burden of their collection.

Please provide CPKC's response regarding this request.

K. Request 20 (Pricing Strategies)

Request 20 seeks "all UP Executive Level Documents relating to policies or strategies for the pricing or [sic] UP's rail transportation services, including without limitation the level of returns that UP requires when pricing rail traffic, including but not limited to the approaches referenced by UP's then CFO Rob Knight in 2018 ("As you know, and you followed us for many years, for many years we've been willing to walk away from business if it doesn't have the right returning characteristics") (Remarks at Credit Suisse Industrials Conference (Nov. 19, 2018)); and UP's current CPO Jennifer Hamann in 2019 ("We have done I would say a very good job over the last several years of really focusing on that profitability of each piece of our business and where it didn't make sense for us to move it, we had moved away from some of this.") (Remarks at Stephens Nashville Investment Conference (Nov. 15, 2019))." Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad and seeks irrelevant materials, including because it requests "*all*" documents prepared by, prepared for, or received by a large number of management personnel and because of the incredibly broad topic of "policies or strategies for the pricing." Union Pacific also objects

because the request seeks access to documents regarding pricing policies and strategies covering a period dating back to 2018, a period that has no apparent relevance to the issues in this proceeding.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for final studies, analyses, and reports regarding constraints on railroad-wide (*i.e.*, non-customer- and non-commodity-specific) pricing for the period January 1, 2023, to July 29, 2025, that are responsive to Request 20, and produce non-privileged responsive portions of those materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

L. Request 22 (PSR Changes to Service)

Request 22 seeks "all UP Executive Level Documents relating to UP's changes (including without limitation reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroading." Union Pacific reiterated its objections during the January 13 meet and confer that this request is incredibly overbroad and seeks irrelevant materials including because it requests "*all*" documents prepared by, prepared for, or received by a large number of management personnel and because this request would encompass a broad range of documents related to changes in service or service frequency that were implemented long before the proposed merger and are irrelevant to the proposed merger.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for final studies, analyses, and reports regarding railroad-wide (*i.e.*, non-customer- and non-commodity-specific) changes in service or service frequency occasioned by implementation of Precision Scheduled Railroading for the period from January 1, 2023 to July 29, 2025, that are responsive to Request 22, and produce non-privileged responsive portions of those materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

M. Request 24 (Ability to Obtain Favorable Terms for Bundling)

Request 24 seeks "all UP Executive Level Documents discussing, analyzing, studying, or referring to UP's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for UP transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that UP is uniquely or advantageously situated to perform (including without limitation where UP is the sole rail carrier serving a particular shipper facility or providing an efficient rail route)." Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad, unduly burdensome, and seeks irrelevant materials, including because it requests "*all* UP Executive Level Documents" regarding a broad subject area. Union Pacific also objects because the request seeks access to documents regarding revenue-related plans and strategies covering a period that has no apparent relevance to the issues in this proceeding.

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To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for railroad-wide (*i.e.*, non-customer- and non-commodity-specific) final studies, analyses, and reports for the period from January 1, 2023 to July 29, 2025, regarding Union Pacific's ability to obtain more favorable terms for transportation services by linking, bundling, or tying multiple services that are responsive to Request 24, and produce non-privileged responsive portions of those materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

N. Request 26 (Strategies for Customers with Multiple Facilities)

Request 26 seeks "all Documents prepared by personnel in the marketing department and presented to managers recommending, reviewing, or discussing strategies for contracting with customers that have multiple facilities served by UP, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form." Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad, unduly burdensome, and seeks irrelevant materials, including because it requests "*all* Documents" from the marketing department and presented to managers. Union Pacific also objects because the request seeks access to documents regarding revenue-related plans and strategies covering a period that has no apparent relevance to the issues in this proceeding.

To address CPKC's concerns and resolve this dispute, Union Pacific is willing to conduct a reasonable search for final studies, analyses, and reports for the period from January 1, 2023, to July 29, 2025, regarding railroad-wide (*i.e.*, non-customer- and non-commodity-specific) pricing strategies when Union Pacific serves multiple customer facilities that are responsive to Request 26, and produce non-privileged responsive portions of those materials to the extent they exist.

