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By E-Filing

August 4, 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 CPKC's motion to compel (CPKC-36), which asks Your Honor to order Applicants to unnecessarily add *millions* of nonresponsive documents to the broad custodial and non-custodial searches that Applicants are already undertaking, for the following reasons:

First, CPKC's proposed search terms add no marginal benefit and impose an enormous burden on Applicants. As detailed below, Union Pacific and Norfolk Southern have reviewed a statistically significant sample to test the legitimacy of CPKC's proposed terms and found that adding the terms bringing back the most hits in CPKC's proposal to each Applicant pulled in zero additional responsive documents. By contrast, Applicants' existing search efforts have already resulted in the production of thousands of the very documents that CPKC argues can only be adequately identified through use of its sprawling search terms. At this time, there is no need for Your Honor to disrupt Applicants' existing discovery efforts.

Second, CPKC's demand that Union Pacific collect and export additional data from its pre-2022 legacy email system should be denied. Union Pacific has already undertaken an immensely burdensome effort to collect data from its legacy system for its 16 original custodians using the terms negotiated by the non-Applicant railroads—except for CPKC, who refused to participate in negotiations—and is reviewing those documents for responsiveness to requests issued by all railroads, including CPKC. CPKC's demand that Union Pacific collect vast sets of *additional* data from its legacy system is technically challenging and unduly burdensome. Union Pacific has attempted to use CPKC's search terms to collect and export data from its legacy system, but the breadth and complexity of CPKC's terms have caused those efforts to be unsuccessful.

Third, Union Pacific is already searching for periodic reports on pricing and growth strategies, as requested by CPKC, and has produced thousands of documents resulting from that search. CPKC's requested relief is based on a failure to review the produced documents and a misunderstanding of the searches Union Pacific is already conducting.

1. CPKC's Additional Search Terms Are Unreasonable and Unnecessary.

CPKC's additional search terms will add *millions* of documents to Applicants' review processes, imposing an immense burden, without materially affecting the scope of discovery that CPKC will receive in this proceeding.

To determine whether CPKC's search terms are actually tailored to identify responsive documents, Applicants tested the terms. Union Pacific tested the additional search term that CPKC has proposed for Request 18, *see* Exhibit A, Proposed Search Terms for Union Pacific at Search 18.2, which would add hundreds of thousands of documents to the review process if adopted. Norfolk Southern tested CPKC's most recent search term proposal for Request 25, *see* Exhibit B, Proposed Search Terms for Norfolk Southern at Search 25, which would add nearly two million documents to Norfolk Southern's review process if adopted. Each Applicant identified a statistically significant sample set of the documents returned by these searches for review¹ and then reviewed that sample set for responsiveness. Each sample set contained *zero* responsive documents.

The results are striking, but unsurprising when one considers the breadth of the custodial searches that Applicants are already conducting pursuant to search terms that they negotiated with the other non-Applicant railroads.² Based on these previously agreed searches, Applicants expect to add to the review process more than 2.4 million custodial documents across their original 32 custodians, and significantly more documents across the full set of 66 custodians.³

Although CPKC refused to participate in the above negotiations, it did subsequently propose extensive additions to the agreed terms, including Search 18.2. These additional terms were estimated to collectively add *millions* of documents to the review process if adopted. *See* Ex. F, July 7, 2026 email from M. Georges to K. Kelly. While Applicants have proposed various compromises to address CPKC's demands, CPKC has refused any significant changes to its most burdensome proposed searches. As a result, Applicants are proceeding using the search terms they previously agreed to with the other non-Applicant railroads as well as those terms proposed by CPKC that Applicants could accept. For ease of reference, charts showing the additional

¹ The sample set for each Applicant consisted of 385 documents that hit on the additional term, but do not hit on the agreed terms that each Applicant is currently using. The sample size is sufficient to achieve a 95% confidence level with a 5% margin of error.

² As background, Applicants disclosed the search terms they intended to use in early May, agreed to all proposed modifications to those terms that they had received from the other non-Applicant railroads as of June 11, and then proceeded with document review consistent with those agreed terms. *See* Ex. C, May 7, 2026 UP Custodial Proposal; Ex. D, May 8, 2026 NS Custodial Proposal, Ex. E, June 11, 2026 email from M. Warren to K. Kelly.

³ Applicants are still processing custodial data for the additional custodians in order to determine the total hit count.

terms that CPKC has demanded from each Applicant, the terms' respective hit counts, and whether the terms are disputed are attached as Exhibits A and B.⁴

In asking Your Honor to impose its proposed search terms on Applicants, CPKC ignores a bedrock principle of e-discovery: "The party responsible for production will usually be most familiar with its own records, and therefore will be 'best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.'" *L-3 Commc'ns Corp. v. Sparton Corp.*, 313 F.R.D. 661, 667 (M.D. Fla. 2015) (citing Sedona Conference, *Sedona Principles* at 38 (2d ed. 2007)). Applicants designed their initial custodial search term proposal to cover a wide range of requests from the non-Applicant railroads while avoiding needless overreach and false positives. *See Est. of Mann v. Cnty. of Stanislaus*, 2022 WL 4029571, at *2 (E.D. Cal. Sept. 2, 2022) ("Search terms must be reasonably tailored to identify responsive communications.").

CPKC's search term demands must also be considered in light of the extensive non-custodial searches that Applicants are undertaking. Applicants have worked constructively with CPKC to determine whether the documents that CPKC is seeking can be located through searches of non-custodial locations, such as centralized electronic file repositories, and to review and produce from those locations when identified. Applicants' non-custodial searches have already resulted in the production of approximately 7,000 executive-level documents sought by CPKC.

In fact, the very documents CPKC cites in support of its proposed custodial terms are the types of documents that Applicants have located through their reasonable non-custodial searches and produced to CPKC. *See* Mot. at 2. Contrary to CPKC's assertions, the production of these documents does not signal a gap in custodial search terms. Instead, their production highlights the comprehensiveness of Applicants' holistic discovery efforts. CPKC has already received thousands of executive-level documents touching on the exact topics it now seeks to compel.

In evaluating whether to grant CPKC's requested relief, Your Honor must weigh the marginal value of the discovery sought against the burden of obtaining it. *See 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) ("Under 49 CFR § 1114.21(c), ... discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought."); *see also AliveCor, Inc. v. Apple, Inc.*, 2023 WL 2224431, at *2 (N.D. Cal. Feb. 23, 2023) ("Perfection in ESI discovery is not required; rather a producing party must take reasonable steps to identify and produce responsive documents.").

⁴ The underlying CPKC discovery requests, pursuant to which CPKC is demanding these search terms, are attached as Exhibit G.

CPKC seeks to minimize the burden by asserting that “[i]f CPKC’s search terms capture non-responsive documents, Applicants’ TAR program will screen out the non-responsive material.” Mot. at 3. But that is false. While TAR is a helpful tool that can generate efficiencies, it is not a magic wand that eliminates all burden on the reviewing party. Nor does TAR relieve requesting parties of their obligation to reasonably tailor their search term requests.

Even with the use of TAR, it will take significant machine time and resources to process and cull the documents from Applicants’ systems and promote the results to a review database. Additionally, TAR “does not eliminate the need for human review.” Bolch Judicial Institute, Duke Law, Technology Assisted Review (TAR) Guidelines (Jan. 2019) (“TAR Guidelines”) at 40. Human review is still necessary in tandem with TAR’s machine learning model. For example, human privilege review of documents identified by TAR as responsive is still critical and time-consuming. And when applied in conjunction with broad or imprecise search terms—such as those proposed by CPKC—a TAR model is far more likely to return a larger volume of documents requiring manual review. TAR Guidelines at 38 (outlining the consequences of introducing new documents midstream). Finally, the use of a TAR model does not solve the fundamental flaw of CPKC’s terms: they are simply not well-crafted for CPKC’s purpose. Applicants’ sampling process demonstrates that CPKC’s proposed terms are not identifying responsive documents. Thus, even accounting for the efficiencies provided by TAR, the burden imposed by reviewing the additional documents sought by CPKC still far outweighs the limited value of the unique material those terms would capture.

2. Extensive Supplemental Collection from Union Pacific’s Pre-2022 Legacy Email System Is Unduly Burdensome and Unnecessary.

Prior to 2022, Union Pacific used a legacy email system that is unduly burdensome to search at the immense scale demanded by CPKC. As Union Pacific has previously explained to the non-Applicant railroads, collecting and exporting material from Union Pacific’s legacy Lotus Notes system is technically challenging and extremely burdensome. *See* Ex. H, July 2, 2026 Letter from M. Georges to M. Thompson.

While Union Pacific undertook an immense effort to collect and export data that contained the agreed search terms for its 16 original custodians, it is technically challenging to export the array of data demanded by CPKC. Union Pacific has already attempted to export data from the legacy system using terms that CPKC previously proposed, but the breadth and complexity of CPKC’s terms have caused those efforts to be unsuccessful.

As with the terms themselves, CPKC’s request for custodial materials from 2019 to 2022—including those of Mr. Lance Fritz—overstates relevance while ignoring burden. Union Pacific’s prior productions and existing discovery commitments substantially cover the topics and period sought by CPKC. This is particularly true in the case of Mr. Fritz. As former CEO, documents that rose to Mr. Fritz’s level, or that reflect his input, are especially likely to be reflected in the non-custodial files that Applicants produced or will produce. Any incremental

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materials captured by CPKC's terms as applied to the pre-2022 materials of Mr. Fritz or other custodians are unlikely to significantly add to the material produced through Union Pacific's existing discovery efforts.

Union Pacific's commitment to produce *certain* materials from 2019 to 2022 does not open the door to unrestrained discovery for that period. If anything, Union Pacific's existing discovery efforts demonstrate a willingness to engage with reasonably tailored, nonduplicative requests. CPKC's own discovery responses exhibit its apparent recognition of the significant burden of retrieving materials from legacy systems. *See, e.g.*, Ex. I, July 16, 2026 email from J. Matelis to K. Kelly ("Because CP and KCS merged in 2023, pulling data for two legacy railroads back through 2019 is particularly burdensome for CPKC."). Union Pacific, unlike CPKC, has provided a detailed explanation of the challenges posed by its legacy Lotus Notes system. CPKC has failed to justify the massive burden imposed by its request that Union Pacific run overbroad search terms across pre-2022 legacy sources.

3. Union Pacific Is Already Searching for and Producing Pricing and Growth Strategy Documents.

Union Pacific has already produced a large volume of documents regarding pricing and growth strategies as part of its ongoing non-custodial searches. These materials, which include marketing and sales documents from the sub-executive level, are directly responsive to CPKC's demand for periodic reports. Had CPKC sought clarity before rushing to file its motion, it likely would have realized that this issue had already been resolved.

* * *

For the foregoing reasons, Applicants respectfully request that the Board deny CPKC's motion to compel.

Sincerely,

/s/ Matthew J. Warren

Matthew J. Warren
Marc A. Korman

Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company

/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

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 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

Exhibit A
Proposed Search Terms for Union Pacific

	A	B	C	D	E	F	G	H	I
1	Hit Report for CPKC's 7-24 Proposed Terms Across 16 Original Custodians (2022-2026)				Total Within Existing Agreed Terms Search Hits: 189,280 Total Search Hits, Including Families: 370,609		Total Outside Existing Agreed Terms Search Hits: 507,773 Total Search Hits, Including Families:		
2	Request	Search Name	Search Term	Date Range	Total Documents Hit By Term AND Agreed Terms	Total Documents Hit by Term AND Agreed Terms Including Families	Total Documents Hit by Term EXCLUDING Agreed Terms	Total Documents Hit by Term EXCLUDING Agreed Terms Including Families	Notes
3	Produce 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.	10.1	(transcon* OR (east* w/10 west*) OR end-to-end OR duopoly OR coast-to-coast OR first-mover OR downstream) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line)	1/1/2022 to 2/17/2026	18,926	48,870	5,228	12,765	No Dispute on Term
4		10.2	((UP OR Ruby OR UNP OR UPRR) w/10 (CSX OR Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line OR end-to-end OR coast-to-coast OR east-west)	1/1/2022 to 2/17/2026	26,810	64,761	379	783	No Dispute on Term
5		10.3	((BNSF OR Basalt OR "Union Pacific" w/10 (CSX OR Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line OR end-to-end OR coast-to-coast OR east-west)	1/1/2022 to 2/17/2026	19,613	55,094	350	830	No Dispute on Term
6	Produce 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."	13	falcon OR eagle OR "Mexico-US-Canada" OR "Mexico U.S. Canada" OR ("CN" OR "Canadian National" OR CNR OR CNI) AND ("UP" OR "Union Pacific" OR UNP OR UPRR) w/20 ("joint service" OR "new service" OR "service connection" OR "seamless connection" OR interchange OR interline OR "commercial product" OR "new product")) AND (GMXT OR "Grupo Mexico" OR "Grupo México" OR Ferromex OR FXE)	3/12/2023 to 2/17/2026	14,830	51,763	8,833	13,436	Disputed - CPKC Addition
7		13 [UP Term]	falcon w/5 premium	3/12/2023 to 2/17/2026	4,221	13,752	120	207	Agreed Terms include: (falcon w/3 premium) [UP Proposal Not Included in Total Counts in Row 1]
8	Produce 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."	14	((("Union Pacific" OR UP OR UNP OR UPRR) OR ("Norfolk Southern" OR NS OR NSC OR norfolksouthern)) AND (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC)) w/25 (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR truck-competitive OR "market access")	03/15/2025 – 02/17/2026	5,030	19,164	2,493	4,389	No Dispute on Term

Exhibit A
Proposed Search Terms for Union Pacific

	A	B	C	D	E	F	G	H	I
9	Produce all UP Executive Level Documents relating to strategies for growing UP's rail traffic.	16	(plan* OR strateg* OR project* OR initiative* OR playbook OR develop* OR roadmap OR campaign* OR AOP) w/20 ((grow* OR increas* OR retain* OR enhanc* OR boost* or driv* OR expan* OR conver* OR captur*) w/15 (volume OR traffic OR revenue* OR shipper* OR customer* OR account* OR carload* OR intermodal OR share OR truck* OR modal OR price))	1/1/2022 to 2/17/2026	50,825	151,816	72,984	146,315	Disputed - CPKC Addition
10		16 [UP Term]	((("business review" OR AOP OR "annual operating plan" OR LRP OR "Long range plan") AND (price OR volume OR revenue))	1/1/2022 to 2/17/2026	13,465	60,454	26,315	63,871	[This is same term as 18.1, 20.1, 28]
11	Produce all UP Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP rail network.	18.1	((("business review" OR AOP OR "annual operating plan" OR LRP OR "Long range plan") AND (price OR volume OR revenue))	1/1/2022 to 2/17/2026	13,465	60,454	26,315	63,871	No Dispute on Term (18.1, 20.1, and 28 are the same)
12		18.2	((traffic OR volume* OR capacity OR network OR demand) w/10 (forecast* OR project* OR outlook OR plan*))	1/1/2022 to 2/17/2026	87,902	213,207	258,857	388,792	Disputed - CPKC Addition
13	Produce all UP Executive Level Documents relating to policies or strategies for the pricing or 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)).	20.1	((("business review" OR AOP OR "annual operating plan" OR LRP OR "Long range plan") AND (price OR volume OR revenue))	1/1/2022 to 2/17/2026	13,465	60,454	26,315	63,871	No Dispute on Term
14		20.2	((pric* OR profit* OR margin* OR tariff* OR yield* OR rate* OR "ROR" OR "PI" OR hurdle OR return* OR contrib*) w/15 (formula OR model* OR polic* OR strateg* OR playbook OR system* OR threshold* OR cutoff* OR minimum))	1/1/2022 to 2/17/2026	65,132	152,365	124,448	219,004	Disputed - CPKC Addition

Exhibit A
Proposed Search Terms for Union Pacific

	A	B	C	D	E	F	G	H	I
15	Produce 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.	22	(PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "Unified Plan 2020" OR "UP 2020" OR UP2020) w/30 (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity)	1/1/2022 to 2/17/2026	8,973	30,750	2,968	5,891	No Dispute on Term
16	Produce 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).	24	((bundl* OR tying OR leverag* OR exploit* OR sole-served OR solely-served OR "single served" OR captive))	1/1/2022 to 2/17/2026	59,205	155,261	115,034	196,094	Disputed - CPKC Addition
17		24 [UP Term]	(bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio) w/30 (sole-served OR solely-served OR "single served" OR captive)	1/1/2022 to 2/17/2026	2,367	5,614	949	1,540	[UP Proposal Not Included in Total Counts in Row 1]
18	Produce 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.	26	(bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio) w/30 ((multiple OR multi OR many OR numerous OR several OR various OR across) w/10 (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account*))	1/1/2022 to 2/17/2026	13,152	41,536	14,380	22,816	Disputed - CPKC Addition
19		26 [UP Term]	(bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio) w/30 (multiple w/5 (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account*))	1/1/2022 to 2/17/2026	1,724	6,525	1,585	3,588	[UP Proposal Not Included in Total Counts in Row 1]
20	Produce 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).	28	("business review" OR AOP OR "annual operating plan" OR LRP OR "Long range plan") AND (price OR volume OR revenue)	1/1/2022 to 2/17/2026	13,465	60,454	26,315	63,871	No Dispute on Term

EXHIBIT B

Requestor	Set	Request No.	Request Text	Time Period As Run	Search Terms As Run	Hits (30 Custodians)	Hits + Family (30 Custodians)	Unique Hits (30 Custodians)	Notes
CPKC	1st Discovery Request	11	Produce all NS 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.	1/1/2019 to 2/17/2026	((BNSF OR Basalt OR "Union Pacific" OR UP OR Ruby OR UNP OR UPRR) w/10 (CSX OR Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line OR end-to-end OR coast-to-coast OR east-west) OR (transcon* OR (east* w/10 west*) OR end-to-end OR duopoly OR coast-to-coast OR first-mover OR downstream) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line)	Combined 65,298 Part 1 50,415 Part 2 27,704	Combined 135,286 Part 1 101,214 Part 2 59,578	 Part 1 16,832 Part 2 4,609	No dispute on terms
CPKC	1st Discovery Request	12	Produce all NS Executive Level Documents relating to the "[l]ane [r]ationalization" referenced in the NS Press Release dated April 4, 2024, entitled Norfolk Southern Announces new initiatives to drive further productivity and accountability.”	1/1/2024 to 5/31/2024	("lane rationalization" OR (lane w/5 ration*)) OR (("Intermodal" OR "OD pair*") w/10 (review OR optimiz*)) OR (("OD pair*" OR lane* OR corridor* OR route* OR market*) w/10 (eliminat* OR remov* OR discontinu* OR exit* OR consolidat* OR rationaliz* OR optimiz* OR suspend*)) OR ((low-volume OR "low volume" OR density OR "limited growth" OR "growth prospects" OR profit* OR complex*) w/10 ("OD pair*" OR lane* OR corridor* OR route*))	11,064	23,456	4,925	No dispute on terms

Requestor	Set	Request No.	Request Text	Time Period As Run	Search Terms As Run	Hits (30 Custodians)	Hits + Family (30 Custodians)	Unique Hits (30 Custodians)	Notes
CPKC	1st Discovery Request	15	Produce all NS 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."	3/15/2025 to 2/17/2026	((“Union Pacific” OR “UP” OR “UNP” OR UPRR) AND (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR “KC”)) w/25 (intermodal OR gateway OR interchange OR interline OR “joint service” OR “new service” OR “domestic intermodal” OR “truck-competitive” OR “market access”)	3,267	8,085	853	No dispute on terms
CPKC	1st Discovery Request	17	Produce all NS Executive Level Documents relating to strategies for growing NS’s rail traffic.	1/1/2019 to 2/17/2026	(plan* OR strateg* OR project* OR initiative* OR playbook OR develop* OR roadmap OR campaign* OR AOP) w/20 (grow* OR increas* OR retain* OR enhanc* OR boost* or driv* OR expan* OR conver* OR captur*) w/15 (volume OR traffic OR revenue* OR shipper* OR customer* OR account* OR carload* OR intermodal OR share OR truck* OR modal OR price)	177,851	493,534	59,625	Terms disputed
CPKC	1st Discovery Request	19	Produce all NS Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the NS rail network.	1/1/2019 to 2/17/2026	("same store" OR "SSP" OR playbook OR "follow the market" OR "market approach" OR "market update") AND (price OR volume OR revenue) OR (traffic OR volume* OR capacity OR network OR demand OR RPU) w/10 (forecast* OR project* OR outlook OR budget)	Combined 341,302 Part 1 157,952 Part 2 201,884	Combined 673,440 Part 1 296,170 Part 2 463,011	Part 1 0 Part 2 95,155	Terms disputed

