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August 5, 2026
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Public Record

August 5, 2026

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

BNSF-45 / CPKC-37 / CSXT-18

Re: STB Docket No. FD 36873 – Issue for Resolution at August 11 Conference

Dear Judge Soulikias:

BNSF, CPKC, and CSXT write regarding the agenda for the upcoming August 11, 2026 discovery conference.

MATTER GOING FORWARD

CPKC’s Motion to Compel (CPKC-36). On July 30, 2026, CPKC moved to compel (1) Applicants to run additional search terms that are likely to hit on relevant material, which can then be fed into Applicants’ TAR process, (2) UP to collect and search for pre-2022 documents for the 16 original custodians using CPKC’s proposed search terms, consistent with UP’s prior agreement, (3) UP to search the custodial file of UP’s former CEO from 2019 to 2023 (when he would have been assessing the merits of potential mergers), and (4) UP to conduct a reasonable search for comprehensive sets of periodic reports concerning pricing and growth strategies beyond what may or may not be part of UP’s custodial document collection (just like NS has agreed to do). CPKC-36. UP and NS oppose the motion. UP-86 / NS-84. UP and NS oppose the addition of most of the incremental terms. Citing burden, UP refuses to run additional pre-2022 searches for the 16 custodians. UP also opposes additional searches of its former CEO by asserting that documents that rose to his level may be part of future UP productions.

Barring changes in UP’s and NS’s positions, CPKC intends to raise the first three issues described above at next Tuesday’s hearing. In view of UP’s new commitment in its letter brief that UP is “searching for and producing pricing and growth strategy documents,” UP-86/NS-84 at 5, CPKC will hold that fourth portion of its motion in abeyance until UP completes its productions.

ADJOURNED MATTERS

1. UP’s Motion to Compel Data Productions (UP-75 / NS-73)¹
2. BNSF’s Third Motion to Compel (Growth-Related Board Materials) (BNSF-40)

LIST OF ATTENDEES

A. BNSF

¹ On an unrelated meet-and-confer on August 5, Applicants said they may re-raise portions of their motion to compel data productions, but it is unclear to respondents which parts of the motion or as to which respondents.

1. Daniel Donovan
2. McClain Thompson
3. Grace Brier
4. Tim Strafford

B. CSX

1. Eric Enson
2. Eric Fanchiang
3. John Scheib

C. CPKC

1. Joseph J. Matelis
2. David L. Meyer
3. Noah Stern

Based on most recent hearing:

A. Union Pacific

1. Michael Rosenthal
2. Laura Flahive Wu
3. Kevin Kelly

B. Norfolk Southern

1. Matthew Warren
2. Carrie Mahan
3. Stephen Laudone
4. William Mullins
5. Spencer Naake

C. NJ TRANSIT

1. Ayelet Hirschhorn

[Signature page follows.]

To the extent that Applicants use their agenda letter to provide supplemental briefing on that motion (which is fully briefed), those respondents reserve the right to respond.

Respectfully,

/s/ Daniel T. Donovan

Daniel T. Donovan, P.C.
KIRKLAND & ELLIS LLP
Counsel for BNSF Railway Company

/s/ Joseph J. Matelis

Joseph J. Matelis
SULLIVAN & CROMWELL LLP
Counsel for CPKC

/s/ Eric Enson

Eric Enson
CROWELL & MORING LLP
Counsel for CSXT

cc: Counsel of Record

CERTIFICATE OF SERVICE

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

/s/ Onika Williams

Attorney for BNSF Railway Company

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