Please confirm that CPKC accepts this proposal.

O. Request 28 (Strategies for Increased Revenues)

Request 28 seeks "all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss UP's plans or strategies for retaining or increasing the revenues obtained by UP from rail customers (whether by growing traffic, increasing prices, or otherwise)." Union Pacific reiterated its objections during the January 13 meet and confer that this request is overbroad, unduly burdensome, and seeks irrelevant materials. Union Pacific also objects because the request seeks access to documents regarding revenue-related plans and strategies covering a period that has no apparent relevance to the issues in this proceeding.

Given the materials for which Union Pacific has proposed to search in response to Requests 16, 20, 24, and 26, and the limited (or non-existent) marginal value of any additional materials sought by Request 28, Union Pacific does not concede that additional searches are necessary in response to Request 28.

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March 5, 2026
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As always, we are available to confer regarding this matter.

Sincerely,

/s/ Kevin M. Kelly

Kevin M. Kelly

EXHIBIT C

From: [Kelly, Kevin](#)
To: [Thompson, McClain](#); [Korman, Marc](#); [*AEllis@stblaw.com2](#); [Matellis, Joseph \(NON-SIDLEY @SULLCROM.COM \)](#); [Donovan, Daniel T.](#); [McCarrick, T.J.](#); [Razi, Sara Y.](#); [Bohl, Lindsey C.](#); [David Meyer](#); [*pdenton@steptoe.com](#); [*tstrafford@steptoe.com](#); [Cunningham, Rich](#); [Scheib, John M.](#); [Gardiner, Kent](#); [van Houwelingen, Luke](#); [Aluise, Dylan M.](#); [Hynes, Samantha F.](#); [Golden, Nathan H.](#); [Joseph, Neil](#); [Volbrecht, Tate D.](#); [Enson, Eric](#); [Fanchiang, Eric](#); [*Avia.Gridi@stblaw.com](#)
Cc: [Ludwin, Derek](#); [Flahive Wu, Laura](#); [Rosenthal, Michael](#); [Magcale, Jamie Dominique U](#); [Brown, Molly](#); [Damitio, Daniel](#); [Harrison, Caroline](#); [Krovoza, Charlotte](#); [Warren, Matthew J.](#); [ratkins](#); [Laudone, Stephen S.](#); [William Mullins](#); [Spencer Naake](#); [OpalDisco](#)
Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests - Responsiveness
Date: Thursday, July 9, 2026 11:04:18 PM
Attachments: [2026.07.09 Class Is Proposed Edits to UP Responsiveness Criteria \(UP Responses\) \(STB\).docx](#)
[image001.png](#)

McClain,

We've reviewed the additional requests from Non-Applicant Railroads regarding responsiveness and provide responses below:

First, addressing your chart, we've added our responses in red.

Criteria	UP and NS Response(s)	Issue
FN 1: While the parties are committed to ensuring an efficient discovery process, the agreed responsiveness criteria listed in this document is not intended to be exhaustive or exclusive, and the parties serving discovery reserve the right to modify, alter, or expand the types of documents that may be considered responsive based on future additional discovery requests.	UP/NS do not agree, and reserve the right to object to any future modifications that other parties request.	The ALJ rejected a request from UP and NS that the ALJ set a deadline for new requests. We may have additional requests, including when we see the forthcoming supplements. If additional requests are served, modifications or additions to the criteria may be needed. The parties can negotiate in good faith if that is necessary, as they have with this criteria. But we're not forgoing the possibility of additions or modifications down the road. Both sides can reserve their rights. We agree that both sides can reserve their rights. We do not agree with your remaining arguments.
Please confirm this scope includes documents and communications received from bankers, economists, financial advisors, or other consultants regarding alternatives to the	<u>NS</u>: Confirmed, as they relate to NS's evaluation of whether to enter into the Merger Agreement. <u>UP</u>: Yes, if these documents or communications were considered by Union Pacific in evaluating whether to propose or enter into the Merger Agreement, they are	We do not agree that this should be limited to documents or communications related to NS's or UP's evaluation of the merger. If bankers or advisers provided UP or NS (or both) with information on market shares, expansion into new markets, etc. during the search period, it is responsive, regardless