Requestor	Set	Request No.	Request Text	Time Period As Run	Search Terms As Run	Hits (30 Custodians)	Hits + Family (30 Custodians)	Unique Hits (30 Custodians)	Notes
CPKC	1st Discovery Request	21	Produce all NS Executive Level Documents relating to policies or strategies for the pricing of NS's rail transportation services, including without limitation the level of returns that NS requires when pricing rail traffic.	1/1/2019 to 2/17/2026	("same store" OR "SSP" OR playbook OR "follow the market" OR "market approach" OR "market update") AND (price OR volume OR revenue) OR ((pric* OR profit* OR margin* OR tariff* OR yield* OR rate* OR "ROR" OR "PI" OR hurdle OR return* OR contrib* OR RPU) w/15 (formula OR model* OR polic* OR strateg* OR playbook OR system* OR threshold* OR cutoff* OR minimum))	193,778	339,184	20,700	Terms disputed
CPKC	1st Discovery Request	23	Produce all NS Executive Level Documents relating to NS's changes (including without limitations reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroading.	1/1/2019 to 2/17/2026	(PSR OR (Precision w/2 (Schedul* OR Rail*)) OR TOP OR "TOP21" OR "TOP 21" OR "TOP 2021" OR "TOP2021" OR "Thoroughbred Operat*" OR SPG) w/10 (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity OR TPM)	99,521	245,279	39,934	No dispute on terms

Requestor	Set	Request No.	Request Text	Time Period As Run	Search Terms As Run	Hits (30 Custodians)	Hits + Family (30 Custodians)	Unique Hits (30 Custodians)	Notes
CPKC	1st Discovery Request	25	Produce all NS Executive Level Documents discussing, analyzing, studying or referring to NS's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for NS transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that NS is uniquely or advantageously situated to perform (including without limitation where NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route)	1/1/2019 to 2/17/2026	(bundl* OR tying OR tie* OR link* OR leverag* OR exploit OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive)	2,093,917	3,056,119	1,808,905	Terms disputed
CPKC	1st Discovery Request	27	Produce 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 NS, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form.	1/1/2019 to 2/17/2026	(bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio) w/30 ((multiple OR multi OR many OR numerous OR several OR various OR across) w/10 (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account*))	49,154	131,896	8,960	Terms disputed

Requestor	Set	Request No.	Request Text	Time Period As Run	Search Terms As Run	Hits (30 Custodians)	Hits + Family (30 Custodians)	Unique Hits (30 Custodians)	Notes
CPKC	1st Discovery Request	29	Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss NS's plans or strategies for retaining or increasing the revenues obtained by NS from rail customers (whether by growing traffic, increasing prices, or otherwise).	1/1/2019 to 2/17/2026	("same store" OR "SSP" OR playbook OR "follow the market" OR "market approach" OR "market update") AND (price OR volume OR revenue)	157,952	296,170	0	Terms disputed
Deduplicated Totals						2,441,392	3,542,925		

Total Hits With Families Outside Existing Agreed Terms: 1,953,782

EXHIBIT C

From: Kelly, Kevin
Sent: Thursday, May 7, 2026 9:19 PM
To: Golden, Nathan H.; Thompson, McClain; Matelis, Joseph J.; Judge, Kiera S.; David Meyer; Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; *pdenton@steptoe.com; *tstrafford@steptoe.com; Reilly, Matt; Cunningham, Rich; Scheib, John M.; Fanchiang, Eric; Gardiner, Kent; Aluise, Dylan M.; van Houwelingen, Luke; *Avia.Gridi@stblaw.com
Cc: Rosenthal, Michael; Ludwin, Derek; Flahive Wu, Laura; Damitio, Daniel; Brown, Molly; Harrison, Caroline; Warren, Matthew J.; Laudone, Stephen S.; Korman, Marc; ratkins; William Mullins; Spencer Naake
Subject: STB FD 36873 - Custodial Email Searches
Attachments: UP Custodial Email Search Proposal (5.7.2026).xlsx

Counsel,

Applicants have prepared proposals regarding the parameters for custodial email searches that each Applicant will conduct to resolve various document requests issued by the other Class I railroads. I am attaching Union Pacific's proposal here. Norfolk Southern will send its proposal separately.

UP's attached proposal identifies the relevant requests for production, the scope of responsive material that Union Pacific is agreeing to search for in response to the request, the time period and search terms that will be used to identify documents for review, the custodians whose documents will be searched, and the hit count for each search (reflecting the total number of document families containing the search terms during the time period).

As you will see, Applicants proposed searches for merger-related terms (as well as other terms) for time periods that extend beyond the announcement of the merger and overlap with the period when Applicants were working under the direction of counsel to prepare their Application. Given the extraordinary volume of documents both pre- and post-merger announcement that will be reviewed pursuant to Applicants' proposals, Applicants do not intend to individually log privileged responsive documents identified through their searches. Instead, Applicants will provide a categorical log for pre-merger announcement documents that are responsive and privileged. Requiring Applicants to log post-merger announcement communications responsive to the incredibly broad topics identified in the document requests is unduly burdensome and disproportional to the needs of this proceeding.

If you have suggestions for modifications to the search terms that Applicants are employing, we are happy to consider those.

Best,

Kevin

Kevin Kelly

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

COVINGTON

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

	A	B	C	D	E	F	G	H
	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
1	BNSF	1st Discovery Request	15	Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
2	BNSF	1st Discovery Request	17	Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.	Studies, analyses, and reports regarding potential joint ventures, alliances, or other cooperative agreements between UP and BNSF, CN, CPKC, CSX, or NS.	1/1/2019 to 2/17/2026	(BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National") /10 ("cooperative agreement" or "joint venture" or alliance)	1216
3	BNSF	1st Discovery Request	20	Produce all studies and analyses of the impact of the Proposed Transaction on potential future mergers involving any Class I carrier (including Applicants).	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
4	BNSF	1st Discovery Request	21	Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on: a.Applicants' current and future debt and debt service obligations. b.Applicants' financial metrics including revenue, earnings, EBITDA, leverage, and operating ratio; c.Applicants' costs and potential opportunities to reduce costs (synergies); d.Railroad intramodal, intermodal, product, and geographic competition; e.Potential traffic diversions from truck transportation to rail transportation; f.Rail service, including rail service provided by other rail carriers; g.Rail safety, including the safety of rail service provided by other rail carriers; h.Rail labor and employment, including labor forces at railroads other than Applicants; i.Passenger or commuter service; j.Rates for rail transportation; k.Competition, including corridor competition, source competition, and intermodal competition; and l.Applicants' proposed gateway commitment on Applicants' existing traffic and the revenues and profitability of that traffic.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
5	BNSF	1st Discovery Request	22	Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.	Final studies, analyses, and reports that UP relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
6	BNSF	1st Discovery Request	26	Produce all Documents related to UP and NS's planned capital budgets and forecasts for the next five years (as prepared in the 2024 and 2025 period prior to the announcement of the Proposed Transaction).	Studies, analyses, and reports regarding UP's planned capital budgets and capital budget forecasts for the next five years (as prepared between 1/1/2024 and 7/29/2025).	1/1/2024 to 7/29/2025	"capital budget" or "capital spending" or "capital program" or "annual operating plan" or "long range plan"	6662
7	BNSF	2nd Discovery Request	1	Documents and Communications received from any banker, economist, or financial advisor 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. For the avoidance of doubt, this request seeks, among other things, all studies, surveys, analyses, and reports prepared by investment bankers, consultants, economists, or other third-party advisors in connection with the Proposed Transaction for any officer or director of UP or NS for the purpose of evaluating or analyzing market shares, competition, markets, potential sales growth or expansion into product or geographic markets.	Studies, analyses, and reports that UP relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
9	BNSF	2nd Discovery Request	2	All Documents and Communications (including agendas, minutes, presentations, reports, memoranda, recommendations, actions, or pre-read materials) concerning UP and NS's Board of Director Meetings, including all committees and subcommittees, concerning 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.	Studies, analyses, and reports that UP relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
10	BNSF	2nd Discovery Request	5	All Documents and Communications that concern, discuss, or support any aspect of UP's claim, as stated in its July 29, 2025 press release (https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729), that "[UP] and [NS] shareholders are expected to realize significant value from the transaction, including more than \$30 billion in potential value creation through the expected achievement of approximately \$2.75 billion in annualized synergy opportunity."	Studies, analyses, and reports that UP relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
11	BNSF	2nd Discovery Request	6	All Documents and Communications, including business plans, market studies, operational analyses, forecasts, modeling outputs, and internal reports related to or supporting UP and NS's statements during the December 19, 2025 analyst call that UP and NS expect up to \$2 billion in net revenue EBITDA synergies and "no longer expect significant concessions due to competition enhancements." For the avoidance of doubt, this request seeks, among other things, information regarding the approximately \$750 million in concessions that UP and NS no longer intend to offer.	Studies, analyses, and reports regarding the projected synergies resulting from the Proposed Transaction.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
12	BNSF	2nd Discovery Request	7	All Documents and Communications, including business plans, market studies, operational analyses, forecasts, modeling outputs, and internal reports related to or supporting Jim Vena's statements during UP's earnings call on October 24, 2025 that: a. The Proposed Transaction will "remove 1,000 trucks of rail-to-rail or our portion of it in Chicago and other places that today runs on the highway instead of going rail to rail." b. UP is "absolutely sure we can grow the business because of the watershed area of the United States that's underserved and a railroad that is seamless." c. UP will provide 2-to-1 customers access "to another railroad to give them the optionality that they had before so that nobody in this merger loses anything." d. The Proposed Transaction will not "remove 300 lanes of traffic." e. The Proposed Transaction will "have more options for our customers, not less."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
13	BNSF	2nd Discovery Request	8	All Documents and Communications concerning the Committed Gateway Pricing program as defined and discussed in the Application.	Studies, analyses, and reports regarding the Committed Gateway Pricing Program.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
14	BNSF	2nd Discovery Request	9	All Documents and Communications concerning UP and NS's commitment to keeping all existing gateways open for eligible traffic on commercially reasonable terms, as discussed in the Application.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
15	BNSF	2nd Discovery Request	10	All Documents and Communications concerning UP and NS's commitment to divest portions of their shares in the Peoria & Pekin Union Railway Company ("PPU"), Terminal Railroad Association of St. Louis ("TRRA"), and TTX Company ("TTX").	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

	A	B	C	D	E	F	G	H
1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
16	BNSF	2nd Discovery Request	34	Communications between UP and NS concerning the Proposed Transaction before and after the execution of the Merger Agreement related to integration planning, the Proposed Transaction's effect on competition in the rail industry, the downstream effects of the Proposed Transaction, shipper / customer reactions and feedback to the Proposed Transaction, and/or potential alternatives to the Proposed Transaction.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request. Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
17	BNSF	2nd Discovery Request	35	Documents and Communications concerning any benefits that may result from the Proposed Transaction—including cost savings, economies of scale, new services, rail service improvements, software improvements, data collection improvements, and/or other efficiencies or synergies.	Studies, analyses, and reports regarding benefits of the Proposed Transaction of the types described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
18	BNSF	2nd Discovery Request	36	Documents or Communications concerning any risk that may result from 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 risks.	Studies, analyses, and reports regarding risks of the Proposed Transaction of the types described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
19	BNSF	2nd Discovery Request	37	Documents and Communications concerning the Proposed Transaction's impact 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.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
20	BNSF	2nd Discovery Request	38	Documents and Communications concerning the impact 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.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
21	BNSF	2nd Discovery Request	39	Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on PPU (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of PPU.	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
22	BNSF	2nd Discovery Request	40	Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on TRRA (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of TRRA.	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
23	BNSF	2nd Discovery Request	41	Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on TTX (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of TTX.	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
24	BNSF	2nd Discovery Request	43	All studies, surveys, analyses, confidential information memoranda, and reports prepared by or for any officers, directors, or management for the purpose of evaluating or analyzing the Proposed Transaction with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets.	Studies, analyses, and reports that UP relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

	A	B	C	D	E	F	G	H
1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
25	BNSF	2nd Discovery Request	47	All internal analyses and internal communications, as well as communications between UP and NS, regarding the claims and contentions in at pages 2-3 of the Notice of Intent that: a. The Proposed Transaction will "transform the U.S. supply chain." b. The Proposed Transaction will "unleash the industrial strength of American manufacturing." c. The Proposed Transaction will "create new sources of economic growth and workforce opportunity." d. The Proposed Transaction will create "more accessible, sustainable, and lower-cost supply chain for manufacturers and consumers." e. The Proposed Transaction will "drive additional employment opportunities in towns and cities across the combined rail network." f. The Proposed Transaction will "generate economic growth in communities across the United States." g. "[T]he combined company will compete more effectively with Canadian railroads to win back U.S. freight volume and American jobs."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
26	BNSF	2nd Discovery Request	48	Documents, Communications, and internal analyses concerning the investments that the merged carrier will undertake as a result of the Proposed Transaction and that would not have occurred absent the Proposed Transaction.	Studies, analyses, and reports regarding investments the merged carrier will undertake as a result of the Proposed Transaction that would not have occurred absent the Proposed Transaction.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
27	BNSF	2nd Discovery Request	50	Documents, Communications, and internal analyses showing the set of all tracks that will be abandoned or added as a result of the Proposed Transaction.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
28	BNSF	2nd Discovery Request	52	Documents listing all complaints that UP or NS have made or received regarding failure of other rail carriers to interline with them from 2019 to present, including pursuant to stipulated remedies from prior rail transactions.	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.	1/1/2019 to 2/17/2026	(fail* W/5 interline)	48
29	BNSF	2nd Discovery Request	54	Documents and internal analyses on all facilities closed by UP or NS from 2019 to present, including internal analyses on how the closure of these facilities affect prices and costs.	Studies, analyses, and reports regarding facilities closed by UP, including analyses of the effect of these closures on prices and costs.	1/1/2019 to 2/17/2026	((yard* or shop* or facilit*) W/3 (closing* or closure* or rationalize)) AND (price* or cost*)	3184
30	BNSF	2nd Discovery Request	55	Documents and internal analyses concerning UP or NS information on pricing, quality, and cost efficiencies related to interline arrangements from 2019 to present, as well as Documents and Communications sufficient to show how the Proposed Transaction would affect these interline arrangements.	Studies, analyses, and reports regarding pricing, quality, and cost efficiencies related to interline arrangements. Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	1/1/2019 to 2/17/2026	interline w/5 (pric* OR quality OR efficien*)	2011
31	BNSF	2nd Discovery Request	59	Documents and internal analyses related to instances in which UP or NS made offers (such as bids on Request for Proposals) to customers opening new facilities that could be served by a rail carrier.	Studies, analyses, and reports regarding UP's offers to customers opening new facilities.	1/1/2019 to 2/17/2026	(facilit* W/3 new) W/20 (offer OR bid)	415
32	BNSF	3rd Discovery Request	4	Documents and Communications concerning UP and NS's buffer capacity with respect to employees and equipment from 2019 to present. This request seeks, among other things, information regarding UP's contention that it has "built buffer capacity into [its] locomotive and equipment fleet." App. Vol. 1 p. 230 ¶ 23.	Studies, analyses, and reports regarding UP's buffer capacity with respect to employees, locomotives, and equipment.	1/1/2019 to 2/17/2026	(Buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive))	1272
33	BNSF	3rd Discovery Request	6	Documents and Communications concerning how UP and NS strategic fueling will change after the Proposed Transaction is completed.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
34	BNSF	3rd Discovery Request	7	Documents and Communications concerning plans for mechanical inspections after the Proposed Transaction is completed, including where mechanical inspections will occur and details regarding how they will be performed.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
35	BNSF	3rd Discovery Request	9	Documents and Communications concerning UP and NS's plans to integrate: a. NS's yard control systems with UP's Mobile NX yard-control system. b. NS's train building systems with UP's Precision Train Builder. c. NS's transportation management systems with UP's NetControl transportation management system.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
36	BNSF	3rd Discovery Request	11	Documents and Communications that support or concern each of the following contentions of Jim Vena during the December 19, 2025, analyst call: a. The combined railroad will "strengthen America's competitiveness, deliver exceptional service for our customers, enhance the safety of freight transportation and safeguard jobs." b. The combined railroad will "accelerate freight movement, reach underserved markets with new rail solutions, and strengthen the U.S. supply chain." c. The Proposed Transaction will "facilitate[] volume growth" that will lead to "approximately 900 new net union jobs by the end of the third year." d. The Proposed Transaction will "not only enhance competition within the US supply chain, but also enable American businesses to compete globally and grow." e. "[T]his will be the most carefully planned and executed merger in our industry's history, and we will invest what it takes to ensure a clean outcome that avoids disruption to our customers and overall supply chain."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
37	BNSF	3rd Discovery Request	13	Documents and Communications that support or concern the contentions of Kenny Rocker during the December 19, 2025, analyst call that: a. The Proposed Transaction will change "10,000 existing lanes from [indiscernible] to single-line service." b. The Proposed Transaction will "eliminate 350 cross town moves per day" in Chicago. c. "By integrating dat, end to end, customers will see instant savings along with greater access and control."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
38	BNSF	3rd Discovery Request	15	Documents and Communications that support or concern the contentions of Eric Gehringer during the December 19, 2025, analyst call that: a. "[T]he UP-NS merger is designed to make our network more resilient and protect against disruptions." b. "[A] larger unified system gives us more flexibility and capacity to manage challenges." c. "[O]ver the last 5 years, both companies have completed successful seamless technology cutovers." d. "[O]ur technology cutovers did not impact customers or their railroads."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
39	BNSF	3rd Discovery Request	16	Documents and Communications that support or concern the contentions of Jennifer Hamann during the December 19, 2025, analyst call that: a. "[T]he rails have upheld their merger commitments. Union Pacific absolutely has done that. And we will—are rapidly committed to do that."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
40	BNSF	3rd Discovery Request	17	Documents and Communications that support or concern the contentions made in the White Paper that: a. "A transcontinental American railroad will enhance competition with Canada to win back U.S. freight volume and good-paying union railroad jobs." p. 5. b. "A seamless transcontinental railroad will provide stronger competition for long-haul trucking, which dominates the market." p. 7. c. "Without structural reform and bold leadership, rail's position in the U.S. freight market will continue to erode – no matter how well individual railroads perform." p. 7. d. "A route-by-route analysis of projected post-merger growth verified there is sufficient capacity to continue fulfilling all service commitments to all passenger services, including Amtrak and commuter agencies." p. 14. e. "A transcontinental operating plan will provide service improvements for customers without overhauling existing networks." p. 18. f. "[T]he combined railroad's plans do not include any operational changes to connections with Union Pacific's and Norfolk Southern's many current short line partners." p. 20. g. "The combined company's operating plan does not change principal routes, nor does it include line divestitures or discontinued services." p. 21. h. "The end-to-end nature of the Union Pacific and Norfolk Southern combination reduces the risk of service disruptions." p. 26. i. "Most traffic moving on the two networks will not be affected [by the Proposed Transaction], and most yards and terminals will not experience any significant merger-related increase in activity levels." p. 26. j. "The combined company will be more resilient due to the greater availability of resources, such as the main line track, terminals, crews, locomotives and rail cars required to keep traffic flowing." p. 26. k. UP and NS's "recent experience with successful system and technology integrations," as referred to in the White Paper at page 27, including but not limited to:	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
41	BNSF	3rd Discovery Request	19	Documents and Communications that support or concern UP and NS's contentions in the Application that: a. "[S]hippers repeatedly say they want . . . seamless, efficient, end-to-end rail service with a single carrier accountable for the full move." App. Vol. 1, p. 12. b. "This end-to-end merger does not eliminate parallel routes or diminish competitive alternatives." App. Vol. 1, p. 13. c. The Proposed Transaction will "strengthen the national defense." App. Vol. 1, p. 24. d. "[T]he proposed transaction will not cause the loss of any essential rail service, and inclusion of other rail carriers would interfere with achievement of the benefits of the proposed transaction." App. Vol. 1, p. 35. e. "Applicants' gateway commitment will ensure that BNSF and CSX, as well as CN and CPKC, could continue competing effectively with UP/NS if they remain as independent companies." App. Vol. 1, p. 50.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
42	BNSF	3rd Discovery Request	20	Documents and Communications related to UP and NS's downstream effects analysis. See 49 C.F.R. § 1180.6(b)(12). For the avoidance of doubt, this request seeks Documents and Communications that support or concern Applicants' contentions that (i) "Applicants believe that even if there were a responsive merger, it would not diminish the substantial public benefits of the proposed transaction," App. Vol. 1, p. 50, and (ii) "if other railroads respond to the competitive pressures generated by this merger by forming a second, more efficient transcontinental railroad that also offers broader single-line service, unlocking even more growth in watershed markets, the result would simply be an American network with two stronger, more efficient transcontinental carriers." App. Vol. 1, p. 51.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
43	BNSF	3rd Discovery Request	22	Documents and Communications that support or concern Jim Vena's contentions that: a. UP/NS "will have procedures in place to promptly address any unexpected issues and to ensure that we are delivering the services that we promise." App. Vol. 1, p. 160 ¶ 5. b. "We also anticipate achieving significant efficiencies driven by improved asset utilization for UP and our customers, implementation of best operating practices and technologies, and streamlined administrative costs." App. Vol. 1, p. 168 ¶ 24. c. "The transaction will also benefit Amtrak." App. Vol. 1, p. 170 ¶ 29. d. "The benefits of the UP/NS merger cannot be achieved through mere partnership agreements between UP and NS." App. Vol. 1, p. 178 ¶ 49. e. "The Union Pacific Transcontinental Railroad Will Deliver Improved Service with No Transitional Service Disruptions." App. Vol. 1, p. 183.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
44	BNSF	3rd Discovery Request	25	Documents and Communications that support or concern Kenny Rocker and Ed Elkins' contentions that: a. "[C]ustomers overwhelmingly and consistently choose single-line options." App. Vol. 1, p. 224 ¶ 11. b. "[C]ustomers will be able to plan their freight moves with rail as easily as they do with trucking." App. Vol. 1, p. 226 ¶ 13. c. "We believe that customers in the watershed markets want to move by rail." App. Vol. 1, p. 253 ¶ 78. d. "We strongly believe that the true growth potential here goes well beyond what can be modeled on paper." App. Vol. 1, p. 277 ¶ 134. e. "[W]e see big potential around the ports and in global trade." App. Vol. 1, p. 278 ¶ 135.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
45	BNSF	3rd Discovery Request	26	Documents and Communications that support or concern Katherine Novak's contentions that: a. "Committed Gateway Pricing will further enhance competition by extending the competitive benefits of this merger to certain customers who would not otherwise benefit from the merger's new single-line route." App. Vol. 1, p. 316 ¶ 9. b. "UP has used the I-5 Agreement to successfully increase competition with BNSF for traffic moving on the I-5 Corridor." App. Vol. 1, p. 318 ¶ 13. c. "Committed Gateway Pricing is more likely to have cells populated with rates reflecting current market conditions." App. Vol. 1, p. 319 ¶ 14. d. "Committed Gateway Pricing is purely additive." App. Vol. 1, p. 320 ¶ 15. e. "Committed Gateway Pricing will provide eligible customers both rate and service benefits." App. Vol. 1, p. 320 ¶ 16. f. "Use of the 70th percentile rate provides meaningful competitive benefits and appropriately reflects the competition-enhancing goals of the program." App. Vol. 1, p. 328 ¶ 35. g. "Applicants therefore commit to nondiscriminatory treatment of traffic moving under Committed Gateway Pricing." App. Vol. 1, p. 330 ¶ 43. h. "[I]n the unlikely event that [service disruptions] do occur, they will be temporary in nature." App. Vol. 1, p. 331 ¶ 46. i. "[T]here are no grounds for a permanent special program." App. Vol. 1, p. 331 ¶ 47.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
46	BNSF	3rd Discovery Request	27	Documents and Communications that support or concern Gaurav Dua's contentions that: a. The "Service Assurance Plan, developed by UP, in this Application, is a product of this thoughtful integration planning effort." App. Vol. 1, p. 527 ¶ 14. b. "UP and NS are following an integration process that is informed by industry leading practices, and their integration planning to date has the level of detail that I would expect to see given the months long regulatory approval process." App. Vol. 1, p. 527 ¶ 15. c. "[T]he approach towards integration planning for the UP-NS combination is both disciplined and robust, with an emphasis on anticipating and mitigating any potential impacts on service." App. Vol. 1, p. 527 ¶ 16.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
47	BNSF	3rd Discovery Request	29	Documents and Communications related to UP and NS's decisions before the Proposed Transaction to invest in infrastructure needed to accommodate additional interline traffic. App. Vol. 2, p. 42 ¶ 60.	Studies, analyses, and reports regarding UP's decisions before the Proposed Transaction to accommodate additional interline traffic.	1/1/2019 to 7/29/2025	(invest* w/5 (interline or interchange))	505
48	BNSF	3rd Discovery Request	30	Documents and Communications that support or concern the contentions of Mark Israel that: a. "[T]he combined vertical effects of the proposed merger of UP and NS are procompetitive, meaning that they will enhance competition in the rail industry, create downward pressure on price relative to the state of the world that would exist absent the merger, and benefit shippers in the form of greater investment, higher quality service, and a more efficient rail network." App. Vol. 2, p. 141 ¶ 13. b. "[A] merger between complementary railroads in settings where individual shippers negotiate sophisticated (non-linear) contracts is either benign or efficiency-enhancing and shipper-welfare enhancing." App. Vol. 2, p. 150 ¶ 24 (italics omitted). c. "UP/NS's incentive to compete less aggressively tends to result in rate increases that are much smaller in magnitude compared to the direct benefits that shippers are likely to receive on interline shipments to which CGP is applicable." App. Vol. 2, p. 213 ¶ 166.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
49	BNSF	3rd Discovery Request	31	Documents and Communications that support or concern Eric Gehringer's and John F. Orr's contentions at that: a. "UP/NS will also implement new train and blocking plans that allow manifest traffic, including traffic moving to and from watershed areas, to move faster and more reliably with fewer handlings." App. Vol. 2, p. 503 ¶ 8. b. "[T]he benefits of this transaction cannot be achieved without a merger." App. Vol. 2, p. 504 ¶ 10. c. "Accommodating projected growth will not fundamentally alter the principal routes currently operated by UP or NS." App. Vol. 2, p. 604 ¶ 238. d. "[T]he merger will allow UP/NS to handle the same traffic levels as the two railroads handled before using fewer, more efficient trains than UP and NS use today." App. Vol. 2, p. 621 ¶ 265. e. "The UP/NS merger will not result in any adverse impact to passenger operations." p. Vol. 2, p. 637 ¶ 307.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
50	BNSF	3rd Discovery Request	32	Documents and Communications that support or concern David T. Hunt's and Matthew Schabas' contentions that: a. "Multiple shipper segments would realize substantial benefits from improved single-line service." App. Vol. 2, p. 317 ¶ 6. b. "Shippers . . . consistently report three factors as particularly important: price, reliability, and transit time." App. Vol. 2, p. 320. c. "Shippers do not expect railroads to be faster than truck but are more likely to switch from truck to rail if railroads can narrow the gap, while improving reliability and remaining below the cost of truck. And interchanges between railroads in interline service add significant transit time." App. Vol. 2, p. 325. d. "[S]hippers will make their mode choice consistently across the United States." App. Vol. 2, p. 349. e. "There will be a meaningful improvement in the existing interline intermodal lanes offered today, and these lanes will behave like the existing single-line service lanes offered by Class I railroads." App. Vol. 2, p. 350.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
51	BNSF	3rd Discovery Request	34	Documents and Communications that support or concern the contentions of Josh Turner that: a. "Applicants have established guiding principles and implementation practices to ensure successful integration of their IT systems." App. Vol. 2, p. 814 ¶ 132. b. "Applicants will invest approximately \$798 million over this period to fully integrate their technology portfolios." App. Vol. 2, p. 815 ¶ 136. c. "The existing customer service frameworks of both railroads are being meticulously evaluated, and Applicants are planning to deliver customer care benefits soon after the close of the transaction, along with longer-term improvements." App. Vol. 2, p. 838 ¶ 218. d. "Applicants engaged in a risk assessment process that identified three broad areas that create risks of merger-related service disruptions: changes in traffic levels and patterns, changes in procedures and processes, and changes in IT systems." App. Vol. 2, p. 913-14 ¶ 418. e. "Applicants concluded that the risk of merger-related service disruptions would be highest at the classification yards and intermodal terminals with the most merger-related operational changes. Those classification yards and intermodal terminals are: Chicago, St. Louis, Kansas City, Memphis, and New Orleans." App. Vol. 2, p. 914 ¶ 418.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
52	CPKC	1st Discovery Request	10	Produce 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.	Studies, analyses, and reports regarding potential railroad combinations between UP, BNSF, CSX, or NS, or discussing Transcontinental Rail Mergers.	1/1/2019 to 2/17/2026	((BNSF or Basalt or CSX or Cobalt or "Norfolk Southern" or NS) w/20 (merg* or transaction or combination or acqui* or control)) or "transcontinental rail*"	45589
53	CPKC	1st Discovery Request	13	Produce 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."	Studies, analyses, and reports regarding the Falcon Premium interline initiative UP announced on September 12, 2023.	3/12/2023 to 2/17/2026	falcon w/2 premium	3237
54	CPKC	1st Discovery Request	14	Produce 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."	Studies, analyses, and reports regarding the Louisville interline initiative between UP and NS announced on September 15, 2025.	3/15/2025 to 2/17/2026	louisville and "norfolk southern" and "interline service"	165
55	CPKC	1st Discovery Request	16	Produce all UP Executive Level Documents relating to strategies for growing UP's rail traffic.	Studies, analyses, and reports regarding UP's railroad-wide or commodity-wide strategies for growing rail traffic.	1/1/2019 to 2/17/2026	((plan OR strateg*) W/20 (grow* OR increas* OR retain) W/5 (Volume or Rail or Traffic))	21964
56	CPKC	1st Discovery Request	18	Produce all UP Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP rail network.	Studies, analyses, and reports regarding UP's forecasts of future traffic levels on the UP rail network.	1/1/2019 to 2/17/2026	traffic W/5 forecast	4174

