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August 27, 2026

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

ENTERED
Office of Chief Counsel
August 27, 2026
Part of
Public Record

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

Dear Judge Soulikias:

Applicants move to compel BNSF Railway Company (“BNSF”) to comply with Decision No. 29, which ordered BNSF to supplement its responses and objections to Applicants’ Request Numbers 1–4 to substantiate its claims of privilege. *See* Decision No. 29 at 3. Nearly a month has passed since that order was issued, and BNSF has neither supplemented its responses nor produced responsive documents.

In Decision No. 29, Your Honor held that BNSF’s “broad privilege assertions are not sufficient to assess the privilege it asserts” and that “[a]dditional specificity is required.” Decision No. 29 at 2. Your Honor accordingly ordered BNSF to supplement its responses and objections to Request Numbers 1–4 “to demonstrate (1) which privilege is claimed and (2) that the elements of the corresponding privilege, with the supporting underlying factual information, are met,” and to “make clear whether it is withholding information based upon privilege, an objection, or both.” Decision No. 29 at 3. BNSF had itself “agreed to supplement its responses and objections” at the July 24 discovery conference. Decision No. 29 at 2.

BNSF bears the burden of proving that the withheld material is protected, and “[a] blanket assertion of the privilege will not suffice.” Decision No. 29 at 2 (quoting *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998)). BNSF has not carried that burden, and its month-long silence leaves Applicants unable to assess whether BNSF is withholding non-privileged business information or to renew the requests for relief that Decision No. 29 denied without prejudice pending supplementation. *See* Decision No. 29 at 3. That delay prejudices Applicants and impedes the expeditious resolution of this proceeding.

Applicants therefore respectfully request that Your Honor order BNSF to supplement its responses and objections to Request Numbers 1–4 in compliance with Decision No. 29 by September 4, 2026.

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Respectfully submitted,

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cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th 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
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