Proposed Transaction, competition, market shares, sales growth, or expansion into new markets.	within scope.	of whether that information “related” to UP’s or NS’s evaluation of the merger. Please let us know if UP and NS will drop that limitation – or if we have a scope / relevant dispute that needs to get addressed by the ALJ. We agree to remove this limitation.
Please confirm this scope includes board materials regarding competition, consolidation, company growth, and alternatives to the Proposed Transaction.	<u>NS</u>: Confirmed, as they relate to NS’s evaluation of whether to enter into the Merger Agreement. <u>UP</u>: Yes, if these documents or communications were considered by Union Pacific in evaluating whether to propose or enter into the Merger Agreement, they are within scope.	Same as above. Board materials related to competition, consolidation, growth, and alternatives to the Proposed Transaction are responsive, regardless of whether they “relate” to UP’s or NS’s evaluation of the merger. Please let us know if UP and NS will drop that limitation – or if we have a scope / relevant dispute that needs to get addressed by the ALJ. We do not agree to this modification. Applicants have already agreed to conduct searches for board materials regarding the proposed transaction (and produced those materials). Applicants have also agreed to undertake searches for documents responsive to more tailored requests for documents related to competition, prior merger analyses, strategies for growth, etc. This request for anything related to broad topics (like growth) is unreasonable.
BNSF Set 4 at No. 7 – Seeking documents and communications concerning specific statements made in the application. BNSF Set 5 at No. 1	NS said it does not agree to conduct custodial searches in response to these requests.	<u>First</u>, this discovery seeks information about contentions that NS has made and that we are entitled to test. Whether we agree these requests are appropriate for custodial searches (see below), NS should at least include these contentions in the responsiveness

and 2 – Seeking documents and communications concerning specific statements made by Mark George.		criteria. <u>Second</u>, what is NS’s basis to exclude these requests from its custodial searches? Mark George and other executives are custodians. <u>Third</u>, does NS intend to do (or also do) targeted pulls from custodians or from non-custodial sources for information responsive to those requests? Norfolk Southern will respond separately on this issue.
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Second, we have provided edits in response to CN’s additions in the attached. These are consistent with our responses to CN’s recent discovery requests. The additions we’ve accepted are in blue font. We’ve tracked our other edits.

Third, we have revised the responsiveness criteria regarding strategies related to CPKC’s requests in the attached to resolve that issue.

Best,

Kevin

Kevin Kelly

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

Sent: Thursday, July 2, 2026 4:10 PM

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

[EXTERNAL]

Marc, Kevin –

Thank you for the feedback to the responsiveness criteria. As I previewed this morning, we have made progress, and only a handful of issues remain.

First, please let us know your positions on the four rows in the chart below.

Second, in Track in the attached, the CN team added responsiveness criteria based on the set of requests that CN recently served. Please let us know if those additions are agreed.

Thanks,

McClain

Criteria	UP and NS Response(s)	Issue
FN 1: While the parties are committed to ensuring an efficient discovery process, the agreed responsiveness criteria listed in this document is not intended to be exhaustive or exclusive, and the parties serving discovery reserve the right to modify, alter, or expand the types of documents that may be considered responsive based on future additional discovery requests.	UP/NS do not agree, and reserve the right to object to any future modifications that other parties request.	The ALJ rejected a request from UP and NS that the ALJ set a deadline for new requests. We may have additional requests, including when we see the forthcoming supplements. If additional requests are served, modifications or additions to the criteria may be needed. The parties can negotiate in good faith if that is necessary, as they have with this criteria. But we're not forgoing the possibility of additions or modifications down the road. Both sides can reserve their rights.
Please confirm this scope includes documents and communications received from bankers,	<u>NS</u> : Confirmed, as they relate to NS's evaluation of whether to enter into the Merger Agreement. <u>UP</u> : Yes, if these documents or	We do not agree that this should be limited to documents or communications related to NS's or UP's evaluation of the merger. If bankers or advisers provided UP or