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57	CPKC	1st Discovery Request	20	Produce all UP Executive Level Documents relating to policies or strategies for the pricing or 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)).	Studies, analyses, and reports regarding UP's railroad-wide or commodity-wide pricing strategies.	1/1/2019 to 2/17/2026	(pricing W/3 (formula OR model OR polic* OR strateg* OR system))	13389
58	CPKC	1st Discovery Request	22	Produce 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 Railroad.	Studies, analyses, and reports regarding the impact of Precision Scheduled Railroad on rail service.	1/1/2019 to 2/17/2026	(PSR OR "Precision Scheduled Railroad") w/10 service	9340
59	CPKC	1st Discovery Request	24	Produce 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).	Studies, analyses, and reports regarding UP's ability to obtain more favorable terms for transportation services by linking, bundling, or tying multiple services.	1/1/2019 to 2/17/2026	(negotiat* or strateg*) W/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*")	22930
60	CPKC	1st Discovery Request	26	Produce 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.	Studies, analyses, and reports regarding UP's railroad-wide or commodity-wide strategies for contracting with customers for multiple facilities.	1/1/2019 to 2/17/2026	(negotiat* or strateg*) W/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*")	22930
61	CPKC	1st Discovery Request	28	Produce 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).	Studies, analyses, and reports regarding UP's railroad-wide or commodity-wide strategies for retaining or increasing revenues obtained from rail customers.	1/1/2019 to 2/17/2026	((plan OR strateg*) W/20 (retain OR increas*) W/5 revenue))	2496
62	CSX	1st Discovery Request	3	Produce all Documents studying, analyzing, discussing or otherwise Relating to the impacts of the Proposed Transaction on rail service offered, or that may be offered, by any Person, Including: a. Impacts of the Proposed Transaction on single-line rail service offered by any Person; b. Impacts of the Proposed Transaction on traffic that is or may be interchanged through and between any Persons; c. Impacts of the Proposed Transaction on market shares; d. Impacts of the Proposed Transaction on interline connections; e. Impacts of the Proposed Transaction on pricing and service; f. Impacts of the Proposed Transaction on Intramodal Competition; g. Impacts of the Proposed Transaction on Intermodal Competition; h. Impacts of the Proposed Transaction on Product Competition; and i. Impacts of the Proposed Transaction on Geographic Competition.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115

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63	CSX	1st Discovery Request	4	Produce documents sufficient to show the Applicants' Plans Relating to 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.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
64	CSX	1st Discovery Request	5	Produce documents sufficient to show the 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; d. New Orleans, Louisiana; and e. Kansas City, Missouri	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
65	CSX	1st Discovery Request	6	Produce all studies, analyses, or presentations Relating to 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.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
66	CSX	1st Discovery Request	13	All documents relating to the creation or development of the "Committed Gateway Pricing" mechanism discussed in the Application.	Studies, analyses, and reports regarding the Committed Gateway Pricing Program.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
67	CSX	1st Discovery Request	14	All documents studying, analyzing, discussing, or otherwise Relating to the impacts of the Proposed Transaction on traffic that is currently, or may in the future be, interchanged through and between CSXT and the Applicants, including documents sufficient to show all current and future traffic that the Applicants have or may interchange with CSXT.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	((Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control))	40115
68	CSX	1st Discovery Request	23	Produce all Management Level Documents concerning strategy or Planning relating to fee discounts, refunds, incentives or other means of reducing a customer's total payments associated with bundling or otherwise providing service to multiple customer locations for all business line and commodity sectors.	Studies, analyses, and reports regarding UP's railroad-wide or commodity-wide strategies for contracting with customers for multiple facilities.	1/1/2019 to 2/17/2026	(negotiat* or strateg*) W/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*"))	22930
69	CSX	1st Discovery Request	27	Produce all Management Level Documents that show the Applicants' analyses of the competitiveness of single line movements vs. interline movements in all commodity sectors, including but not limited to cost-differences such as line haul, train blocking, storage, or other interchange-related costs, service quality differences, or any other differences between single line vs. interline movements.	Studies, analyses, and reports regarding relative competitiveness of single line movements vs. interline movements.	1/1/2020 to 2/17/2026	("single line" AND interline AND compet*)	2154

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1	Requestor	Set	Request No.	Request Text	UP will conduct reasonable search for:	Time Period	UP Search Terms	Hits
70	CSX	1st Discovery Request	28	Produce documents sufficient to show the Applicants' analyses of interchange alternatives in all commodity sectors, including but not limited to run through trains, steel wheel, only crew changes, trackage rights, haulage, including cost and operational impacts.	Studies, analyses, and reports regarding interchange alternatives in all commodity sectors.	1/1/2020 to 2/17/2026	interchange W/5 (alternat* OR compet*)	1883
71	CSX	1st Discovery Request	29	Produce all Management Level Documents discussing existing or potential alliances with other railroads for coordinating rail service of all commodities, including any analysis of costs or benefits from each alliance.	Studies, analyses, and reports regarding potential joint ventures, alliances, or other cooperative agreements between UP and BNSF, CN, CPKC, CSX, or NS.	1/1/2019 to 2/17/2026	(BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National") /10 ("cooperative agreement" or "joint venture" or alliance)	1216
72	CSX	2nd Discovery Request	9	Documents sufficient to show from January 1, 2020 to the present how Applicants' pricing decisions, practices, strategies, or Plans have been or are affected by traffic flow, profitability levels, the characteristics of a particular movement such as length, commodity, or tonnage, the availability of competing railroads, or the availability of other modes of transportation such as trucking or water shipping.	Studies, analyses, and reports regarding UP's railroad-wide or commodity-wide pricing strategies.	1/1/2019 to 2/17/2026	(pricing W/3 (formula OR model OR polic* OR strateg* OR system))	13389
73	CSX	2nd Discovery Request	21	Produce communications between Applicants and Amtrak sufficient to show any complaints by Amtrak or any disputes between Amtrak and Applicants regarding Applicants' ownership or operation of any facilities or routes near the following locations: a.Sedalia, Missouri b.Jefferson City, Missouri c.River Subdivision, Missouri d.Chicago, Illinois	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.	1/1/2020 to 2/17/2026	(((*@amtrak.com) AND (sedalia OR "jefferson city" OR "river subdivision" OR chicago)) AND complain*)	253

	A	B	C
1	First Name	Last Name	Title
2	Eric	Gehringer	EVP - Operations
3	Matthew	Graham	General Director - Environmental Management
4	Grant	Janke	AVP - Capital Planning & Finance
5	Katherine	Novak	General Director - Interline Operations
6	Marqui	Parkerson	VP - Labor Relations
7	Joshua	Perkes	SVP, Chief Human Resources Officer
8	Carrie	Powers	VP, Controller & Chief Accounting Officer
9	Kenny	Rocker	EVP - Marketing & Sales
10	John	Turner	SVP - Operations - Northern Region
11	Jim	Vena	Chief Executive Officer

EXHIBIT D

From: Laudone, Stephen S. <slaudone@sidley.com>
Sent: Friday, May 8, 2026 12:58 PM
To: Kelly, Kevin; Golden, Nathan H.; Thompson, McClain; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM); Judge, Kiera S.; David Meyer; Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; *pdenton@steptoe.com; *tstrafford@steptoe.com; Reilly, Matt; Cunningham, Rich; Scheib, John M.; Fanchiang, Eric; Gardiner, Kent; Aluise, Dylan M.; van Houwelingen, Luke; *Avia.Gridi@stblaw.com
Cc: Rosenthal, Michael; Ludwin, Derek; Flahive Wu, Laura; Damitio, Daniel; Brown, Molly; Harrison, Caroline; Warren, Matthew J.; Korman, Marc; ratkins; William Mullins; Spencer Naake
Subject: RE: STB FD 36873 - Custodial Email Searches
Attachments: NS Custodial Email Search Proposal (5.8.2026).xlsx

[EXTERNAL]
Counsel,

Please find attached Norfolk Southern's proposal regarding the parameters for custodial email searches to resolve a number of document requests issued by the other Class I railroads. The parameters outlined in Kevin's email below apply equally to Norfolk Southern's proposal. The Norfolk Southern custodians to be searched are those individuals who submitted verified statements as part of the Amended Application filed on April 30, 2026.

We are happy to consider any suggestions you may have for modifications to the search terms that Applicants are employing.

Best,
Stephen

STEPHEN S. LAUDONE
Senior Managing Associate

SIDLEY AUSTIN LLP
+1 202 736 8384
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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, May 7, 2026 9:19 PM
To: Golden, Nathan H. <goldenn@sullcrom.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>;

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Subject: STB FD 36873 - Custodial Email Searches

Counsel,

Applicants have prepared proposals regarding the parameters for custodial email searches that each Applicant will conduct to resolve various document requests issued by the other Class I railroads. I am attaching Union Pacific's proposal here. Norfolk Southern will send its proposal separately.

UP's attached proposal identifies the relevant requests for production, the scope of responsive material that Union Pacific is agreeing to search for in response to the request, the time period and search terms that will be used to identify documents for review, the custodians whose documents will be searched, and the hit count for each search (reflecting the total number of document families containing the search terms during the time period).

As you will see, Applicants proposed searches for merger-related terms (as well as other terms) for time periods that extend beyond the announcement of the merger and overlap with the period when Applicants were working under the direction of counsel to prepare their Application. Given the extraordinary volume of documents both pre- and post-merger announcement that will be reviewed pursuant to Applicants' proposals, Applicants do not intend to individually log privileged responsive documents identified through their searches. Instead, Applicants will provide a categorical log for pre-merger announcement documents that are responsive and privileged. Requiring Applicants to log post-merger announcement communications responsive to the incredibly broad topics identified in the document requests is unduly burdensome and disproportional to the needs of this proceeding.

If you have suggestions for modifications to the search terms that Applicants are employing, we are happy to consider those.