economists, financial advisors, or other consultants regarding alternatives to the Proposed Transaction, competition, market shares, sales growth, or expansion into new markets.	communications were considered by Union Pacific in evaluating whether to propose or enter into the Merger Agreement, they are within scope.	NS (or both) with information on market shares, expansion into new markets, etc. during the search period, it is responsive, regardless of whether that information “related” to UP’s or NS’s evaluation of the merger. Please let us know if UP and NS will drop that limitation – or if we have a scope / relevant dispute that needs to get addressed by the ALJ.
Please confirm this scope includes board materials regarding competition, consolidation, company growth, and alternatives to the Proposed Transaction.	<u>NS</u>: Confirmed, as they relate to NS’s evaluation of whether to enter into the Merger Agreement. <u>UP</u>: Yes, if these documents or communications were considered by Union Pacific in evaluating whether to propose or enter into the Merger Agreement, they are within scope.	Same as above. Board materials related to competition, consolidation, growth, and alternatives to the Proposed Transaction are responsive, regardless of whether they “relate” to UP’s or NS’s evaluation of the merger. Please let us know if UP and NS will drop that limitation – or if we have a scope / relevant dispute that needs to get addressed by the ALJ.
BNSF Set 4 at No. 7 – Seeking documents and communications concerning specific statements made in the application. BNSF Set 5 at No. 1 and 2 – Seeking documents and communications concerning specific statements made by Mark George.	NS said it does not agree to conduct custodial searches in response to these requests.	<u>First</u>, this discovery seeks information about contentions that NS has made and that we are entitled to test. Whether we agree these requests are appropriate for custodial searches (see below), NS should at least include these contentions in the responsiveness criteria. <u>Second</u>, what is NS’s basis to exclude these requests from its custodial searches? Mark George and other executives are custodians. <u>Third</u>, does NS intend to do (or also do) targeted pulls from custodians or from non-custodial sources for information responsive to those requests?

McClain Thompson

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

Sent: Wednesday, July 1, 2026 2:34 PM

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

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

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

McClain,

I have included responses on behalf of Norfolk Southern to your responses in the attached document (they are in bold and highlighted). As for the green text additions, except for those on which we commented in the attached, we view them as generally consistent with our understanding of the requests and responsiveness so will accept the language as to how the various requests can be described. Of course, the non-Applicants do not get to draft or edit our specific review criteria, but we agree as to the scope of these requests with your language.

-Marc

MARC A. KORMAN
Counsel

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

Sent: Wednesday, July 1, 2026 1:49 PM

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

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

McClain,

We have provided Union Pacific's responses to the Non-Applicant Railroads' proposed edits to the responsiveness criteria in the attached. Our comments are in **red**. Unless modified in track or otherwise noted, the proposed edits are consistent with Union Pacific's understanding of the requests and the documents that are responsive. While the Non-Applicant Railroads do not get to draft, review, or edit Union Pacific's specific review protocol, Union Pacific agrees as to the scope of these requests consistent with your language.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin

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

To: Ellis, Abram J <AEllis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>

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

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

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

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From: Ellis, Abram J <AEllis@stblaw.com>

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

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer

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<tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric
<EFanchiang@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>
Cc: Ludwin, Derek <dludwin@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal,
Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown,
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Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>;
Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

EXTERNAL

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

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>
Sent: Monday, June 29, 2026 7:19 AM
To: Thompson, McClain <mccclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>;
Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis,
Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.
<Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com
<pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich
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<tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric
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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

*** External Email ***

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

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Monday, June 29, 2026 5:56 AM
To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <alused@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
Cc: zzExt-dludwin <dludwin@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

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

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Sunday, June 28, 2026 9:43 PM
To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEenson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
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Subject: RE: FD 36873 - Applicants' 1st Set of Discovery Requests

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

Kevin Kelly

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>
Sent: Sunday, June 28, 2026 6:45 PM
To: Kelly, Kevin <Kkelly@cov.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D.

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

[EXTERNAL]

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

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

Thanks – Joe

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, June 26, 2026 4:46 PM
To: Thompson, McClain <mccclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
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Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain,

You have not provided the information we requested regarding the scope of the searches BNSF is

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

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

Counsel,

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

Best,

Kevin

Kevin Kelly

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

COVINGTON

From: Kelly, Kevin

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

To: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEenson@crowell.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; 'Gridi, Avia' <Avia.Gridi@stblaw.com>

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

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

Counsel,

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

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Kelly, Kevin

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

To: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise,

Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; 'Gridi, Avia' <Avia.Gridi@stblaw.com>

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

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

Counsel,

Please see the attached correspondence.

Best,

Kevin

Kevin Kelly

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UP – Proposed Responsiveness Criteria¹

- Documents and Communications regarding integration planning, including risks to integration.
- Documents and Communications regarding potential joint ventures, alliances, or other cooperative agreements between UP and BNSF, CN, CPKC, CSX, or NS.
 - **Response: Please confirm this includes JVs, alliances, or cooperative agreements regardless of whether they were implemented.**
 - **Confirmed.**
- Documents and Communications regarding impacts of the Proposed Transaction, **including on potential future mergers involving any Class I rail carrier (including Applicants).**
- Documents and communication regarding impacts of the Proposed Transaction on **current future debt and debt service obligations; financial metrics; costs and potential opportunities to reduce costs; railroad intramodal, intermodal, product, and geographic competition; potential traffic diversions from truck to rail; rail service; rail safety; rail labor and employment; passenger or commuter service; rates for rail transportation; competition, including corridor, source, and intermodal competition; Applicants’ proposed gateway commitment on Applicants’ existing traffic and the revenues and profitability of that traffic.**
- Documents and communication regarding impacts of the Proposed Transaction on competition with international ports and railroads, including lane level diversion analyses, targeted shippers, price and service assumptions, expected volume recapture by corridor, and any related marketing or pricing plans.
- ~~Final studies, analyses, and reports~~Documents and Communications that UP ~~relied upon~~considered in evaluating whether to propose or enter into the Merger Agreement
 - **Response: We do not agree to limiting to “final” studies, analyses, and reports that were “relied upon.”**
 - **We have revised the language above.**
- Documents and Communications regarding UP’s planned capital budgets and capital budget forecasts for the next 5 years (as prepared between 1/1/2024 and 7/29/2025).

¹ While the parties are committed to ensuring an efficient discovery process, the agreed responsiveness criteria listed in this document is not intended to be exhaustive or exclusive, and the parties serving discovery reserve the right to modify, alter, or expand the types of documents that may be considered responsive based on future additional discovery requests. **Union Pacific does not agree, and reserves the right to object to any future modifications that other parties request.**

- Documents and Communications that UP ~~relied-considered upon~~ in evaluating whether to propose or enter into the Merger Agreement.
- **Response:** We do not agree to limiting to documents that were “relied upon.” Our requests seek documents that were prepared for UP and its executives to consider regarding the merger, competition, etc., regardless of whether they were “relied upon.”
- **We have revised the language above.**
- **Response:** Please confirm this scope includes documents and communications received from bankers, economists, financial advisors, or other consultants regarding alternatives to the Proposed Transaction, competition, market shares, sales growth, or expansion into new markets.
- **Yes, if these documents or communications were considered by Union Pacific in evaluating whether to propose or enter into the Merger Agreement, they are within scope.**
- **Response:** Please confirm this scope includes documents and communications prepared for or by officers, directors, or management for purposes of evaluating the deal, including with respect to market share, competition, market expansion, and sales growth.
- **Confirmed.**
- **Response:** Please confirm this scope includes board materials regarding competition, consolidation, company growth, and alternatives to the Proposed Transaction.
- **Yes, if these documents or communications were considered by Union Pacific in evaluating whether to propose or enter into the Merger Agreement, they are within scope.**
- Documents and Communications regarding the projected synergies resulting from the Proposed Transaction.
- Documents and Communications regarding the impact of the Proposed Transaction as described in each of the five sub-components identified in BNSF’s request regarding Jim Vena’s statements during UP’s earnings call on October 24, 2025. See Set 2 No. 7.
- **RESPONSE:** Please confirm that UP will be providing its reviewers a list of each of the components identified in Set 2 No. 7.
- **Confirmed.**
- Documents and Communications regarding the Committed Gateway Pricing Program.