Best,

Kevin

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COVINGTON

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	A	B	C	D	E	F	G	H
	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
1	BNSF	1st Discovery Request	15	Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
2	BNSF	1st Discovery Request	17	Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.	Studies, analyses, and reports regarding potential joint ventures, alliances, or other cooperative agreements between NS and BNSF, CN, CPKC, CSX, or UP.	1/1/2019 to 2/17/2026	(BNSF or CSX* or "Union Pacific" or UP or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National") w/10 ("cooperative agreement" or "joint venture" or alliance)	3,160
3	BNSF	1st Discovery Request	20	Produce all studies and analyses of the impact of the Proposed Transaction on potential future mergers involving any Class I carrier (including Applicants).	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
4	BNSF	1st Discovery Request	21	Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on: a.Applicants' current and future debt and debt service obligations. b.Applicants' financial metrics including revenue, earnings, EBITDA, leverage, and operating ratio; c.Applicants' costs and potential opportunities to reduce costs (synergies); d.Railroad intramodal, intermodal, product, and geographic competition; e.Potential traffic diversions from truck transportation to rail transportation; f.Rail service, including rail service provided by other rail carriers; g.Rail safety, including the safety of rail service provided by other rail carriers; h.Rail labor and employment, including labor forces at railroads other than Applicants; i.Passenger or commuter service; j.Rates for rail transportation; k.Competition, including corridor competition, source competition, and intermodal competition; and l.Applicants' proposed gateway commitment on Applicants' existing traffic and the revenues and profitability of that traffic.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
5	BNSF	1st Discovery Request	23	Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.	Final studies, analyses, and reports that NS relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
6	BNSF	1st Discovery Request	26	Produce all Documents related to UP and NS's planned capital budgets and forecasts for the next five years (as prepared in the 2024 and 2025 period prior to the announcement of the Proposed Transaction).	Studies, analyses, and reports regarding NS's planned capital budgets and capital budget forecasts for the next five years (as prepared between 1/1/2024 and 7/29/2025).	1/1/2024 to 7/29/2025	"capital budget" or "capital spending" or "capital program" or "annual operating plan" or "long range plan"	2,374
7	BNSF	2nd Discovery Request	1	Documents and Communications received from any banker, economist, or financial advisor 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. For the avoidance of doubt, this request seeks, among other things, all studies, surveys, analyses, and reports prepared by investment bankers, consultants, economists, or other third-party advisors in connection with the Proposed Transaction for any officer or director of UP or NS for the purpose of evaluating or analyzing market shares, competition, markets, potential sales growth or expansion into product or geographic markets.	Studies, analyses, and reports that NS relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
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1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
9	BNSF	2nd Discovery Request	2	All Documents and Communications (including agendas, minutes, presentations, reports, memoranda, recommendations, actions, or pre-read materials) concerning UP and NS's Board of Director Meetings, including all committees and subcommittees, concerning 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.	Studies, analyses, and reports that NS relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
10	BNSF	2nd Discovery Request	6	All Documents and Communications, including business plans, market studies, operational analyses, forecasts, modeling outputs, and internal reports related to or supporting UP and NS's statements during the December 19, 2025 analyst call that UP and NS expect up to \$2 billion in net revenue EBITDA synergies and "no longer expect significant concessions due to competition enhancements." For the avoidance of doubt, this request seeks, among other things, information regarding the approximately \$750 million in concessions that UP and NS no longer intend to offer.	Studies, analyses, and reports regarding the projected synergies resulting from the Proposed Transaction.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
11	BNSF	2nd Discovery Request	8	All Documents and Communications concerning the Committed Gateway Pricing program as defined and discussed in the Application.	Studies, analyses, and reports regarding the Committed Gateway Pricing Program.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
12	BNSF	2nd Discovery Request	9	All Documents and Communications concerning UP and NS's commitment to keeping all existing gateways open for eligible traffic on commercially reasonable terms, as discussed in the Application.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
13	BNSF	2nd Discovery Request	10	All Documents and Communications concerning UP and NS's commitment to divest portions of their shares in the Peoria & Pekin Union Railway Company ("PPU"), Terminal Railroad Association of St. Louis ("TRRA"), and TTX Company ("TTX").	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
14	BNSF	2nd Discovery Request	12	All Documents and Communications sufficient to show the practical operating capacity (defined as average daily carloads/tonnage) of all NS facilities located within eastern Pennsylvania from 2019 to present.	Studies, analyses, and reports regarding NS's operating capacity in eastern Pennsylvania.	1/1/2019 to 2/17/2026	(eastern w/3 (Pennsylvania OR "PA")) AND (capacity OR carloads OR tonnage OR operation*)	3,454
15	BNSF	2nd Discovery Request	34	Communications between UP and NS concerning the Proposed Transaction before and after the execution of the Merger Agreement related to integration planning, the Proposed Transaction's effect on competition in the rail industry, the downstream effects of the Proposed Transaction, shipper / customer reactions and feedback to the Proposed Transaction, and/or potential alternatives to the Proposed Transaction.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request. Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
16	BNSF	2nd Discovery Request	35	Documents and Communications concerning any benefits that may result from the Proposed Transaction—including cost savings, economies of scale, new services, rail service improvements, software improvements, data collection improvements, and/or other efficiencies or synergies.	Studies, analyses, and reports regarding benefits of the Proposed Transaction of the types described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
17	BNSF	2nd Discovery Request	36	Documents or Communications concerning any risk that may result from 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 risks.	Studies, analyses, and reports regarding risks of the Proposed Transaction of the types described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
18	BNSF	2nd Discovery Request	39	Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on PPU (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of PPU.	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237

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1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
19	BNSF	2nd Discovery Request	40	Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on TRRA (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of TRRA.	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
20	BNSF	2nd Discovery Request	41	Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on TTX (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of TTX.	Studies, analyses, and reports regarding UP and NS's commitment to divest portions of their shares in PPU, TRRA, and TTX as part of the Proposed Transaction or the impact of the Proposed Transaction on PPU, TRRA, and TTX.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
21	BNSF	2nd Discovery Request	43	All studies, surveys, analyses, confidential information memoranda, and reports prepared by or for any officers, directors, or management for the purpose of evaluating or analyzing the Proposed Transaction with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets.	Studies, analyses, and reports that NS relied upon in evaluating whether to propose or enter into the Merger Agreement.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
22	BNSF	2nd Discovery Request	47	All internal analyses and internal communications, as well as communications between UP and NS, regarding the claims and contentions in at pages 2-3 of the Notice of Intent that: a. The Proposed Transaction will "transform the U.S. supply chain." b. The Proposed Transaction will "unleash the industrial strength of American manufacturing." c. The Proposed Transaction will "create new sources of economic growth and workforce opportunity." d. The Proposed Transaction will create "more accessible, sustainable, and lower-cost supply chain for manufacturers and consumers." e. The Proposed Transaction will "drive additional employment opportunities in towns and cities across the combined rail network." f. The Proposed Transaction will "generate economic growth in communities across the United States." g. "[T]he combined company will compete more effectively with Canadian railroads to win back U.S. freight volume and American jobs."	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
23	BNSF	2nd Discovery Request	48	Documents, Communications, and internal analyses concerning the investments that the merged carrier will undertake as a result of the Proposed Transaction and that would not have occurred absent the Proposed Transaction.	Studies, analyses, and reports regarding investments the merged carrier will undertake as a result of the Proposed Transaction that would not have occurred absent the Proposed Transaction.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
24	BNSF	2nd Discovery Request	50	Documents, Communications, and internal analyses showing the set of all tracks that will be abandoned or added as a result of the Proposed Transaction.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
25	BNSF	2nd Discovery Request	52	Documents listing all complaints that UP or NS have made or received regarding failure of other rail carriers to interline with them from 2019 to present, including pursuant to stipulated remedies from prior rail transactions.	Complaints that NS has made or received regarding failure of other carriers to interline with them, including pursuant to stipulated remedies from prior rail transactions.	1/1/2019 to 2/17/2026	(fail* w/5 interline)	36
26	BNSF	2nd Discovery Request	54	Documents and internal analyses on all facilities closed by UP or NS from 2019 to present, including internal analyses on how the closure of these facilities affect prices and costs.	Studies, analyses, and reports regarding facilities closed by NS, including analyses of the effect of these closures on prices and costs.	1/1/2019 to 2/17/2026	((yard* or shop* or facilit*) w/3 (closing* or closure* or rationalize)) AND (price* or cost*)	3,946

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1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
27	BNSF	2nd Discovery Request	55	Documents and internal analyses concerning UP or NS information on pricing, quality, and cost efficiencies related to interline arrangements from 2019 to present, as well as Documents and Communications sufficient to show how the Proposed Transaction would affect these interline arrangements.	Studies, analyses, and reports regarding pricing, quality, and cost efficiencies related to interline arrangements. Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	1/1/2019 to 2/17/2026	interline w/5 (pric* OR quality OR efficien*)	1,086
28	BNSF	2nd Discovery Request	59	Documents and internal analyses related to instances in which UP or NS made offers (such as bids on Request for Proposals) to customers opening new facilities that could be served by a rail carrier.	Studies, analyses, and reports regarding NS's offers to customers opening new facilities.	1/1/2019 to 2/17/2026	(facilit* w/3 new) w/20 (offer OR bid)	133
29	BNSF	3rd Discovery Request	4	Documents and Communications concerning UP and NS's buffer capacity with respect to employees and equipment from 2019 to present. This request seeks, among other things, information regarding UP's contention that it has "built buffer capacity into [its] locomotive and equipment fleet." App. Vol. 1 p. 230 ¶ 23.	Studies, analyses, and reports regarding NS's buffer capacity with respect to employees, locomotives, and equipment.	1/1/2019 to 2/17/2026	(buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive))	273
30	BNSF	3rd Discovery Request	6	Documents and Communications concerning how UP and NS strategic fueling will change after the Proposed Transaction is completed.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
31	BNSF	3rd Discovery Request	7	Documents and Communications concerning plans for mechanical inspections after the Proposed Transaction is completed, including where mechanical inspections will occur and details regarding how they will be performed.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
32	BNSF	3rd Discovery Request	9	Documents and Communications concerning UP and NS's plans to integrate: a. NS's yard control systems with UP's Mobile NX yard-control system. b. NS's train building systems with UP's Precision Train Builder. c. NS's transportation management systems with UP's NetControl transportation management system.	Studies, analyses, and reports regarding integration planning, including risks to integration.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
33	BNSF	3rd Discovery Request	14	Documents and Communications that support or concern the contentions of Claude Elkins during the December 19, 2025 analyst call that (a) Our merger will streamline rail connections between major manufacturing and population centers. . . [and] will enable more efficient, lower-cost supply chains, (b) Our combined intermodal business will grow by more than 1.4 million annual loads as we offer 6 new premium intermodal lanes operating 7 days a week, (c) Benefits from the merger will also reshape the playing field for carload customers across the US and in industries like agriculture, food, chemicals, forest products, coal, and metals, (d) By transforming the watershed markets from interline to single-line service we expect to convert 105,000 carloads annually from truck to rail	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237

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1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
34	BNSF	3rd Discovery Request	17	Documents and Communications that support or concern the contentions made in the White Paper that: a. "A transcontinental American railroad will enhance competition with Canada to win back U.S. freight volume and good-paying union railroad jobs." p. 5. b. "A seamless transcontinental railroad will provide stronger competition for long-haul trucking, which dominates the market." p. 7. c. "Without structural reform and bold leadership, rail's position in the U.S. freight market will continue to erode – no matter how well individual railroads perform." p. 7. d. "A route-by-route analysis of projected post-merger growth verified there is sufficient capacity to continue fulfilling all service commitments to all passenger services, including Amtrak and commuter agencies." p. 14. e. "A transcontinental operating plan will provide service improvements for customers without overhauling existing networks." p. 18. f. "[T]he combined railroad's plans do not include any operational changes to connections with Union Pacific's and Norfolk Southern's many current short line partners." p. 20. g. "The combined company's operating plan does not change principal routes, nor does it include line divestitures or discontinued services." p. 21. h. "The end-to-end nature of the Union Pacific and Norfolk Southern combination reduces the risk of service disruptions." p. 26. i. "Most traffic moving on the two networks will not be affected [by the Proposed Transaction], and most yards and terminals will not experience any significant merger-related increase in activity levels." p. 26. j. "The combined company will be more resilient due to the greater availability of resources, such as the main line track, terminals, crews, locomotives and rail cars required to keep traffic flowing." p. 26. k. UP and NS's "recent experience with successful system and technology integrations," as referred to in the White Paper at page 27, including but not limited to:	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
35	BNSF	3rd Discovery Request	19	Documents and Communications that support or concern UP and NS's contentions in the Application that: a. "[S]hippers repeatedly say they want . . . seamless, efficient, end-to-end rail service with a single carrier accountable for the full move." App. Vol. 1, p. 12. b. "This end-to-end merger does not eliminate parallel routes or diminish competitive alternatives." App. Vol 1., p. 13. c. The Proposed Transaction will "strengthen the national defense." App. Vol. 1, p. 24. d. "[T]he proposed transaction will not cause the loss of any essential rail service, and inclusion of other rail carriers would interfere with achievement of the benefits of the proposed transaction." App. Vol 1, p. 35. e. "Applicants' gateway commitment will ensure that BNSF and CSX, as well as CN and CPKC, could continue competing effectively with UP/NS if they remain as independent companies." App. Vol. 1, p. 50.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
36	BNSF	3rd Discovery Request	20	Documents and Communications related to UP and NS's downstream effects analysis. See 49 C.F.R. § 1180.6(b)(12). For the avoidance of doubt, this request seeks Documents and Communications that support or concern Applicants' contentions that (i) "Applicants believe that even if there were a responsive merger, it would not diminish the substantial public benefits of the proposed transaction," App. Vol. 1, p. 50, and (ii) "if other railroads respond to the competitive pressures generated by this merger by forming a second, more efficient transcontinental railroad that also offers broader single-line service, unlocking even more growth in watershed markets, the result would simply be an American network with two stronger, more efficient transcontinental carriers." App. Vol. 1, p. 51.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237

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1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
37	BNSF	3rd Discovery Request	22	Documents and Communications that support or concern Jim Vena's contentions that: a. UP/NS "will have procedures in place to promptly address any unexpected issues and to ensure that we are delivering the services that we promise." App. Vol. 1, p. 160 ¶ 5. b. "We also anticipate achieving significant efficiencies driven by improved asset utilization for UP and our customers, implementation of best operating practices and technologies, and streamlined administrative costs." App. Vol. 1, p. 168 ¶ 24. c. "The transaction will also benefit Amtrak." App. Vol. 1, p. 170 ¶ 29. d. "The benefits of the UP/NS merger cannot be achieved through mere partnership agreements between UP and NS." App. Vol. 1, p. 178 ¶ 49. e. "The Union Pacific Transcontinental Railroad Will Deliver Improved Service with No Transitional Service Disruptions." App. Vol. 1, p. 183.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
38	BNSF	3rd Discovery Request	24	Documents and Communications that support or concern Mark George's contention that (a) Railroad cannot contract their way to a seamless network through alliances and marketing agreements." App. Vol. 1, p. 211 ¶ 58.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
39	BNSF	3rd Discovery Request	25	Documents and Communications that support or concern Kenny Rocker and Ed Elkins' contentions that: a. "[C]ustomers overwhelmingly and consistently choose single-line options." App. Vol. 1, p. 224 ¶ 11. b. "[C]ustomers will be able to plan their freight moves with rail as easily as they do with trucking." App. Vol. 1, p. 226 ¶ 13. c. "We believe that customers in the watershed markets want to move by rail." App. Vol. 1, p. 253 ¶ 78. d. "We strongly believe that the true growth potential here goes well beyond what can be modeled on paper." App. Vol. 1, p. 277 ¶ 134. e. "[W]e see big potential around the ports and in global trade." App. Vol. 1, p. 278 ¶ 135.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
40	BNSF	3rd Discovery Request	29	Documents and Communications related to UP and NS's decisions before the Proposed Transaction to invest in infrastructure needed to accommodate additional interline traffic. App. Vol. 2, p. 42 ¶ 60.	Studies, analyses, and reports regarding NS's decisions before the Proposed Transaction to accommodate additional interline traffic.	1/1/2019 to 7/29/2025	(invest* w/5 (interline or interchange))	124
41	BNSF	3rd Discovery Request	30	Documents and Communications that support or concern the contentions of Mark Israel that: a. "[T]he combined vertical effects of the proposed merger of UP and NS are procompetitive, meaning that they will enhance competition in the rail industry, create downward pressure on price relative to the state of the world that would exist absent the merger, and benefit shippers in the form of greater investment, higher quality service, and a more efficient rail network." App. Vol. 2, p. 141 ¶ 13. b. "[A] merger between complementary railroads in settings where individual shippers negotiate sophisticated (non-linear) contracts is either benign or efficiency-enhancing and shipper-welfare enhancing." App. Vol. 2, p. 150 ¶ 24 (italics omitted). c. "UP/NS's incentive to compete less aggressively tends to result in rate increases that are much smaller in magnitude compared to the direct benefits that shippers are likely to receive on interline shipments to which CGP is applicable." App. Vol. 2, p. 213 ¶ 166.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237

	A	B	C	D	E	F	G	H
1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
42	BNSF	3rd Discovery Request	31	Documents and Communications that support or concern Eric Gehringer's and John F. Orr's contentions at that: a. "UP/NS will also implement new train and blocking plans that allow manifest traffic, including traffic moving to and from watershed areas, to move faster and more reliably with fewer handlings." App. Vol. 2, p. 503 ¶ 8. b. "[T]he benefits of this transaction cannot be achieved without a merger." App. Vol. 2, p. 504 ¶ 10. c. "Accommodating projected growth will not fundamentally alter the principal routes currently operated by UP or NS." App. Vol. 2, p. 604 ¶ 238. d. "[T]he merger will allow UP/NS to handle the same traffic levels as the two railroads handled before using fewer, more efficient trains than UP and NS use today." App. Vol. 2, p. 621 ¶ 265. e. "The UP/NS merger will not result in any adverse impact to passenger operations." p. Vol. 2, p. 637 ¶ 307.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
43	BNSF	3rd Discovery Request	32	Documents and Communications that support or concern David T. Hunt's and Matthew Schabas' contentions that: a. "Multiple shipper segments would realize substantial benefits from improved single-line service." App. Vol. 2, p. 317 ¶ 6. b. "Shippers . . . consistently report three factors as particularly important: price, reliability, and transit time." App. Vol. 2, p. 320. c. "Shippers do not expect railroads to be faster than truck but are more likely to switch from truck to rail if railroads can narrow the gap, while improving reliability and remaining below the cost of truck. And interchanges between railroads in interline service add significant transit time." App. Vol. 2, p. 325. d. "[S]hippers will make their mode choice consistently across the United States." App. Vol. 2, p. 349. e. "There will be a meaningful improvement in the existing interline intermodal lanes offered today, and these lanes will behave like the existing single-line service lanes offered by Class I railroads." App. Vol. 2, p. 350.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
44	CPKC	1st Discovery Request	11	Produce all NS 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.	Studies, analyses, and reports regarding potential railroad combinations between UP, BNSF, CSX, or NS, or discussing Transcontinental Rail Mergers.	1/1/2019 to 2/17/2026	((BNSF or Basalt or CSX or Cobalt or "Norfolk Southern" or NS) w/20 (merg* or transaction or combination or acqui* or control)) or "transcontinental rail*"	48,176
45	CPKC	1st Discovery Request	12	Produce all NS Executive Level Documents relating to the land rationalization referenced in the NS Press Release dated April 4, 2024, entitled Norfolk Southern Announces new initiatives to drive further productivity and accountability."	Studies, analyses, and reports regarding the lane rationalization initiatives.	1/1/2024 to 5/31/2024	"lane rationalization" OR (lane w/5 ration*)	1,186
46	CPKC	1st Discovery Request	15	Produce all NS 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.	Studies, analyses, and reports regarding the Louisville interline initiative between UP and NS announced on September 15, 2025.	3/12/2023 to 2/17/2026	louisville and "norfolk southern" and "interline service"	132
47	CPKC	1st Discovery Request	17	Produce all NS Executive Level Documents relating to strategies for growing UP's rail traffic.	Studies, analyses, and reports regarding NS's railroad-wide or commodity-wide strategies for growing rail traffic.	1/1/2019 to 2/17/2026	((plan OR strateg*) w/20 (grow* OR increas* OR retain) W/5 (volume or rail or traffic))	3,535
48	CPKC	1st Discovery Request	19	Produce all NS Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the NS rail network.	Studies, analyses, and reports regarding NS's forecasts of future traffic levels on the NS rail network.	1/1/2019 to 2/17/2026	traffic W/5 forecast	532
49	CPKC	1st Discovery Request	21	Produce all NS Executive Level Documents relating to policies or strategies for the pricing of NS's rail transportation services, including without limitation the level of returns that NS requires when pricing rail traffic.	Studies, analyses, and reports regarding NS's railroad-wide or commodity-wide pricing strategies.	1/1/2019 to 2/17/2026	(pricing w/3 (formula OR model OR polic* OR strateg* OR system))	5,443
50	CPKC	1st Discovery Request	22	Produce all NS Executive Level Documents relating to NS's changes (including without limitations reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroading.	Studies, analyses, and reports regarding the impact of Precision Scheduled Railroading on rail service.	1/1/2019 to 2/17/2026	(PSR OR "Precision Scheduled Railroading") w/10 service	8,211

	A	B	C	D	E	F	G	H
1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
51	CPKC	1st Discovery Request	25	Produce all NS Executive Level Documents discussing, analyzing, studying or referring to NS's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for NS transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that NS is uniquely or advantageously situated to perform (including without limitation where NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route).	Studies, analyses, and reports regarding NS's ability to obtain more favorable terms for transportation services by linking, bundling, or tying multiple services.	1/1/2019 to 2/17/2026	(negotiat* or strateg*) w/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*")	13,748
52	CPKC	1st Discovery Request	27	Produce 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 NS, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form.	Studies, analyses, and reports regarding NS's railroad-wide or commodity-wide strategies for contracting with customers for multiple facilities.	1/1/2019 to 2/17/2026	(negotiat* or strateg*) w/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*")	13,748
53	CPKC	1st Discovery Request	29	Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss NS's plans or strategies for retaining or increasing the revenues obtained by NS from rail customers (whether by growing traffic, increasing prices, or otherwise).	Studies, analyses, and reports regarding NS's railroad-wide or commodity-wide strategies for retaining or increasing revenues obtained from rail customers.	1/1/2019 to 2/17/2026	((plan OR strateg*) w/20 (retain OR increas*) w/5 revenue)	584
54	CSX	1st Discovery Request	3	Produce all Documents studying, analyzing, discussing or otherwise Relating to the impacts of the Proposed Transaction on rail service offered, or that may be offered, by any Person, Including: a. Impacts of the Proposed Transaction on single-line rail service offered by any Person; b. Impacts of the Proposed Transaction on traffic that is or may be interchanged through and between any Persons; c. Impacts of the Proposed Transaction on market shares; d. Impacts of the Proposed Transaction on interline connections; e. Impacts of the Proposed Transaction on pricing and service; f. Impacts of the Proposed Transaction on Intramodal Competition; g. Impacts of the Proposed Transaction on Intermodal Competition; h. Impacts of the Proposed Transaction on Product Competition; and i. Impacts of the Proposed Transaction on Geographic Competition.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
55	CSX	1st Discovery Request	4	Produce documents sufficient to show the Applicants' Plans Relating to 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.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237