- Documents and Communications regarding ~~the impacts of the Proposed Transaction as described in~~ UP and NS's commitment to keeping all existing gateways open for eligible traffic on commercially reasonable terms, as discussed in the Application. *See* Set 2 No. 9.
- Documents and Communications regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction.
- Documents and Communications regarding the impact of the Proposed Transaction on PPU, TRRA, and TTX.
- Documents and Communications regarding the impacts of the Proposed Transaction on competition in the rail industry.
- Documents and Communications regarding the downstream effects of the Proposed Transaction.
- Documents and Communications regarding shipper / customer reactions and feedback to the Proposed Transaction.
- Documents and Communications regarding potential alternatives to the Proposed Transaction.
- Documents and Communications regarding risks of the Proposed Transaction including risks related to costs, services, interchanges, competition, or personnel. This request includes any audit committee or auditor materials summarizing, evaluating, categorizing, or quantifying such risk.
- Documents and Communications regarding impacts of the Proposed Transaction on UP's ability to provide adequate and efficient rail services to shippers and the public, including plans to eliminate or reduce any existing services by UP or NS.
- Documents and Communications regarding impacts of the Proposed Transaction on UP's ability to enter transportation contracts with any shipper, including shippers that would be considered captive shippers following the Proposed Transaction.
- Documents and Communications regarding impacts of the Proposed Transaction as described in each of the seven components identified in BNSF's request concerning claims and contentions in pages 2-3 of the Notice of Intent. *See* BNSF Set 2 No. 47.
 - **RESPONSE:** Please confirm that UP will be providing its reviewers a list of each of the components identified in Set 2 No. 47.
 - **Confirmed**
- Documents and Communications regarding investments the merged carrier will undertake as a result of the Proposed Transaction that would not have occurred absent the Proposed Transaction.

- Documents and Communications regarding impacts of the Proposed Transaction **on all tracks that will be abandoned or added as a result of the Proposed Transaction.**
- Complaints that UP has made or received regarding failure of other carriers to interline with them, including pursuant to stipulated remedies from prior rail transactions.
- Documents and Communications regarding facilities closed by UP, including analyses of the effect of these closures on prices and costs.
- Documents and Communications regarding pricing, quality, and cost efficiencies related to interline arrangements.
 - **Response: Please confirm this would include pricing formulas and volume-based pricing strategies.**
 - **Confirmed.**
- Documents and Communications regarding impacts of the Proposed Transaction **on interline arrangements from 2019 to present.**
- Documents and Communications regarding UP's offers to customers opening new facilities.
- Documents and Communications regarding UP's buffer capacity with respect to employees, locomotives and equipment.
- Documents and Communications regarding **how UP and NS strategic fueling will change after the Proposed Transaction is completed.**
- Documents and Communications regarding the impacts of the Proposed Transaction as described in **BNSF's request concerning each of the five specific contentions of Jim Vena during the December 19, 2025, analyst call. See Set 3 No. 11**
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 11.**
 - **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction as described in **BNSF's request concerning each of the three specific contentions of Kenny Rocker during the December 19, 2025, analyst call. See Set 3 No. 13.**
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 13.**
 - **Confirmed.**

- Documents and Communications regarding the impacts of the Proposed Transaction as described in BNSF’s request concerning each of the four specific contentions of Eric Gehringer during the December 19, 2025, analyst call. *See Set 3 No. 15*
 - **RESPONSE:** Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 15.
 - **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction as described in BNSF’s request concerning the contention of Jennifer Hamann during the December 19, 2025, analyst call that “[T]he rails have upheld their merger commitments. Union Pacific absolutely has done that. And we will—are rapidly committed to do that.” Set 3 No. 16.
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF’s request concerning each of the 14 specific contentions in the UP/NS White Paper. *See Set 3 No. 17.*
 - **RESPONSE:** Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 17.
 - **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF’s request concerning each of the contentions in the Application. *See Set 3 No. 19; Set 4 No. 7.*
 - **RESPONSE:** Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 19 and Set 4 No. 7.
 - **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF’s request concerning Applicants’ contentions about downstream effects. *See Set 3 No. 20*
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF’s request concerning each of the five specific contentions of Jim Vena in the Application. *See Set 3 No. 22*
 - **RESPONSE:** Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 22.
 - **Confirmed.**

- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the five specific contentions of Kenny Rucker and Ed Elkins in the Application. *See Set 3 No. 25*
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 25.**
 - **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the nine specific contentions of Katherine Novak in the Application. *See Set 3 No. 26.*
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 26.**
 - **Confirmed.**
- Documents and Communications regarding UP's decisions before the Proposed Transaction to accommodate additional interline traffic.
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the 11 specific contentions of Elizabeth Bailey in the Application. *See Set 3 No. 28*
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 28.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the three specific contentions of Mark Israel in the Application. *See Set 3 No. 30*
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 30.**
 - **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the four specific contentions of Eric Gehringer and John Orr in the Application. *See Set 3 No. 31*
 - **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 31**
 - **Confirmed.**

- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the five specific contentions of David Hunt and Matthew Schabas in the Application. *See Set 3 No. 32*
- **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 32**
- **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning each of the five specific contentions of Josh Turner' in the Application. *See Set 3 No. 34*
- **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 3 No. 34**
- **Confirmed.**
- Documents and Communications regarding the impacts of the Proposed Transaction described in BNSF's request concerning the claims in "Get the Facts | Guide to What's New in the Amended Application | April 2026". *See Set 4 No. 5*
- **RESPONSE: Please confirm that UP will be providing its reviewers a list of each of the contentions identified in Set 4 No. 5.**
- **Confirmed.**
- ~~All due diligence Documents shared between Applicants, including contents of any data rooms, in connection with the Proposed Transaction.~~
- **Union Pacific used an iDeals Virtual Data Room to share due diligence documents with Norfolk Southern in connection with the proposed transaction. We have collected these documents and will produce them unless privileged.**
- Documents and Communications regarding potential railroad combinations between UP, BNSF, CSX, or NS, or discussing Transcontinental Rail Mergers.
- Documents and Communications regarding the Falcon Premium interline initiative UP announced on September 12, 2023.
- Documents and Communications regarding the Louisville interline initiative between UP and NS announced on September 15, 2025.
- Documents and Communications regarding UP's ~~railroad-wide or commodity-wide~~ strategies for growing rail traffic.

- **Response: CPKC is interested in more disaggregated information than this (e.g., regional strategies and customer specific strategies). What level of information is UP willing to provide?**
- **We have accepted CPKC's proposed edit.**
- Documents and Communications regarding UP's forecasts of future traffic levels on the UP rail network.
- Documents and Communications regarding UP's ~~railroad-wide or commodity-wide~~ pricing strategies.
- **Response: CPKC is interested in more disaggregated information than this (e.g., regional strategies and customer specific strategies). What level of information is UP willing to provide?**
- **We have accepted CPKC's proposed edit.**
- Documents and Communications regarding the impact of Precision Scheduled Railroading on rail service.
- Documents and Communications regarding UP's ability to obtain **additional business or** more favorable terms for transportation services by linking, bundling, or tying multiple services.
- Documents and Communications regarding UP's ~~railroad-wide or commodity-wide~~ strategies for contracting with customers for multiple facilities.
- **Response: CPKC is interested in more disaggregated information than this (e.g., regional strategies and customer specific strategies). What level of information is UP willing to provide?**
- **We have accepted CPKC's proposed edit.**
- Documents and Communications regarding UP's ~~railroad-wide or commodity-wide~~ strategies for retaining or increasing revenues obtained from rail customers.
- **Response: CPKC is interested in more disaggregated information than this (e.g., regional strategies and customer specific strategies). What level of information is UP willing to provide?**
- **We have accepted CPKC's proposed edit.**
- Documents and Communications regarding the impacts of the Proposed Transaction as described in **CSX's request concerning the impacts of the Proposed Transaction on rail service offered or that may be offered. See CSX Set 1 No. 3.**

- Documents and Communications regarding the impacts of the Proposed Transaction on rail service through and between the following locations, including investments in infrastructure and capacity, traffic forecasts, density charts, capacity studies or reports, changes expected to result from the Proposed Transaction that would impact any Person's costs to provide rail service through and between the locations, and all studies, analyses, and reports regarding expected or potential impacts of the Proposed Transaction on rates and service for traffic moving through and between the locations:
 - a. Meridian Speedway;
 - b. Dallas, Texas and the Meridian Speedway; and
 - c. Dallas, Texas and Shreveport, Louisiana.
- Documents and Communications regarding the impacts of the Proposed Transaction on existing capacity on any main lines, yards, and terminals that are expected to experience significant increases in activity from the Proposed Transaction, including analyses concerning whether sufficient capacity exists to implement operating changes intended to optimize current traffic flows and development of any related capital improvement plans.
- Documents and Communications regarding the impacts of the Proposed Transaction Applicants' Plans Relating to their operations of or operations near interchange facilities or locations in or near to the following geographic areas, Including either Applicant's investments in infrastructure and capacity, traffic forecasts, density charts, capacity studies or reports, changes expected to result from the Proposed Transaction that would impact any Person's costs to provide rail service through interchange facilities or locations in the following geographic areas, and all studies, analyses, and reports regarding expected or potential impacts of the Proposed Transaction on rates and service for traffic moving through the interchange facilities or locations in the following geographic areas:
 - a. Chicago, Illinois;
 - b. Memphis, Tennessee;
 - c. St. Louis, Missouri/East St. Louis, Illinois;
 - d. New Orleans, Louisiana;
 - e. Kansas City, Missouri;
 - f. Omaha, Nebraska;
 - g. Council Bluffs, Iowa;
 - h. Shreveport, Louisiana;
 - i. Meridian, Mississippi;

- j. Myrtlewood, Alabama; and
- k. Birmingham, Alabama.
- Documents and Communications regarding the impacts of the Proposed Transaction on the following entities and any future Plans Relating to the Applicants' ownership stake of, control of, or involvement or relationship with the following entities:
 - a. Terminal Railroad Association of St. Louis;
 - b. TTX Company;
 - c. Ferrocarril Mexicano, S.A. de C.V. (a/ka "Ferromex");
 - d. Rail Pulse; e. PTC-220, LLC; and f. Meteorcomm, LLC
 - g. CSXT.
- Documents and Communications regarding the impacts of the Proposed Transaction on traffic that is currently, or may in the future be, interchanged through and between CSXT or CN and the Applicants, including documents sufficient to show all current and future traffic that the Applicants have or may interchange with CSXT or CN.
- Documents and Communications regarding relative competitiveness of single line movements vs. interline movements.
- Documents and Communications regarding interchange alternatives in all commodity sectors.
- Communications between Applicants and Amtrak sufficient to show complaints by Amtrak or disputes between Amtrak and UP regarding UP's ownership or operation of facilities or routes near: Sedalia, Missouri; Jefferson City, Missouri; River Subdivision, Missouri; and Chicago, Illinois.
- ~~Documents and Communications regarding any potential "golden share" or other proposal for ownership in or control of the Proposed Transaction by the federal government of the United States.~~
- Documents and Communications regarding rail competition in Mt. Vernon, Illinois; Des Moines, Iowa; and Danville, Illinois, including competition with short lines.
- ~~Documents and Communications supporting the contentions by Dr. Bailey in the Amended Application detailed in CN's requests. See CN Request Set 4, Requests 24-28.~~
- ~~**NOTE: Please confirm that UP will be providing its reviewers with a list of each of the contentions identified in CN Request Set 4, Requests 24-28.**~~

- ~~Documents and Communications supporting the contentions by Dr. Israel in the Amended Application detailed in CN's requests. See CN Request Set 4, Request 29.~~
- ~~NOTE: Please confirm that UP will be providing its reviewers with a list of each of the contentions identified in CN Request Set 4, Request 29.~~
- ~~Documents and Communications supporting the contentions by David Hunt in the Amended Application detailed in CN's requests. See CN Request Set 4, Requests 30-32.~~
- ~~NOTE: Please confirm that UP will be providing its reviewers with a list of each of the contentions identified in CN Request Set 4, Requests 30-32.~~
- Documents and Communications supporting the contentions by John Orr and Erie Gehringer in the Amended Application detailed in CN's requests. See CN Request Set 4, Request 33. ~~NOTE: Please confirm that UP will be providing its reviewers with a list of each of the contentions identified in CN Request Set 4, Request 33.~~

EXHIBIT D

Filed under seal pursuant to the Protective Order