	A	B	C	D	E	F	G	H
1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
56	CSX	1st Discovery Request	5	Produce documents sufficient to show the 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; d. New Orleans, Louisiana; and e. Kansas City, Missouri	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
57	CSX	1st Discovery Request	6	Produce all studies, analyses, or presentations Relating to 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.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
58	CSX	1st Discovery Request	13	All documents relating to the creation or development of the "Committed Gateway Pricing" mechanism discussed in the Application.	Studies, analyses, and reports regarding the Committed Gateway Pricing Program.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
59	CSX	1st Discovery Request	14	All documents studying, analyzing, discussing, or otherwise Relating to the impacts of the Proposed Transaction on traffic that is currently, or may in the future be, interchanged through and between CSXT and the Applicants, including documents sufficient to show all current and future traffic that the Applicants have or may interchange with CSXT.	Studies, analyses, and reports regarding impacts of the Proposed Transaction as described in this request.	7/30/2024 to 2/17/2026	(Opal OR "Union Pacific" OR "UP" OR Nickel OR Ruby OR Pegasus) AND (merg* OR transaction OR combination OR acqui* OR control)	33,237
60	CSX	1st Discovery Request	20	Produce, with respect to service and operations in and through Rockport, Indiana; Middletown, Ohio; Enon, Pennsylvania; Waynesburg, Pennsylvania; Brownsville, Pennsylvania; New Orleans, Louisiana; and Columbus, Ohio: a. all communications with shippers and other railroads regarding operations, dispatch, assignment of traffic to fulfill shipper requests, availability of equipment and crews, and potential infrastructure or other improvements or investments; b. all documents reflecting or analyzing Norfolk Southern and CSXT movements of traffic or levels or service metrics thereof; c. all documents reflecting or analyzing capacity, capacity utilization, effects of capacity and capacity utilization on Norfolk Southern and CSXT movements of traffic or competitiveness, and effects of potential capacity improvements on Norfolk Southern and CSXT movements of traffic or competitiveness; d. documents sufficient to show the effect or value of Norfolk Southern dispatch or other operational control with respect to business and competitiveness.	Studies, analyses, and reports regarding NS operations, dispatching, traffic assignment, crew and equipment availability, traffic movements, service metrics, and capacity in any of the listed municipalities.	1/1/2019 to 2/17/2026	(Rockport OR Middletown OR Enon OR Waynesburg OR Brownsville OR New Orleans OR Columbus) AND (operation* OR dispatch* OR assignment OR (availab* w/3 (equipment OR crews)) OR infrastructure OR improv* OR invest* OR movement* OR metric* OR capacity)	54,767
61	CSX	1st Discovery Request	23	Produce all Management Level Documents concerning strategy or Planning relating to fee discounts, refunds, incentives or other means of reducing a customer's total payments associated with bundling or otherwise providing service to multiple customer locations for all business line and commodity sectors.	Studies, analyses, and reports regarding NS's railroad-wide or commodity-wide strategies for contracting with customers for multiple facilities.	1/1/2019 to 2/17/2026	(negotiat* or strateg*) w/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*")	13,748

	A	B	C	D	E	F	G	H
1	Requestor	Set	Request No.	Request Text	NS will conduct reasonable search for:	Time Period	NS Search Terms	Hits
62	CSX	1st Discovery Request	27	Produce all Management Level Documents that show the Applicants' analyses of the competitiveness of single line movements vs. interline movements in all commodity sectors, including but not limited to cost-differences such as line haul, train blocking, storage, or other interchange-related costs, service quality differences, or any other differences between single line vs. interline movements.	Studies, analyses, and reports regarding relative competitiveness of single line movements vs. interline movements.	1/1/2020 to 2/17/2026	("single line" AND interline AND compet*)	1,998
63	CSX	1st Discovery Request	28	Produce documents sufficient to show the Applicants' analyses of interchange alternatives in all commodity sectors, including but not limited to run through trains, steel wheel, only crew changes, trackage rights, haulage, including cost and operational impacts.	Studies, analyses, and reports regarding interchange alternatives in all commodity sectors.	1/1/2020 to 2/17/2026	interchange w/5 (alternat* OR compet*)	436
64	CSX	1st Discovery Request	29	Produce all Management Level Documents discussing existing or potential alliances with other railroads for coordinating rail service of all commodities, including any analysis of costs or benefits from each alliance.	Studies, analyses, and reports regarding potential joint ventures, alliances, or other cooperative agreements between NS and BNSF, CN, CPKC, CSX, or NS.	1/1/2019 to 2/17/2026	(BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National") w/10 ("cooperative agreement" or "joint venture" or alliance)	4,848
65	CSX	2nd Discovery Request	9	Documents sufficient to show from January 1, 2020 to the present how Applicants' pricing decisions, practices, strategies, or Plans have been or are affected by traffic flow, profitability levels, the characteristics of a particular movement such as length, commodity, or tonnage, the availability of competing railroads, or the availability of other modes of transportation such as trucking or water shipping.	Studies, analyses, and reports regarding NS's railroad-wide or commodity-wide pricing strategies.	1/1/2019 to 2/17/2026	(pricing W/3 (formula OR model OR polic* OR strateg* OR system))	5,443
66	CSX	2nd Discovery Request	21	Produce communications between Applicants and Amtrak sufficient to show any complaints by Amtrak or any disputes between Amtrak and Applicants regarding Applicants' ownership or operation of any facilities or routes near the following locations: a.Sedalia, Missouri b.Jefferson City, Missouri c.River Subdivision, Missouri d.Chicago, Illinois	Communications between Applicants and Amtrak sufficient to show complaints by Amtrak or disputes between Amtrak and NS regarding NS's ownership or operation of facilities or routes near: Sedalia, Missouri; Jefferson City, Missouri; River Subdivision, Missouri; and Chicago, Illinois.	1/1/2020 to 2/17/2026	(((*@amtrak.com) AND (sedalia OR "jefferson city" OR "river subdivision" OR chicago)) AND complain*)	8

	A	B	C	D
1	First Name	Last Name	Title	Party
2	Mark	George	President and Chief Executive Officer	Norfolk Southern
3	Claude	Elkins	Executive Vice President and Chief Commercial Officer	Norfolk Southern
4	John	Orr	Executive Vice President and Chief Operating Officer	Norfolk Southern

EXHIBIT E

From: Warren, Matthew J. <mjwarren@sidley.com>

Sent: Thursday, 11 June 2026 22:50:02

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

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Laudone, Stephen S. <slaudone@sidley.com>

Subject: FD 36873 - NS Response to Custodial Search Counterproposals

[EXTERNAL]

Counsel,

On behalf of Norfolk Southern, attached is a spreadsheet with hit counts for the search parameters we shared with you on May 21, 2026. As Kevin indicated, Norfolk Southern accepts the search term modifications requested by non-Applicant Class I railroads.

Matt

MATT WARREN

SIDLEY AUSTIN LLP

+1 202 736 8996

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

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

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.

<Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; *pdenton@steptoe.com
<pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

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

McClain,

We write to provide a further update regarding the parties' negotiation of a custodial search framework. On behalf of Union Pacific, we are providing hit counts in the attached spreadsheet for the search term parameters that we shared with you on May 19 in response to your counterproposals. These hit counts are globally deduplicated and include email hits, including families, for the custodians we have agreed to search. Additionally, per your request, we have provided broken down hit counts, including families, for all the terms highlighted in yellow in the first tab. Please note that the attached hit report is for emails collected and processed from Union Pacific's current enterprise email system, which has been in place since 2021. Union Pacific also maintains an archive of its prior enterprise email system, which contains emails from 2019 through 2021, and which we have collected and are still processing and searching. We intend to provide another hit report for emails stored on that prior system shortly. We understand that Norfolk Southern will provide its own hit counts via separate email.

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

We intend to promptly proceed with review of these documents.

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
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www.cov.com

COVINGTON

From: Kelly, Kevin

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

To: 'Thompson, McClain' <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

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

McClain,

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

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

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

Centralized Sources. Applicants, as the producing parties, are in the best position to determine how to locate responsive documents stored on their systems in response to these requests. While Applicants' investigations into which non-custodial sources will be searched for responsive

information are ongoing, we can confirm the Applicants are searching locations within non-custodial sources that are most likely to contain responsive information, including locations within SharePoint sites, data rooms, and other central repositories. Your request that we provide the “specific non-custodial data sources searched for responsive [sic] information (e.g., the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched), as well as the name and a description of all data storage systems maintained by the departments” is unreasonable and unduly burdensome.

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

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

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

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

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

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

further confer on this issue if helpful, but we need a reasonable basis for extending the time period.

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

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

Responsiveness Criteria. In our custodial search proposal, we identified the reasonable scope of documents for which we would search in response to each request, which is standard practice for responding to objectionably overbroad requests. In doing so, we have identified broad responsiveness criteria intended to account for the fact that the non-Applicant Class I railroads have issued hundreds of discovery requests that seek overlapping material and articulate their requests in inconsistent terms (even within a single railroad's requests).

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

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

As always, we are available to discuss.

Best,

Kevin

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

To: Kelly, Kevin <kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal,

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Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>

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

[EXTERNAL]

Kevin, Matt –

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

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

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

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

January 30 (e.g., “Accounting” and “Commercial”), please just let us know, as we’ll need to notice depositions to learn this information and identify what repositories of responsive data exist.

Additional Custodians. In addition to collecting and searching the files for the custodians UP and NS identified in your initial proposal plus those you identified on May 21 as part of the review to comply with Decision No. 13 (excluding the lawyers), please see below for our position on the necessary additional custodians. This includes executives and key personnel who based on their roles would have information relevant to topics such as pricing and marketing strategies, customer negotiations, interline and intermodal initiatives, strategic planning and growth strategies, overseeing operations and evaluating potential mergers. The list of proposed custodians that UP and NS initially provided is far too narrow. By way of example, actual negotiations with customers are not led by the senior executives of UP or NS. Likewise, UP’s and NS’s efforts and alleged potential struggles to modernize through implementation of PSR, to coordinate interline initiatives, and to grow their railroads short of a merger will likely be reflected primarily in the files of employees several levels below the C-suite.

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

UP:

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

NS:

- Randolph St. Claire (AVP Operations)
- Tim Livingston (SVP Transportation)
- Rodney Moore (VP Transportation)
- Craig Hudson (VP, Industrial Development)

- Rob Jones (Director, Northern Region)
- Mike Grim (Director, Southern Region)
- Marybeth Flournoy (Director, Strategic Partnerships)
- Christine Traubel (Group Vice President)
- Frank Voyack (VP Government Relations)
- Elizabeth Talton-Buck (Chief Communications Officer)
- NS to Identify NS Person with Most Responsibility for TRRA

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

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

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

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

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

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

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

Thanks,

McClain

McClain Thompson

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Volbrecht, Tate D. <tate.volbrecht@kirkland.com>

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

McClain,

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

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

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

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

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

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

Best,

Kevin

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

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

To: Kelly, Kevin <kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; AEllis@stblaw.com <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; pdenton@steptoe.com <pdenton@steptoe.com>; tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>

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

[EXTERNAL]

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

McClain Thompson

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From: Thompson, McClain

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

To: 'Kelly, Kevin' <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

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

Kevin –

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

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

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

Thanks,

McClain

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

<EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins

<wmullins@mullinslawgroup.net>; [*dludwin@cov.com](mailto:dludwin@cov.com) <dludwin@cov.com>; Harrison, Caroline

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

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

[*lflahivewu@cov.com](mailto:lflahivewu@cov.com) <lflahivewu@cov.com>; [*mgeorges@COV.COM](mailto:mgeorges@COV.COM) <mgeorges@COV.COM>;

[*mbenov@COV.COM](mailto:mbenov@COV.COM) <mbenov@COV.COM>

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

Counsel,

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

For each search term, we identify the total family hits from our original set of ten proposed custodians. For search terms that are related to UP's analysis of the proposed transaction, we have also identified the total family hits for the original set of proposed custodians *and* the fourteen individual custodians that UP searched in response to Decision No. 13 (as described in UP-49 at 5-

6). To the extent we can agree on appropriately tailored terms, Union Pacific is willing to search both sets of custodians for these searches, except that Union Pacific will exclude from review documents from the following three custodians: Christina Conlin, Michael Schmidt, and John Menicucci. These custodians are all lawyers in UP's Law Department. Any non-privileged documents they possess are likely also in the custodial files of the remaining custodians. Please note that certain HSR custodians were already included in the original set of custodians proposed by UP. Consistent with our prior report, the hit count for each search reflects the total number of email families containing the search terms during the identified time period without global de-duplication.

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

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

Best,

Kevin

Kevin Kelly

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

COVINGTON

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

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

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

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>;

[*tstrafford@steptoe.com](mailto:tstrafford@steptoe.com) <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>;
Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>;
Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van
Houwelingen, Luke <LVanHouwelingen@crowell.com>; [*Avia.Gridi@stblaw.com](mailto:Avia.Gridi@stblaw.com)
<Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F.
<hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Kelly, Kevin
<Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J.
<mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek
<dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc
<mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>;
Joseph, Neil <neil.joseph@kirkland.com>

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

[EXTERNAL]

Covington team,

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

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

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

Date Range: July 30, 2023 to Present

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

- (Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby OR Pegasus OR Cobalt OR Basalt) AND (merg* OR transaction OR combination OR acqui* OR control)
- (BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National") /10 AND ("cooperative agreement" or "joint venture" or alliance)
 - Search is January 1, 2015 to present.

- "capital budget" or "capital spending" or "capital program" **OR "capital forecast"** or "annual operating plan" or "long range plan"
 - Search is January 1, 2024 to present
- (fail* **w/5 W/25** interline)
 - Search is January 1, 2019 to present
- ((yard* or shop* or facilit*) **w/3/ W/25** (closing* or closure* or rationalize)) AND (price* or cost*)
 - Search is January 1, 2019 to present
- interline **w/5 W/25** (pric* OR quality OR efficien*)
 - Search is January 1, 2019 to present
- (facilit* **w/3 W/25** new) W/20 (offer OR bid)
 - Search is January 1, 2019 to present
- (Buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive))
 - Search is January 1, 2019 to present
- ((invest* OR improv*) **w/5 W/25** (interline or interchange))
 - Search is January 1, 2019 to present
- **(Committed /2 Gateway) OR ((BNSF OR CSX) /5 rate)**
- ("single line" AND interline AND compet*)
 - Search is January 1, 2020 to present
- interchange W/5 (alternat* OR compet*)
 - Search is January 1, 2020 to present
- (pricing **w/5** (formula OR model OR polic* OR strateg* or system))
 - Search is January 1, 2020 to present
- (negotiat* or strateg*) W/10 (bundl* OR tying OR tie OR link* OR leverag* OR **multi* OR refun* or discount* or waiv***)
 - Search is January 1, 2019 to present
- (((**amtrak**) AND (sedalia OR "jefferson city" OR "river subdivision" OR chicago)) AND (complain* **OR disput***)
 - Search is January 1, 2020 to present

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

Questions and Comments:

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

Best,

Eric Fanchiang

Eric Fanchiang

Pronouns: he/him/his

Crowell & Moring LLP

efanchiang@crowell.com

+1.949.798.1338 direct

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

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

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

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

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

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

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

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

Date Range: July 30, 2023 to Present

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

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

- Search is January 1, 2015 to present.
- "capital budget" or "capital spending" or "capital program" **OR "capital forecast"** or "annual operating plan" or "long range plan"
 - Search is January 1, 2024 to present
- (fail* ~~w/5~~ **w/25** interline)
- ((yard* or shop* or facilit*) ~~w/3~~ **w/25** (closing* or closure* or rationalize)) AND (price* or cost*)
- interline ~~w/5~~ **w/25** (pric* OR quality OR efficien*)
- (facilit* ~~w/3~~ **w/25** new) W/20 (offer OR bid)
- (Buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive))
- ((invest* **OR improv***) ~~w/5~~ **w/25** (interline or interchange))
- (Committed /2 Gateway) OR ((BNSF OR CSX) /5 rate)
- "Service Assurance"
- (Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND
 - **Operational Terms:** Integ* OR operat* OR diver* OR safety OR "rail service" OR labor OR employment OR ((passenger OR commuter) /5 service) OR (yard /2 control) OR (train /2 build*) OR (transport* /2 manag*)
 - **Financial Terms:** debt OR revenue OR earning* OR EBITDA OR leverage OR (operating /2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth
 - **Board Terms:** (Board /5 Director*) OR (Board /10 Committee)
 - **Gateway Terms:** (gateway* /10 traffic OR I-5)
 - **Divestment Terms:** share* and (TRRA OR (Terminal /2 Railroad) OR PPU OR TTX OR (Peoria /2 Pekin))
 - **Analyst/Earnings Call Terms:** (rail /2 rail) OR watershed or (lane* /2 traffic) OR (cross /2 town /2 move) OR (data /2 integ) OR (technolog* /2 cutover)
 - **Application Contention Terms:** (single /2 (carrier OR line)) OR "parallel route*" OR defens* OR Amtrak OR "partnership agreement" OR (transition* /2 service) OR freight OR port* OR trade OR "vertical effect*" OR (negot* /s contract*) OR (traffic /2 (manifest or level*)) OR "principal route*" OR (truck /2 rail) OR IT or tech* OR (service* /2 disrupt*)

Questions and Comments:

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

McClain Thompson

KIRKLAND & ELLIS LLP

1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
T +1 202 389 5292
M +1 917 545 6401

mccclain.thompson@kirkland.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, May 7, 2026 10:57 PM
To: Thompson, McClain <mccclain.thompson@kirkland.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>;
 *AEllis@stblaw.com <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.
 <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J.
 <matelisi@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>;
 *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>;
 Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>;
 Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>;
 Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke
 <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise,
 Dylan M. <aluised@stblaw.com>; Hynes, Samantha F. <hyness@stblaw.com>; Golden, Nathan
 H. <goldenn@stblaw.com>; Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>;
 Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>;
 *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman,
 Marc <morkman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte
 <CKrovoza@cov.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

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

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

As also reflected in the table, a number of other files on your list were not missing from the production, but some could have appeared to be missing because they were placed in the wrong folder or because a script contains an outdated reference. In some cases, we

recognized that files were mistakenly listed in our index as workpapers. We identified 19 workpapers that arguably should have been included in the original upload but were not. We expect to provide those workpapers, updated scripts, relocated workpapers, and an updated index through Covington's Kiteworks FTP site on Friday.

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

Regards,

Mike

Michael L. Rosenthal

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5448 | mrosenthal@cov.com
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COVINGTON

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

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

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

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

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

[EXTERNAL]

Sidley, Covington Teams – Although our review is ongoing, we have identified 181 missing work papers, intermediate datasets, and files that are needed to re-run applicant's backups and verify output. All should have been provided with the application last Thursday morning. Please see attached for a summary chart. Please let us know your position by this Thursday, so we can evaluate next steps. Thanks, McClain

McClain Thompson

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1301 Pennsylvania Ave., N.W.

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T +1 202 389 5292

M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Thompson, McClain

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

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

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

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

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

McClain Thompson

KIRKLAND & ELLIS LLP

1301 Pennsylvania Ave., N.W.

Washington, D.C. 20004

T +1 202 389 5292

M +1 917 545 6401

mcclain.thompson@kirkland.com

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

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

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

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>;

Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

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

McClain,

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

Ordinary Course Materials

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

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

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

Board Materials

To clarify the record, on February 4, I informed you that Union Pacific was engaged in a process to scope the Board materials addressing the proposed transaction that were potentially responsive, had collected certain materials consistent with that process, and had begun its review process. On March 4, I confirmed the parameters that Union Pacific was employing to identify responsive material, that Union Pacific's review process was ongoing, and that due to the ongoing nature of the review I could not provide a date certain for production. Those representations remain accurate and consistent with Union Pacific's representations to the Board. Notwithstanding the foregoing, I

expect Union Pacific's voluntary production of Board materials will occur prior to the submission of its revised Application, and Norfolk Southern expects to produce some Board materials this week.

BNSF Set 1, Request No. 8

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

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

Transearch and DAT Freight & Analytics Data

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

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

Other Data Follow-Ups

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

Best,

Kevin

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From: Kelly, Kevin

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

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

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

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

McClain,

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

Best,

Kevin

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

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

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

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>;

Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

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

[EXTERNAL]

Mike, Kevin, and Matt –

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

Ordinary Course Materials

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

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

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

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

Board Materials

Board materials are one example of what UP and NS continue to withhold. On February 4, UP and NS both explained how they had scoped their board material production – that is, they had already identified the board materials that they were agreeing to produce. Counsel for NS said that NS would produce its board materials the week of February 9. One month later, none have been produced. Yesterday, UP and NS said they are moving with “all deliberate speed,” but would not provide a date by which they will produce any board materials. Counsel for UP and NS also declined to commit to produce any board materials before an application is accepted. That is inconsistent with the representations UP and NS made to the Board that they are voluntarily advancing the production of ordinary course materials.

BNSF Set 1, Request No. 8

We also write to memorialize our discussion regarding UP's response to BNSF Set 1, Request No. 8. It seeks documents “sufficient to show any discounts, contract extensions, or any other economic value or concession offered in connection with or related to any discussion with a customer or stakeholder related to its support or non-opposition of the Proposed Transaction.” UP responded “Union Pacific has not identified any such materials.” We learned on yesterday's call that UP's response was date-limited to inducements / discounts offered on or before July 29, 2025 – *i.e.*,

before UP and NS executed their merger agreement, such that the discovery response would almost certainly yield a null set. There is no logical explanation for UP selecting that cut-off, except to shield responsive information from stakeholders and the STB. UP's limitation flies in the face of Jim Vena's promises of "transparency" in this process. In league with UP's efforts to shield Schedule 5.8 under a baseless privilege assertion, UP's response to Request No. 8 is emblematic of the difficulties stakeholders face in trying to get to the bottom of the application and the contentions that support it. We assume UP will revise its response to Request No. 8 to reflect all economic concessions offered to customers and stakeholders since the merger announcement.

Transearch and DAT Freight & Analytics Data

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

Other Data Follow-Ups

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

- BNSF Set 1, No. 9: We asked for car and container movement data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025? Also, the car event data produced by UP does not report train symbol information for ~20% of the records. The lack of consistent reporting of train symbols in this data diminishes the utility of this data and opens the possibility for misinterpreting or overlooking important trends and patterns. Please either confirm these are data anomalies that may be disregarded, or please explain what these records represent. Next, the car event data produced by UP does not contain fields sufficient for identifying the sequence of cars within a train at a given event. Car sequencing information is part of standard car event data and is necessary for understanding how different types of interchange and other train events affect blocking and train build activities and assessing what potential there is for incremental improvement under combined operations.
- BNSF Set 1, No. 10: We asked for system-wide train event data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025? Also, UP has produced computer readable density data for only 2024 (and not for 2019-2023). Additionally, the computer readable density data that UP produced for 2024 does not identify foreign densities (i.e., densities for other railroads operating by trackage rights or other joint agreements over UP segments). Density data broken out by owner vs foreign densities is necessary for evaluating pre- and post-merger volumes relative to capacity and the impact that UP/NS's anticipated growth traffic may have on foreign traffic operating via trackage rights or joint use agreements on UP/NS segments.
- BNSF Set 1, No. 12: We asked for density information based on specific parameters from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025? Also, does UP agree to break out computer readable density data by passenger, foreign, and UP volumes?

- BNSF Set 1, No. 25: We asked for reciprocal switch data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025?

Next Meet-and-Confer

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

Thanks,

McClain

McClain Thompson

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

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

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

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

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

McClain,

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

Best,

Kevin

Kevin Kelly

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

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

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

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

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

[EXTERNAL]

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

McClain Thompson

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

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

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

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

Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

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

McClain,

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

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

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

Best,

Kevin

Kevin Kelly

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

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

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

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

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

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

[EXTERNAL]

Kevin –

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

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

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

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

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

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

- Please confirm that UP and NS have not collected or searched any emails, for any custodians, as part of their discovery efforts.
- To the extent UP and NS have engaged in custodial searches, please identify: (i) the custodians; (ii) the search terms used; (iii) the data parameters used; and (iv) any criteria (other than privilege or work product) used to shield documents from searching or production.
- The specific non-custodial data sources searched for response information (*e.g.*, the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched).
- To the extent UP and NS have engaged in non-custodial searches for each source, please describe with specificity UP and NS's search and collection protocol (*i.e.*, search terms and data parameters, "go-get" productions by UP or NS employees, another tool or strategy, etc.).
- The name and a description of all data storage systems maintained by the departments referenced in your emails.
- The name of any UP or NS employee that drafted, reviewed, or provided factual information that fed into (or supported) the verified statements supporting UP and NS's 12/19 application.

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

Thanks,

McClain

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

Sent: Friday, February 20, 2026 4:06 PM

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

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

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

McClain,

I was traveling outside the office this week, but will follow up separately with times when we are available to meet and confer next week.

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

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

Regarding the board and banker materials, I informed you on our last call that I could not provide a date of production because we were still engaged in the process of collecting and reviewing

potentially responsive materials. I can confirm that we have *not* paused our review of these materials pending the filing of the revised application, and that review is ongoing.

Best,

Kevin

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

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

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

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

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

[EXTERNAL]

Kevin, Matt –

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

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

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

If Applicants' position is that discovery (not only productions, but also efforts to find compromises

or run searches) is on pause until Applicants re-file their application, please just let us know.

Thanks,

McClain

McClain Thompson

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From: Thompson, McClain

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

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

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

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

Kevin – We should keep the call. The ALJ's denial without prejudice changes nothing about the meet-and-confer process or the various follow ups on which we need answers from UP and NS.

The decision was purely about timing, not scope. We need to keep the process moving, so there is not further delay. Thanks, McClain

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

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

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

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

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

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

McClain,

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

Best,

Kevin

Kevin Kelly

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COVINGTON

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

Sent: Friday, February 6, 2026 5:43 PM

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

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

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

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

[EXTERNAL]

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

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

Sent: Friday, February 6, 2026 5:12 PM

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

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

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

McClain, we could do:

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

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

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

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

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

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

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

[EXTERNAL]

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

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

Sent: Thursday, February 5, 2026 11:21 AM

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

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

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

Counsel,

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

Eric

Eric Enson

eenson@crowell.com

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*

EXHIBIT F

From: Georges, Maria
To: Kelly, Kevin; Stern, Noah P. M.; Laudone, Stephen S.; Korman, Marc; Enson, Eric; Gridi, Avia; Thompson, McClain; Fanchiang, Eric; Rosenthal, Michael; Cc: Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Warren, Matthew J.; William Mullins; Ludwin, Derek; Harrison, Caroline; ratkins; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly; Korman, Marc; OpalDisco
Cc: David Meyer; Matelis, Joseph J.; Hynes, Samantha F.; Aluise, Dylan M.
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal
Date: Tuesday, July 7, 2026 9:54:46 AM
Attachments: UP - CPKC Search Terms (2021-2026) 16 Custodians_07.07.2026.xlsx
UP - Agreed to Search Terms (2019-2026) 16 Custodians_07.07.2026.xlsx
image001.png

Dear Counsel,

Attached please find an updated hit report for the previously agreed-upon search terms for the 16 original custodians across custodial data from 2019–2026.

Please note that the numbers have increased since the last hit report was circulated because UP has continued processing custodial data, including Teams and OneDrive data. In addition, UP is now running all search terms across all 16 custodians. This population of 312,726 hits (713,082 hits with families) now represents the documents hitting on the agreed-upon search terms for the 16 custodians using the referenced time periods across the custodians' 2019-2026 data. These numbers do not include hits across the data of the 20 additional custodians that UP is collecting and processing consistent with the ALJ's recent decision, but assuming similar hit rates across the other custodians, UP estimates a search term hit population of ~1.2 million documents.

Additionally, attached is a hit report for CPKC's proposed additional search terms, which shows hits across the 16 original custodians' data from 2021–2026. While collection and processing of additional custodial data remain ongoing, specifically the 16 original custodians' 2019-2021 Lotus Notes data hitting on the CPKC terms, this population of 1,453,011 documents (2,183,240 with families) represents documents above and beyond the 713,082 hits with families returned by the agreed-upon search terms. In other words, CPKC's additional terms more than triple the volume of documents (just across the 16 original custodians). Assuming similar hit rates across the other 20 custodians, UP estimates that CPKC's terms would result in ~5.4 million documents on top of the ~1.2 million documents from the agreed terms referenced above for the 36 custodians. The disproportional number of hits appears to be driven by CPKC's selection of broad terms likely to appear in many non-responsive documents, instead of using terms tailored to the specific requests CPKC has served. While UP remains committed to working with CPKC to conduct a reasonable search for responsive documents, whether using custodial searches or other targeted collections, CPKC's proposed terms are neither reasonable nor proportional to the needs of this proceeding.

UP can also confirm that there is already significant overlap between CPKC's proposed terms and the agreed-upon terms, with 629,712 overlapping hits between the two sets. As a result, UP believes the agreed-upon terms are already reasonably tailored to provide CPKC with the documents it needs and that additional CPKC search terms are unnecessary. Nonetheless, to the extent you provide modified search terms that you would like us to test, we are willing to address reasonable requests.

All the best,

Maria

Maria Georges

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, June 25, 2026 9:10 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dudwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

Union Pacific is continuing to analyze CPKC's proposed search terms, including comparing CPKC's terms against the terms proposed by the other railroads and previously accepted by Applicants, and expects to provide an update on whether it can agree to these new terms next week. To the extent certain terms return a disproportionate number of additional unique documents and Union Pacific cannot agree to one or more of CPKC's

new terms, Union Pacific will provide CPKC with updated hit reports, including unique hit counts.

Best,

Kevin

Kevin Kelly

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From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Wednesday, June 17, 2026 6:01 PM
To: Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; Kelly, Kevin <Kkelly@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

[EXTERNAL]
Counsel,

Below, please find CPKC's counterproposal regarding search terms concerning CPKC's First Set of Discovery Requests to Applicants. We'll follow up separately regarding the remaining points discussed yesterday.

Best,
Noah

Request No.	Request Text	Search Term Counterproposal
10/11	Produce all UP/NS 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.	((BNSF or Basalt or "Union Pacific" or UP or Ruby OR UNP OR UPRR) AND (CSX or Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* or transaction or comb* or acqui* OR control or consolid* OR "single-line" OR "end-to-end" OR "coast-to-coast" OR "east-west") OR (("transcon*" OR (east* w/10 west*) OR "end-to-end" OR "duopoly" OR "coast-to-coast" OR "first-mover" OR "downstream") w/30 (merg* or transaction or comb* or acqui* or control or consolid* OR "single-line"))
12	Produce all NS Executive Level Documents relating to the lane rationalization referenced in the NS Press Release dated April 4, 2024, entitled Norfolk Southern Announces new initiatives to drive further productivity and accountability."	("lane rationalization" OR (lane w/5 ration*)) OR (("Intermodal" OR "OD pair*") w/10 (review OR optimiz*)) OR (("OD pair*" OR lane* OR corridor* OR route* OR market*) w/10 (eliminat* OR remov* OR discontinu* OR exit* OR consolidat* OR rationaliz* OR optimiz*)

		OR suspend*)) OR ((low-volume OR "low volume" OR density OR "limited growth" OR "growth prospects" OR profit* OR complex*) w/10 ("OD pair*" OR lane* OR corridor* OR route*))
13	Produce 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."	(falcon OR eagle OR "Mexico-US-Canada" OR "Mexico U.S. Canada") OR (("CN" OR "Canadian National" OR CNR OR CNI) AND ("UP" OR "Union Pacific" OR UNP OR UPRR) AND (GMXT OR "Grupo Mexico" OR "Grupo México" OR Ferromex OR FXE) AND (intermodal OR "rail service" OR "joint service" OR "new service" OR "service connection" OR "seamless connection" OR interchange OR interline OR "commercial product" OR "new product"))
14/15	Produce all UP/NS 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."	[For UP] (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC) AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR "truck-competitive" OR "market access") AND ("Norfolk Southern" OR NS OR NSC OR norfolksouthern) ***** [For NS] (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC) AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR "truck-competitive" OR "market access") AND ("Union Pacific" OR UP OR UNP OR UPRR)
16/17	Produce all UP/NS Executive Level Documents relating to strategies for growing UP's rail traffic.	(plan* OR strateg* OR project* OR initiative* OR playbook OR develop* OR roadmap OR campaign* OR AOP) w/20 (grow* OR increas* OR retain* OR enhanc* OR boost* or driv* OR expan* OR conver* OR captur*) w/15 (volume OR traffic OR revenue* OR shipper* OR customer* OR account* OR carload* OR intermodal OR share OR truck* OR modal OR price)

18/19	Produce all UP/NS Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP/NS rail network.	(traffic OR volume* OR capacity OR network OR carload* OR demand) w/20 (forecast* OR project* OR outlook OR plan* OR budget OR expect* OR anticipat* OR future OR playbook)
20/21	Produce all UP/NS Executive Level Documents relating to policies of strategies for the pricing or UP's/NS's rail transportation services, including without limitation the level of returns that UP/NS requires when pricing rail traffic	(pric* OR profit* OR margin* OR tariff* OR contract* OR yield* OR rate* OR "ROR" OR "PI" OR hurdle OR return* OR contrib* OR AOP) w/50 (formula OR model* OR polic* OR strateg* OR playbook OR system* OR commodity OR region* OR customer* OR account* OR campaign*)
22/23	Produce all UP/NS Executive Level Documents relating to UP's/NS's changes (including without limitation reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroadng.	[For UP] (PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "Unified Plan 2020" OR "UP 2020" OR "UP2020") AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity) ***** [For NS] (PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "TOP21" OR "TOP 21" OR "TOP 2021" OR "TOP2021" OR "Thoroughbred Operat*") AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity OR TPM)
24/25	Produce all UP/NS Executive Level Documents discussing, analyzing, studying, or referring to UP's/NS's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for UP/NS transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that UP/NS is uniquely or advantageously situated to perform (including without limitation where UP/NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route).	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric* OR profit* OR margin* OR rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook OR AOP OR campaign*) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive) AND (facilit* OR plant* OR site* OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)
26/27	Produce 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/NS, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form.	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric* OR profit* OR margin* OR rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook) AND

		(bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive OR multiple) AND (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)
28/29	Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss UP's/NS's plans or strategies for retaining or increasing the revenues obtained by UP/NS from rail customers (whether by growing traffic, increasing prices, or otherwise).	(negotiat* OR strateg* OR formula OR model* OR contract* OR pric* OR profit* OR margin* or rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook OR report) AND (retain* OR increas* OR grow* OR win* OR expand* OR renew* OR capture*) w/20 (revenue* OR traffic OR volume* OR pric* OR rate* OR contract* OR customer* OR shipper* OR account* OR facilit*)

From: Laudone, Stephen S. <slaudone@sidley.com>

Sent: Wednesday, June 17, 2026 3:27 PM

To: Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstraftford@steptoe.com <tstraftford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Kelly, Kevin <kkelly@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework

Counsel,

Attached is Norfolk Southern's updated hit report, which now includes hits for certain CPKC discovery requests and identifies unique hits.

Best,
Stephen

STEPHEN S. LAUDONE
Senior Managing Associate

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+1 202 736 8384
slaudone@sidley.com

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

Sent: Wednesday, 17 June 2026 12:05:41

To: Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstraftford@steptoe.com <tstraftford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil

<neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

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

Counsel,

Attached is Union Pacific's updated hit report. This now includes hits from emails in Union Pacific's prior enterprise system (as well as the current system) and identifies unique document hits. We've also included searches that we previously proposed for certain CPKC-issued requests.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
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Washington, DC 20001-4956
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COVINGTON

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

Sent: Tuesday, June 16, 2026 10:05 PM

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EFEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; pdenton@steptoe.com <pdenton@steptoe.com>; tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

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

[EXTERNAL]

Attached is the equivalent Norfolk Southern custodian chart for your review.

Thank you,

Marc

MARC A. KORMAN

Counsel

SIDLEY AUSTIN LLP

+1 202 736 8417

mkorman@sidley.com

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

Sent: Tuesday, June 16, 2026 9:47 PM

To: Korman, Marc <mkorman@sidley.com>; Enson, Eric <EFEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; pdenton@steptoe.com <pdenton@steptoe.com>; tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

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

All,

I am writing to follow-up on the meet and confer we had this morning. This email recaps our discussion and is sent on behalf of

both Applicants.

Custodians: We explained that our own review of the additional custodians demonstrates that they are likely to be substantively duplicative of the existing custodians. In fact, most report to an existing custodian. We requested that you articulate your basis for concluding that each of the 32 additional custodians you have identified possess documents that are material to the Board's merits analysis and non-duplicative of those likely to exist in the files of the existing custodians. As of now you have not provided that explanation.

While we think we have already identified the appropriate custodians, as a compromise, and as discussed, we think it would be productive for us to agree on a number of custodians. Specifically, each Applicant offered to add any four custodians, which would bring the total number of custodians for each Applicant to 20. We think this is a reasonable number and anything more would be unduly burdensome. As discussed, attached is a chart for the additional custodians proposed for Union Pacific, which includes titles, reporting structure, and employment dates. We understand that counsel for Norfolk Southern will send their own, similar chart.

In making this offer, we noted one of your proposed additional custodians, Rebecca Gregory, is a lawyer who has worked in various legal roles at Union Pacific. If you choose Ms. Gregory, we will not collect documents from the time periods when she held a legal role.

Regarding the person most knowledgeable for TRRA, we believe that is already covered in our custodial set. To the extent there is anyone else that might fit that category, David Hughes could be a candidate based on our assessment of your request. For NS, Ed Boyle—who is already an agreed upon custodian—is NS's TRRA board member and is who NS would identify as the person most knowledgeable for TRRA.

During the meet and confer, you asked several questions about our proposal and indicated that you will speak with your clients for their positions. We look forward to hearing from you.

Export Search Terms: You asked for the search terms Union Pacific applied for collections. Attached are the export search terms employed to export data to Union Pacific's e-discovery vendor for processing and additional searching.

CPKC Search Terms: During our subsequent meet and confer call with counsel for CPKC this afternoon, counsel stated that they will send us their counterproposals for search terms. We look forward to receiving those.

Data Sources: As we explained during the meet and confer, we are collecting Enterprise data systems (email, One Drive, and Teams) for custodians, as well as additional sources to the extent we determine they are likely to contain responsive documents.

Unique Hits: We have agreed to your search term modifications, so it is not clear why you need this information. Nonetheless, we will provide the unique hits to you as soon as we obtain them from our e-discovery vendor. We understand that counsel for Norfolk Southern will send their own.

Responsiveness Criteria: As we explained, in an effort to consolidate the various overlapping requests, we articulated broad responsiveness criteria that applies across categories of requests and that we think reasonably addresses your requests. For example, addressing the specific categories of documents sought in BNSF's motion to compel, we've agreed to search for documents and communications regarding the Committed Gateway Pricing program (Applicants' proposals re BNSF 2nd, Request No 8); documents and communications regarding integration planning, including risks to integration (*id.* at BNSF 2nd, Request No. 34); documents and communications regarding pricing, quality, and cost efficiencies related to interline arrangements (*id.* at BNSF 2nd, Request No. 55); documents and communications regarding UP's offers to customers opening new facilities (*id.* at BNSF 2nd, Request No. 59), documents and communications regarding UP's railroad-wide or commodity-wide pricing strategies and documents and communications regarding the impacts of the Proposed Transaction, including on pricing (*id.* at CPKC 1st, Request No. 20); and the projected synergies resulting from the Proposed Transaction (*id.* at BNSF 2nd, Request No. 6). Similarly, for CPKC's requests subject to the meet and confer, our responsiveness criteria track the language of the requests.

But if there are specific revisions you believe are necessary, we remain willing to consider your proposals.

Production Deadlines and TAR: As discussed during the meet and confer, we think that discussions of a production schedule and TAR protocol are premature. We cannot take positions on either until we know the universe of documents that we will need to review. That universe of documents will expand as we add more custodians. That said, we are committed to producing documents as quickly as possible and on a rolling basis, and we will be prepared to set deadlines once we know the scope of data we need to review. We are willing to work on a schedule that would allow us to substantially complete productions 10 business days before depositions, which we anticipate will begin this summer. We would prioritize custodial review based on the ordering of depositions. We will also provide additional information on TAR once we resolve the remaining issues regarding the scope of custodial searches. As we explained, any use of TAR will be validated in accordance with best practices and will include human review.

Non-Custodial and Centralized Sources: We explained during the meet and confer that we are also searching non-custodial locations, such as SharePoint/Teams channels.

Beginning Date Range: You stated that there may be transaction-related documents back to 2023. You also proposed that we review a sample of 500 documents from 2023 for these search terms to determine responsiveness. We continue to be confused as to why you think there will be documents created in connection with the Proposed Transaction dating back to January 1, 2023.

Nevertheless, in an effort to be cooperative, we are willing to consider your proposal for an earlier start date. We also explained that if we agree to a reasonable time period, we would be willing to apply all search terms to all custodians.

Ending Date Range: You stated you will further consider potential ending dates, including whether the end date proposed by Applicants (and adopted by the Board in Decision No. 13) would be acceptable with limited ongoing production of certain categories of documents.

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
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COVINGTON

From: Kelly, Kevin

Sent: Tuesday, June 16, 2026 12:58 PM

To: 'Korman, Marc' <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
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Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

Joe and David,

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

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
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COVINGTON

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

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

To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework



EXTERNAL

All,

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

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

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

MARC A. KORMAN
Counsel

SIDLEY AUSTIN LLP
+1 202 736 8417
mkorman@sidley.com

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

From: Kelly, Kevin <kkelly@cov.com>
Sent: Friday, June 12, 2026 2:52 PM
To: Kelly, Kevin; Enson, Eric; Gridi, Avia; Thompson, McClain; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM); Fanchiang, Eric; Rosenthal, Michael
Cc: Donovan, Daniel T.; McCarrick, T.J.; Ellis, Abram J; Razi, Sara Y.; Bohl, Lindsey C.; David Meyer; [*pdenton@steptoe.com](mailto:pdenton@steptoe.com); [*tstrafford@steptoe.com](mailto:tstrafford@steptoe.com); Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Aluise, Dylan M.; Hynes, Samantha F.; Golden, Nathan H.; Warren, Matthew J.; William Mullins; Ludwin, Derek; Harrison, Caroline; Korman, Marc; Atkins, Raymond; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Georges, Maria; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly
Subject: FD 36873 - Meet & Confer re Custodial Search Framework
When: Tuesday, June 16, 2026 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

From: Kelly, Kevin
Sent: Friday, June 12, 2026 1:59 PM
To: Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Matelis, Joseph J. <Matelisi@nullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; [*pdenton@steptoe.com](mailto:pdenton@steptoe.com) <pdenton@steptoe.com>; [*tstrafford@steptoe.com](mailto:tstrafford@steptoe.com) <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <late.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

10-11 AM ET on Tuesday works for Applicants.

Kevin Kelly

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

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COVINGTON

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

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

To: Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Matelis, Joseph J. <Matelisi@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <late.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

[EXTERNAL]

CSX will make that work.

Eric

Eric Enson

Crowell & Moring LLP

enson@crowell.com

+1.213.310.7977 direct | +1.310.503.1774 mobile

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

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

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Matelis, Joseph J. <Matelisi@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <late.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

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

Avia Gridi

Pronouns: (she/her/hers)

Simpson Thacher & Bartlett LLP

900 G Street, N.W.

Washington, D.C. 20001

T: +1-202-636-5560

avia.gridi@stblaw.com

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

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

To: Matelis, Joseph J. <Matelisi@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Ellis, Abram J <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins

<wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *flahivewu@cov.com <flahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mhenov@COV.COM <mhenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

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

*** External Email ***

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

McClain Thompson

KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
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T +1 202 389 5292
M +1 917 545 6401

mcclain.thompson@kirkland.com

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

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

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

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

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

For CPKC:

Monday: before 11 or 12 to 3

Tuesday: before 11 or after 3

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

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

To: Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aeellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <flahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mhenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>

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

Counsel,

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

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Friday, June 12, 2026 9:12 AM
To: Kelly, Kevin <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

EXTERNAL
Kevin, Matt –

Speaking for BNSF: It is clear we continue to have significant disagreements about the ESI search process – including on custodians and the date ranges that should be applied to searches, among other issues. These issues have been ongoing for months. We'll be proposing near-term deadlines to complete negotiations on all of these issues, and barring agreement, to have those issues submitted via letter briefing.

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

Thanks,

McClain

McClain Thompson

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

mcclain.thompson@kirkland.com

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, June 11, 2026 10:24 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

McClain,

We write to provide a further update regarding the parties' negotiation of a custodial search framework. On behalf of Union Pacific, we are providing hit counts in the attached spreadsheet for the search term parameters that we shared with you

on May 19 in response to your counterproposals. These hit counts are globally deduplicated and include email hits, including families, for the custodians we have agreed to search. Additionally, per your request, we have provided broken down hit counts, including families, for all the terms highlighted in yellow in the first tab. Please note that the attached hit report is for emails collected and processed from Union Pacific's current enterprise email system, which has been in place since 2021. Union Pacific also maintains an archive of its prior enterprise email system, which contains emails from 2019 through 2021, and which we have collected and are still processing and searching. We intend to provide another hit report for emails stored on that prior system shortly. We understand that Norfolk Southern will provide its own hit counts via separate email.

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

We intend to promptly proceed with review of these documents.

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
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www.cov.com

COVINGTON

From: Kelly, Kevin

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

To: 'Thompson, McClain' <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

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

McClain,

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

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

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

Centralized Sources. Applicants, as the producing parties, are in the best position to determine how to locate responsive documents stored on their systems in response to these requests. While Applicants' investigations into which non-custodial sources will be searched for responsive information are ongoing, we can confirm the Applicants are searching locations within non-custodial sources that are most likely to contain responsive information, including

locations within SharePoint sites, data rooms, and other central repositories. Your request that we provide the “specific non-custodial data sources searched for response [sic] information (e.g., the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched), as well as the name and a description of all data storage systems maintained by the departments” is unreasonable and unduly burdensome.

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

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

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

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

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

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

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

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

Responsiveness Criteria. In our custodial search proposal, we identified the reasonable scope of documents for which we would search in response to each request, which is standard practice for responding to objectionably overbroad requests. In doing so, we have identified broad responsiveness criteria intended to account for the fact that the non-Applicant Class I railroads have issued hundreds of discovery requests that seek overlapping material and articulate their requests in inconsistent terms (even within a single railroad’s requests).

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

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

As always, we are available to discuss.

Best,

Kevin

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

To: Kelly, Kevin <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>

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

[EXTERNAL]

Kevin, Matt –

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

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

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

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

Additional Custodians. In addition to collecting and searching the files for the custodians UP and NS identified in your initial proposal plus those you identified on May 21 as part of the review to comply with Decision No. 13 (excluding the lawyers), please see below for our position on the necessary additional custodians. This includes executives and key personnel who based on their roles would have information relevant to topics such as pricing and marketing strategies, customer negotiations, interline and intermodal initiatives, strategic planning and growth strategies, overseeing operations and evaluating potential mergers. The list of proposed custodians that UP and NS initially provided is far too narrow. By way of example, actual negotiations with customers are not led by the senior executives of UP or NS. Likewise, UP's and NS's efforts and alleged potential struggles to modernize through implementation of PSR, to coordinate interline initiatives, and to grow their railroads short of a merger will likely be reflected primarily in the files of employees several levels below the C-suite.

To the extent that these individuals did not hold their current position for the time period covered by the requests, the

files of their predecessors and successors should be collected to cover the full period. The list below is preliminary and subject to modification or expansion based on the review of the records that you have thus far withheld from discovery.

UP:

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

NS:

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

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

Date Range. As a compromise, we'd be willing to agree to start custodian searches (i) that begin on January 1, 2023 for most requests and (ii) that begin on January 1, 2019 for certain search strings tied to pricing strategy, merger strategy, growth strategy, and interline initiatives. Regarding (i), UP and NS selected 2023 as their base year, so we need to know what was being discussed internally that year. Please let us know if you are agreed in concept with (i) and (ii). If we need to have motions practice about the date range, we reserve the right to seek a broader time period.

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

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

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

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

Thanks,

McClain

McClain Thompson

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Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

McClain,

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

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

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

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

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

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

Best,

Kevin

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Sent: Thursday, May 21, 2026 10:18 AM
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Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <late.volbrecht@kirkland.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

[EXTERNAL]

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

McClain Thompson

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From: Thompson, McClain
Sent: Wednesday, May 20, 2026 9:57 AM
To: 'Kelly, Kevin' <Kkelly@cov.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbenov@COV.COM <mbenov@COV.COM>; Volbrecht, Tate D. <late.volbrecht@kirkland.com>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

Kevin –

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

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

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

Thanks,

McClain

McClain Thompson

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Sent: Tuesday, May 19, 2026 11:46 PM
To: Fanchiang, Eric <EFanchiang@crowell.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Enson, Eric <EEEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; *mgeorges@COV.COM <mgeorges@COV.COM>; *mbevov@COV.COM <mbevov@COV.COM>
Subject: RE: FD 36873 - UP Response to Custodial Search Counterproposals

Counsel,

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

For each search term, we identify the total family hits from our original set of ten proposed custodians. For search terms that are related to UP's analysis of the proposed transaction, we have also identified the total family hits for the original set of proposed custodians and the fourteen individual custodians that UP searched in response to Decision No. 13 (as described in UP-49 at 5-6). To the extent we can agree on appropriately tailored terms, Union Pacific is willing to search both sets of custodians for these searches, except that Union Pacific will exclude from review documents from the following three custodians: Christina Conlin, Michael Schmidt, and John Menicucci. These custodians are all lawyers in UP's Law Department. Any non-privileged documents they possess are likely also in the custodial files of the remaining custodians. Please note that certain HSR custodians were already included in the original set of custodians proposed by UP. Consistent with our prior report, the hit count for each search reflects the total number of email families containing the search terms during the identified time period without global de-duplication.

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

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

Best,

Kevin

Kevin Kelly

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

COVINGTON

From: Fanchiang, Eric <EFanchiang@crowell.com>
Sent: Wednesday, May 13, 2026 9:03 PM
To: Thompson, McClain <mclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <mateljsj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

[EXTERNAL]
Covington team,

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

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

Eric Gehringer
Matthew Graham
Grant Janke
Katherine Novak
Marqi Parkerson
Joshua Perkes
Carrie Powers
Kenny Rocker
John Turner
Jim Vena

All other custodians that UP searched in response to HSR order. If UP has reasons why it would have searched a particular individual for responsive competition-related information in response to the Board's order but believes that person's files are not relevant for a broader set of discovery requests, please provide your person-specific position.

Date Range: July 30, 2023 to Present

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

(Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby OR Pegasus OR Cobalt OR Basalt) AND (merg* OR transaction OR combination OR acqui* OR control)

(BNSF or CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National")
~~to~~ AND ("cooperative agreement" or "joint venture" or alliance)

Search is January 1, 2015 to present.

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

Search is January 1, 2024 to present

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

Search is January 1, 2019 to present

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

Search is January 1, 2019 to present

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

Search is January 1, 2019 to present

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

Search is January 1, 2019 to present

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

Search is January 1, 2019 to present

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

Search is January 1, 2019 to present

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

("single line" AND interline AND compet*)

Search is January 1, 2020 to present

interchange W/5 (alternat* OR compet*)

Search is January 1, 2020 to present

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

Search is January 1, 2020 to present

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

Search is January 1, 2019 to present

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

Search is January 1, 2020 to present

"Service Assurance"

(Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby OR Pegasus OR Cobalt OR Basalt) AND

Operational Terms: integ* OR operat* OR diver* OR safety OR "rail service" OR labor OR employment OR ((passenger OR commuter) /5 service) OR (yard /2 control) OR (train /2 build*) OR (transport* /2 manag*)

Financial Terms: debt OR revenue OR earning* OR EBITDA OR leverage OR (operating /2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth

Board Terms: (Board /5 Director*) OR (Board /10 Committee)

Gateway Terms: (gateway* /10 traffic OR I-5)

Divestment Terms: share* and (TRRA OR (Terminal /2 Railroad) OR PPU OR TTX OR (Peoria /2 Pekin))

Analyst/Earnings Call Terms: (rail /2 rail) OR watershed or (lane* /2 traffic) OR (cross /2 town /2 move) OR (data /2 integ) OR (technolog* /2 cutover)

Application Contention Terms: (single /2 (carrier OR line)) OR "parallel route*" OR defens* OR Amtrak OR "partnership agreement" OR (transition* /2 service) OR freight OR port* OR trade OR "vertical effect*" OR (negot* /s contract*) OR (traffic /2 (manifest or level*)) OR "principal route*" OR (truck /2 rail) OR IT or tech* OR (service* /2 disrupt*)

Questions and Comments:

Please provide the organizational charts that we have requested.

Please confirm the data sources that UP is collecting from each custodian.

Please provide hit reports that also include the number of unique hits (plus family).

Please provide hit reports that also include the number of hits (plus family) on a custodian-by-custodian basis.

Please provide hit reports that also include the number of hits (plus family) by search term.

Best,

Eric Fanchiang

Eric Fanchiang

Pronouns: he/him/his

Crowell & Moring LLP

efanchiang@crowell.com

+1.949.798.1338 direct

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

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

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

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

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

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

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

Eric Gehringer
Matthew Graham
Grant Janke
Katherine Novak
Marqi Parkerson
Joshua Perkes
Carrie Powers
Kenny Rocker
John Turner
Jim Vena

All other custodians that UP searched in response to HSR order. If UP has reasons why it would have searched a particular individual for responsive competition-related information in response to the Board’s order but believes that person’s files are not relevant for a broader set of discovery requests, please provide your person-specific position.

Date Range: July 30, 2023 to Present

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

(Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND (merg* OR transaction OR combination OR acqui* OR control)

(BNSF OR CSX* or "Norfolk Southern" or NS or CPKC or CP or "Canadian Pacific" or KCS or CN or "Canadian National")
~~/10~~ AND ("cooperative agreement" or "joint venture" or alliance)

Search is January 1, 2015 to present.

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

Search is January 1, 2024 to present

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

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

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

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

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

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

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

"Service Assurance"

(Opal OR "Norfolk Southern" OR "NS" OR Nickel OR Ruby) AND

Operational Terms: Integ* OR operat* OR diver* OR safety OR "rail service" OR labor OR employment OR ((passenger OR commuter) /5 service) OR (yard /2 control) OR (train /2 build*) OR (transport* /2 manag*)

Financial Terms: debt OR revenue OR earning* OR EBITDA OR leverage OR (operating /2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth

Board Terms: (Board /5 Director*) OR (Board /10 Committee)

Gateway Terms: (gateway* /10 traffic OR I-5)

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Application Contention Terms: (single /2 (carrier OR line)) OR "parallel route*" OR defens* OR Amtrak OR "partnership agreement" OR (transition* /2 service) OR freight OR port* OR trade OR "vertical effect*" OR (negot* /s contract*) OR (traffic /2 (manifest or level*)) OR "principal route*" OR (truck /2 rail) OR IT or tech* OR (service* /2 disrupt*)

Questions and Comments:

Please provide the organizational charts that we have requested.

Please confirm the data sources that UP is collecting from each custodian.

Please provide hit reports that also include the number of unique hits (plus family).

Please provide hit reports that also include the number of hits (plus family) on a custodian-by-custodian basis.

Please provide hit reports that also include the number of hits (plus family) by search term.

McClain Thompson

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Washington, D.C. 20004
T +1 202 389 5292
M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, May 7, 2026 10:57 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

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

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

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

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

Regards,

Mike

Michael L. Rosenthal

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COVINGTON

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

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Tuesday, May 5, 2026 9:03 PM
To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

[EXTERNAL]

Sidley, Covington Teams – Although our review is ongoing, we have identified 181 missing work papers, intermediate datasets, and files that are needed to re-run applicant’s backups and verify output. All should have been provided with the application last Thursday morning. Please see attached for a summary chart. Please let us know your position by this Thursday, so we can evaluate next steps. Thanks, McClain

McClain Thompson

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1301 Pennsylvania Ave., N.W.
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M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Thompson, McClain
Sent: Tuesday, April 14, 2026 8:48 AM
To: 'Kelly, Kevin' <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

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

McClain Thompson

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

mcclain.thompson@kirkland.com

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Wednesday, March 11, 2026 3:02 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J.

<mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <dodanovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AFellis@stblaw.com2 <AFellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

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

Ordinary Course Materials

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

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

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

Board Materials

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

BNSF Set 1, Request No. 8

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

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

Transearch and DAT Freight & Analytics Data

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

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

Other Data Follow-Ups

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

Best,

Kevin

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COVINGTON

From: Kelly, Kevin

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

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

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

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

McClain,

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

Best,

Kevin

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

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

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

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

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

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

[EXTERNAL]

Mike, Kevin, and Matt –

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

Ordinary Course Materials

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

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

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

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

Board Materials

Board materials are one example of what UP and NS continue to withhold. On February 4, UP and NS both explained how they had scoped their board material production – that is, they had already identified the board materials that they were agreeing to produce. Counsel for NS said that NS would produce its board materials the week of February 9. One month later, none have been produced. Yesterday, UP and NS said they are moving with “all deliberate speed,” but would not provide a date by which they will produce any board materials. Counsel for UP and NS also declined to commit to produce any board materials before an application is accepted. That is inconsistent with the representations UP and NS made to the Board that they are voluntarily advancing the production of ordinary course materials.

BNSF Set 1, Request No. 8

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

Transearch and DAT Freight & Analytics Data

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

Other Data Follow-Ups

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

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

BNSF Set 1, No. 10: We asked for system-wide train event data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025? Also, UP has produced computer readable density data for only 2024 (and not for 2019-2023). Additionally, the computer readable density data that UP produced for 2024 does not identify foreign densities (i.e., densities for other railroads operating by trackage rights or other joint agreements over UP segments). Density data broken out by owner vs foreign densities is necessary for evaluating pre- and post-merger volumes relative to capacity and the impact that UP/NS's anticipated growth traffic may have on foreign traffic operating via trackage rights or joint use agreements on UP/NS segments.

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

BNSF Set 1, No. 25: We asked for reciprocal switch data from 2019 to present. Applicants agreed to produce through 2024. Do Applicants agree to provide the information through 2025?

Next Meet-and-Confer

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

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, February 27, 2026 3:21 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

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

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, February 26, 2026 6:46 AM
To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2

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

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

EXTERNAL

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

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Tuesday, February 24, 2026 8:51 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: RE: FD 36873 - BNSF Request for Meet and Confer

McClain,

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

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

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

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Tuesday, February 24, 2026 3:17 PM
To: Kelly, Kevin <Kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt

<matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>

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

[EXTERNAL]

Kevin –

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

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

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

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

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

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

Please confirm that UP and NS have not collected or searched any emails, for any custodians, as part of their discovery efforts.

To the extent UP and NS have engaged in custodial searches, please identify: (i) the custodians; (ii) the search terms used; (iii) the data parameters used; and (iv) any criteria (other than privilege or work product) used to shield documents from searching or production.

The specific non-custodial data sources searched for response information (*e.g.*, the specific SharePoint or OneDrive folders or sites, data repositories, or other areas searched).

To the extent UP and NS have engaged in non-custodial searches for each source, please describe with specificity UP and NS's search and collection protocol (*i.e.*, search terms and data parameters, "go-get" productions by UP or NS employees, another tool or strategy, etc.).

The name and a description of all data storage systems maintained by the departments referenced in your emails.

The name of any UP or NS employee that drafted, reviewed, or provided factual information that fed into (or supported) the verified statements supporting UP and NS's 12/19 application.

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

Thanks,

McClain

McClain Thompson

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

Sent: Friday, February 20, 2026 4:06 PM

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

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

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

McClain,

I was traveling outside the office this week, but will follow up separately with times when we are available to meet and confer next week.

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

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

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

Best,

Kevin

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

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

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

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

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

[EXTERNAL]

Kevin, Matt –

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

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

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

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

Thanks,

McClain

McClain Thompson

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mcclain.thompson@kirkland.com

From: Thompson, McClain

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

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

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

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

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mcclain.thompson@kirkland.com

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

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

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

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

McClain,

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

Best,

Kevin

Kevin Kelly

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COVINGTON

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

Sent: Friday, February 6, 2026 5:43 PM

To: Kelly, Kevin <kkelly@cov.com>; Enson, Eric <EEnson@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek

<dudwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
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Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

[EXTERNAL]

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

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

McClain, we could do:

Wednesday – 2-3:30 ET

Thursday – 2:30-3:30 ET

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

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From: Thompson, McClain <mccain.thompson@kirkland.com>
Sent: Thursday, February 5, 2026 12:13 PM
To: Enson, Eric <EEnson@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dudwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>
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Subject: RE: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

[EXTERNAL]

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

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Sent: Thursday, February 5, 2026 11:21 AM

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Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; *AFellis@stblaw.com2 <AFellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <matelisi@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>
Subject: FD 36873 - Request for Meet and Confer on CSXT's Document Requests

Counsel,

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

Eric

Eric Enson

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Microsoft Teams meeting

Join: <https://teams.microsoft.com/meet/21477266435214?p=0lGp90xLPiguS6Cty3>

Meeting ID: 214 772 664 352 14

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COVINGTON

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Total Search Hits: 1,453,011

Total Search Hits, Including Families: 2,183,240

Client- Provided Search Name	LH Restriction Category	Search Term	Date Range	Total Documents Hit By Term	Total Documents Hit by Term Including Families	Documents Hit by Term and No Other Term	Family Hit by Term and No Other Term
26/27	1	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric*) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR sole-served OR solely-served OR "single served" OR captive OR multiple) AND (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)	1/1/2019 to 2/17/2026	697,053	1,118,298	2,026	2,421
24/25	1	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric*) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR sole-served OR solely-served OR "single served" OR captive) AND (facilit* OR plant* OR site* OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)	1/1/2019 to 2/17/2026	699,214	1,116,713	3,185	3,607
20/21	1	(pric* OR profit* OR margin* OR tariff* OR contract* OR yield* OR rate* OR ROR OR PI OR hurdle OR return* OR contrib* OR AOP) w/50 (formula OR model* OR polic* OR strateg* OR playbook OR system* OR commodity OR region* OR customer* OR account* OR campaign*)	1/1/2019 to 2/17/2026	564,924	982,625	148,264	181,577
18/19	1	(traffic OR volume* OR capacity OR network OR carload* OR demand) w/20 (forecast* OR project* OR outlook OR plan* OR budget OR expect* OR anticipat* OR future OR playbook)	1/1/2019 to 2/17/2026	569,393	985,801	264,842	379,604
24/25	1	(profit* OR margin* OR rate* OR ROR OR PI OR hurdle* OR return* OR playbook OR AOP OR campaign*) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR sole-served OR solely-served OR "single served" OR captive) AND (facilit* OR plant* OR site* OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)	1/1/2019 to 2/17/2026	462,285	758,120	14,569	15,304

26/27	1	(profit* OR margin* OR rate* OR ROR OR PI OR hurdle* OR return* OR playbook) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR sole-served OR solely-served OR "single served" OR captive OR multiple) AND (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)	1/1/2019 to 2/17/2026	398,339	689,836	707	920
28/29	1	(negotiat* OR strateg* OR formula OR model* OR contract* OR pric* OR profit* OR margin* OR rate* OR ROR OR PI OR hurdle* OR return* OR playbook OR report) AND ((retain* OR increas* OR grow* OR win* OR expand* OR renew* OR capture*) w/20 (revenue* OR traffic OR volume* OR pric* OR rate* OR contract* OR customer* OR shipper* OR account* OR facilit*))	1/1/2019 to 2/17/2026	376,713	707,540	55,065	62,257
16/17	1	(plan* OR strateg* OR project* OR initiative* OR playbook OR develop* OR roadmap OR campaign* OR AOP) w/20 ((grow* OR increas* OR retain* OR enhanc* OR boost* OR driv* OR expan* OR conver* OR captur*) w/15 (volume OR traffic OR revenue* OR shipper* OR customer* OR account* OR carload* OR intermodal OR share OR truck* OR modal OR price))	1/1/2019 to 2/17/2026	112,213	262,792	10,875	8,342
13	2	falcon OR eagle OR Mexico-US-Canada OR "Mexico U.S. Canada" OR ((CN OR "Canadian National" OR CNR OR CNI) AND (UP OR "Union Pacific" OR UNP OR UPRR) AND (GMXT OR "Grupo Mexico" OR "Grupo México" OR Ferromex OR FXE) AND (intermodal OR "rail service" OR "joint service" OR "new service" OR "service connection" OR "seamless connection" OR interchange OR interline OR "commercial product" OR "new product"))	3/12/2023 to 2/17/2026	69,459	175,556	35,038	61,385
22/23	1	(PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "Unified Plan 2020" OR "UP 2020" OR UP2020) AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity)	1/1/2019 to 2/17/2026	26,123	85,818	3,318	4,921

10/11 13 14/15 16/17 18/19 20/21 22/23 24/25 26/27 28/29	1	((UP OR Ruby OR UNP OR UPRR) AND (CSX OR Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line OR end-to-end OR coast-to-coast OR east-west)) OR ((transcon* OR (east* w/10 west*) OR end-to-end OR duopoly OR coast-to-coast OR first-mover OR downstream) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line))	1/1/2019 to 2/17/2026	10,731	31,619	366	476
10/11 13 14/15 16/17 18/19 20/21 22/23 24/25 26/27 28/29	1	((BNSF OR Basalt OR "Union Pacific") AND (CSX OR Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line OR end-to-end OR coast-to-coast OR east-west)) OR ((transcon* OR (east* w/10 west*) OR end-to-end OR duopoly OR coast-to-coast OR first-mover OR downstream) w/30 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line))	1/1/2019 to 2/17/2026	9,343	29,598	69	100
14/15	3	(Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC) AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR truck-competitive OR "market access") AND ("Norfolk Southern" OR NS OR NSC OR norfolksouthern)	3/15/2025 to 2/17/2026	92	139	47	68

EXHIBIT G

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36873

**UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
– CONTROL –
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY**

CPKC’S FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Canadian Pacific Railway Company d/b/a Canadian Pacific Kansas City and CPKC, on behalf of itself and its U.S. rail carrier subsidiaries (collectively “CPKC”),¹ requests that Union Pacific Corporation and Union Pacific Railroad Company and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively “Applicants”), respond to no later than December 26, 2025, and produce documents responsive to the following discovery requests no later than January 2, 2026, unless otherwise agreed to by the parties. Applicants are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS

1. “Applicants” means Union Pacific and Norfolk Southern.

¹ CPKC’s U.S. rail carrier subsidiaries include Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware & Hudson Railway Company, Inc.; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company.

2. “BNSF” means BNSF Railway Company; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

3. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, messages on other messaging applications (such as Signal, Slack, Salesforce, Telegram, WhatsApp, WeChat, Teams, or Zoom) other computer linkups, written memoranda, and in-person conversations.

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

5. “CSX” means CSX Transportation, Inc.; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

6. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any Communication, writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained.

7. “East-West Freight Movements” means intercity freight movements between locations served by or via UP that are west of a MidContinent Gateway and locations served by or via NS that are east of a MidContinent Gateway, regardless of whether such freight traffic moves by rail, truck, barge, steamship, or some combination thereof.

8. “Including” means including without limitation.

9. “Merger Agreement” means the “Agreement and Plan of Merger dated as of July 28, 2025” referenced in Applicants’ Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-25 (UP-1/NS-1), filed in this docket on July 30, 2025.

10. “Midcontinent Gateway” means Chicago, Kansas City, Omaha/Council Bluffs, Kansas City, St. Louis/East St. Louis, Memphis/West Memphis, Shreveport, Meridian, Myrtlewood, Birmingham, and New Orleans.

11. “NS Executive Level Documents” means Documents prepared by, prepared for, or received by, (a) the Board of Directors of Norfolk Southern, (b) officers of Norfolk Southern; (c) Norfolk Southern management personnel in the Operations, Marketing & Sales, and Strategic Planning areas at the level of Assistant Vice President and above; and (d) any predecessors or successors of the persons who currently hold each of the above positions listed in parts (a)-(c) above.

12. “NSC” means Norfolk Southern Corporation.

13. “NSR” means Norfolk Southern Railway Company.

14. “Norfolk Southern” or “NS” means NSC, NSR, and their respective parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

15. “Person” or “Persons” means any natural person or any entity including, but not limited to: any corporation, partnership, association, company, estate, business, governmental entity, or agency (public or private), having a separate identification, which is recognized either in law or in fact.

16. “Proposed Transaction” means the proposed “acquisition of control by UPC, through its wholly owned subsidiary Ruby Merger Sub 1 Corporation, of NSC, and through it of NS, and for the resulting common control by UPC of UP and NS” described in Applicants’ Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-25 (UP-1/NS-1), filed in this docket on July 30, 2025.

17. “Relating to” means mentioning, discussing, reflecting, containing, concerning, embodying, stating, dealing with, or making reference to or relating to in any way.

18. “Standard Point Location Code” or “SPLC” means the numeric code used to specify the physical location of a station.

19. “Transcontinental Rail Merger” means any potential combination of Class 1 railroads that includes UP and NS; UP and CSX; BNSF and NS; or BNSF and CSX (or multiple of such combinations).

20. “U.S.” means the United States of America.

21. “UP Draft S-4” means the form S-4 registration statement filed by Union Pacific Corporation with the U.S. Securities and Exchange Commission on September 16, 2025.

22. “UP Executive Level Documents” means Documents prepared by, prepared for, or received by, (a) the Board of Directors of Union Pacific; (b) officers of Union Pacific; (c) Union Pacific management personnel in the Operations, Marketing & Sales, and Strategic Planning areas at the level of Assistant Vice President and above; and (d) any predecessors or successors of the persons who currently hold each of the above positions listed in parts (a)-(c) above.

23. “UPC” means Union Pacific Corporation.

24. “UPRR” means Union Pacific Railroad Company

25. “Union Pacific” or “UP” means UPC, UPRR, and their respective parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

26. The “White House” means President Donald J. Trump, Vice President JD Vance, the Cabinet, and the Executive Office of the President.

INSTRUCTIONS

1. Unless otherwise specified, the time period for these requests is from January 1, 2019, through the date of the response.

2. Documents in Microsoft Excel, Access, and PowerPoint, should be produced in native format.

3. Data files should be submitted in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Data files should be produced with the information necessary to read and interpret the data (*e.g.*, record layout, field names and definitions, definitions of terms or abbreviations used in the fields).

4. Applicants include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.

5. For purposes of these requests, so as to provide the broadest possible construction of a request: the singular shall be read to include the plural and vice versa, the present tense shall be read to include the past tense and vice versa, the term “each” shall be read to include the term “every” and vice versa, the term “any” shall be read to include the term “all” and vice versa, and the term “and” shall be read to include the term “or” and vice versa.

6. To the extent materials called for herein contain Confidential Information under the Protective Order entered in the Decision served August 5, 2025 in this proceeding, CPKC will treat them in accordance with this Protective Order.

7. If an Applicant objects to any portion of any Request, it should identify the portion to which it objects, state the basis for the objection, and respond to the remainder. If an Applicant has objections, that Applicant's counsel is requested to promptly confer with undersigned counsel for CPKC so that Applicant's objections can be promptly addressed and resolved. Please contact Dylan Aluisse or Nathan Golden (contact information below) in the first instance with any questions or concerns or to set up a meet and confer regarding these Requests.

8. If an Applicant withholds any information or Document on the ground that it is privileged, subject to the work product doctrine, or otherwise not discoverable: (a) identify the type of Document (*e.g.*, letter, memorandum, report, chart); identify the author, each addressee and each recipient; state the number of pages, title and date of the Document, and (b) state the basis for the claim that it is privileged or otherwise not discoverable. Such information should be supplied in sufficient detail to permit CPKC to assess the applicability of the privilege claimed.

9. If any of the requested Documents was but is no longer in an Applicant's possession or subject to its control, state what disposition was made of it and when, and explain the reasons for such disposition.

10. If there are no Documents responsive to a particular Request, Applicants should so state in writing.

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

12. These Requests are continuing in nature. If, after making an initial response hereto (and up until the time of a hearing by the Surface Transportation Board in this proceeding), Applicants or their attorneys, agents, or representatives, obtain or become aware of any further Documents responsive to these Requests that were unavailable at the time of the initial response, Applicants are requested to produce such Documents within a reasonable time.

REQUESTS

1. Produce all information and Documents that Applicants or their representatives produce in response to discovery requests submitted by other participants in this proceeding.

CPKC repeats this request on a continuing basis during the pendency of the proceeding.

2. Produce all information and Documents that Applicants or their representatives receive in response to discovery requests they submit to other participants in this proceeding.

CPKC repeats this request on a continuing basis during the pendency of the proceeding.

3. Produce Communications sufficient to show any agreements or understandings reached with other participants in this proceeding, or any positions asserted by Applicants to the extent not reflected in Documents served on all parties of record in this proceeding, regarding the scope of Applicants' responses to discovery requests submitted by other parties in this proceeding. CPKC repeats this request on a continuing basis during the pendency of the proceeding.

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

5. Produce all Documents prepared or reviewed by Union Pacific CEO James Vena in preparation for his September 2025 meeting with President Donald J. Trump.

6. Produce all Documents reflecting Communications between Union Pacific and any member of the White House since January 20, 2025.
7. Produce all Documents summarizing, describing, referencing, or discussing the September 2025 meeting between Union Pacific CEO James Vena and President Donald J. Trump.
8. Produce density charts and/or maps for the UP and NS systems for the period January 1, 2019 to the present.
9. Produce 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.
10. Produce 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.
11. Produce all NS 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.
12. Produce all NS Executive Level Documents relating to the "[l]ane [r]ationalization" referenced in the NS Press Release dated April 4, 2024, entitled "Norfolk Southern announces new initiatives to drive further productivity and accountability."
13. Produce 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."

14. Produce 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.”

15. Produce all NS 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.”

16. Produce all UP Executive Level Documents relating to strategies for growing UP’s rail traffic.

17. Produce all NS Executive Level Documents relating to strategies for growing NS’s rail traffic.

18. Produce all UP Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP rail network.

19. Produce all NS Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the NS rail network.

20. Produce all UP Executive Level Documents relating to policies or strategies for the pricing of 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)).

21. Produce all NS Executive Level Documents relating to policies or strategies for the pricing of NS's rail transportation services, including without limitation the level of returns that NS requires when pricing rail traffic.

22. Produce 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.

23. Produce all NS Executive Level Documents relating to NS's changes (including without limitation reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroading.

24. Produce 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 NS is uniquely or advantageously situated to perform (including without limitation where NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route).

25. Produce all NS Executive Level Documents discussing, analyzing, studying, or referring to NS's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for NS transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that NS is uniquely or advantageously situated to perform (including without limitation where NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route).

26. Produce 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.

27. Produce 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 NS, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form.

28. Produce 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).

29. Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss NS's plans or strategies for retaining or increasing the revenues obtained by UP from rail customers (whether by growing traffic, increasing prices, or otherwise).

CANADIAN PACIFIC RAILWAY COMPANY
Cassandra P. Quach
7550 Ogden Dale Road S.E.
Calgary, AB T2C 4X9 Canada
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**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**
David C. Reeves
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Respectfully submitted,



David L. Meyer
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Attorneys for CPKC

Dated: December 18, 2025

CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of December, 2025, a true and correct copy of the foregoing CPKC's First Set of Discovery Requests to Applicants 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.



Nathan H. Golden

EXHIBIT H

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
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By Email

July 2, 2026

McClain Thompson
Kirkland & Ellis LLP
1301 Pennsylvania Ave, N.W.
Washington, DC 2004
mcclain.thompson@kirkland.com

Re: STB Docket NO. FD 36873 – Collection Methodology

Dear McClain:

As a follow-up to the ALJ hearing on June 26, 2026, Union Pacific (“UP”) provides the following information regarding the collection methodology used for the original 16 custodians and additional details on the limitations of exporting Lotus Notes data. UP migrated its email system from Lotus Notes to Microsoft Office 365 (“O365”) in 2021. This migration occurred on a rolling basis throughout 2021 until completion. As a result, emails from custodians for the 2019–2021 period reside in the legacy Lotus Notes archive, managed by ZL Technologies (“ZL”), while emails from a certain period in 2021 forward are maintained in O365.

I. Lotus Notes Data (2019–2021)

During the relevant period, UP utilized ZL to manage Lotus Notes email data subject to litigation holds. ZL does not maintain custodian inboxes in their native form. Instead, it preserves a single archived copy of each email that is subject to a litigation hold. All retained emails are fully indexed and searchable within ZL.

ZL continues to store UP’s Lotus Notes email data for the 2019–2021 timeframe. However, ZL is no longer UP’s active litigation hold system, and the underlying infrastructure (including servers and software) has not been upgraded since the 2021 migration to O365. As a result, ZL is now a legacy system with material technical and operational limitations.

II. Limitations on Exporting from ZL

UP’s ability to export data from ZL is subject to significant constraints:

- **Volume limitations:** Exports are limited to approximately 50 GB per job, with a maximum of two concurrent exports.

COVINGTON

McClain Thompson

July 2, 2026

Page 2 of 3

- **System constraints:** These limitations cannot be increased without upgrading legacy hardware and licensing, which UP no longer maintains given its transition to O365.
- **Manual process:** Exports require continuous manual monitoring. If an export fails, it does not automatically restart and must be manually reinitiated.
- **Casebook limitations:** ZL requires exports to be organized into “casebooks,” each of which is limited to approximately 300,000 documents. Once that threshold is reached, a new casebook must be created before exports can continue.

Based on these constraints, UP estimates that the 16 original custodians collectively have approximately 1 terabyte of Lotus Notes email data for the 2019–2021 period. Exporting this volume of data in full would require at least 30 calendar days under ideal conditions and likely significantly longer in practice due to the manual nature of the process and the potential for export interruptions.

III. Collection Approach for Lotus Notes Data

Considering the limitations described above, UP determined that exporting the entirety of Lotus Notes email data for the 16 custodians was not feasible or proportional. Accordingly, UP has implemented a collection methodology using agreed-upon search terms:

- UP ran the search terms, including all modifications proposed by non-Applicant Class I railroads as of June 11, 2026, across the ZL system and exported only the hits.
- UP is currently applying the additional search terms that CPKC proposed on June 17, 2026, across the ZL system and is exporting the hits.

This approach ensures that potentially responsive information is identified for review while avoiding the substantial burden and inefficiency associated with a full export of legacy Lotus Notes data.

IV. O365 Data (Post-Migration)

With respect to O365 data (including Email, Teams, and OneDrive), UP initially collected documents for the 16 custodians using “export” search terms provided to BNSF on June 16, 2026. UP has since supplemented those initial collection efforts by completing full mailbox and O365 data source collections for these 16 custodians.

This O365 data is currently being processed and globally de-duplicated by Lighthouse. UP confirms that there is no remaining uncollected O365 email, Teams, or One Drive data for these 16 custodians.

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McClain Thompson

July 2, 2026

Page 3 of 3

Should you have any questions, UP is willing to meet and confer to discuss these issues further.

Respectfully,

/s/ Maria Georges

Maria Georges
Covington & Burling LLP
*Counsel to Union Pacific Corporation and
Union Pacific Railroad Company*

EXHIBIT I

From: Matelis, Joseph J. <Matelisj@sullcrom.com>
Sent: Thursday, July 16, 2026 12:31 PM
To: Kelly, Kevin; Magcale, Jamie Dominique U; Thompson, McClain; zzExt-aellis; 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; Lindsey.Bohl@stblaw.com; *Avia.Gridi@stblaw.com; Vaidya, Tushar
Cc: Flahive Wu, Laura; Ludwin, Derek; Rosenthal, Michael; Damitio, Daniel; Warren, Matthew J.; Korman, Marc; ratkins; Laudone, Stephen S.; William Mullins; Spencer Naake; OpalDisco
Subject: RE: FD 36873 - Applicants' 2nd Set of Discovery Requests - Data Requests

[EXTERNAL]

Kevin – before following up on our unanswered questions from our meet and confer last week about Union Pacific’s Requests 18 through 21 (which in essence seek all CPKC system-wide data from the beginning of 2019 through the end of 2025), a point of clarification about the CP/KCS merger is helpful in framing our concerns. In that proceeding, CP asked UP for UP data only after UP submitted a comment arguing that CP/KCS were proposing a route between Laredo and Chicago that would be “far less efficient than UP’s and BNSF’s route.” (Comment at 7-8.) Only then did CP ask for the relevant UP data to test UP’s argument with UP’s own data. In this proceeding, CPKC has not made any argument yet relying on its own internal data, and we do not yet know whether we will. For that reason, we continue to believe UP’s request is, at best, premature. We are particularly of this view because any additional data analysis UP may want to pursue would need to be part of a reply to comments and not a wholly new analysis to support the Amended Application. Indeed, the fact that UP is seeking these data now gives us significant concern that UP is planning a new analysis for the reply stage, with the result being a significant new piece of argumentation to which no one would have the opportunity to comment.

That said, I want to memorialize questions that we raised during our meet and confer on this topic last week and remain unanswered. The reason answers to these questions are relevant is to see whether, notwithstanding our view that these broad data requests are at best premature, there is a set of data that we might consider providing and would allow you to perform whatever analysis you are considering, while lessening the substantial burden that Requests 18 through 21 would impose on CPKC.

1. Because CP and KCS merged in 2023, pulling data for two legacy railroads back through 2019 is particularly burdensome for CPKC. We reiterate our request that you explain why six years of data is necessary and whether a smaller subset would allow you to do whatever analysis it is you are considering.
2. CPKC has extensive operations in Canada and Mexico. We reiterate our request that you explain why those data are relevant so we can assess whether a smaller set of data focused on particular U.S. routes would be able to meet your needs.
3. Similarly, we asked whether, with respect to CPKC operations (which primarily run north-south in the United States), all the fields that you have requested from other railroads are equally relevant to CPKC or whether some subset would be sufficient for whatever purpose you articulate.

Finally, I also note again, as we did in our objection, that CPKC has already produced 100% traffic tapes, consistent with 49 CFR 1180.4(b)(4)(iii). We think our compliance with a rule specifically addressing data productions justifies a detailed explanation of why UP needs these data now, when CPKC has yet to file a comment relying on its data.

Sincerely – Joe

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

Sent: Tuesday, July 14, 2026 7:01 PM

To: Magcale, Jamie Dominique U <JMagcale@cov.com>; Thompson, McClain <mccain.thompson@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Lindsey.Bohl@stblaw.com; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Vaidya, Tushar <tushar.vaidya@kirkland.com>
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Subject: [EXTERNAL] RE: FD 36873 - Applicants' 2nd Set of Discovery Requests - Data Requests

Counsel,

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

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

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

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

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

Best,

Kevin

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

McClain,

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

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

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

Third, as to the question of reciprocity, we disagree with BNSF’s framing. Applicants are seeking relevant, proportional discovery from a voluntary participant in this proceeding. BNSF elected to participate as a party, has launched a robust public relations campaign against the Proposed Transaction, has served extensive discovery requests on Applicants, and has indicated it may submit evidence and argument in opposition to the merger. As we discussed during our meet and confer on June 30, the Board’s regulations provide for broad discovery, the Board’s discovery rules apply to all parties, and nothing in those rules creates a lower standard for non-Applicant parties. *See* 49 C.F.R. § 1114.21(a)(1).; *see also Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021); *CSX Transp. & Del. & Hudson Ry.—Joint Use Agreement*, FD 35348, slip op. at 3 (STB served Aug. 16, 2010). Thus, as parties, BNSF and the other non-Applicant railroads are subject to discovery. To the extent you possess relevant information, we are entitled to obtain it in discovery, subject to proportionality/burden analyses. As noted above, we disagree that the requests Applicants have made are disproportional or unduly burdensome, but any concerns can be addressed through negotiation of custodial search parameters. We look forward to discussing those with you.

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

Applicants reserve all rights.

Thanks,

Jamie

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

[EXTERNAL]

Kevin –

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

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

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

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

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

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

Thanks,

McClain

McClain Thompson

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

Counsel,

Please see the attached correspondence.

Best,

Kevin

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