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By E-Filing

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 respectfully request entry of the discovery deadlines Applicants proposed in UP-77/NS-75 (July 22, 2026). Applicants submitted those proposed deadlines in response to Your Honor's directive in Decision No. 26 that the parties confer and propose interim discovery deadlines. No participant offered a counterproposal then, and none has offered an alternative schedule since. Now that the Board has adopted a procedural schedule in Decision No. 30, the issue is ripe. Discovery deadlines will ensure an orderly discovery process that aligns with the procedural schedule entered by the Board. Applicants therefore request that Your Honor enter Applicants' previously proposed deadlines, applicable to all interested parties.

I. BACKGROUND

In Decision No. 26, Your Honor ordered the parties to confer and submit—jointly if possible—proposed interim (or benchmark) deadlines addressing preliminary document discovery (including the production framework, document request deadlines, and a document production deadline for all parties), fact witness depositions, expert witness depositions, and limited secondary discovery. *See* Decision No. 26 at 7–8. Because the Board had not yet issued a procedural schedule, Your Honor characterized any such deadlines as “interim” benchmarks subject to later adjustment. *Id.* at 7 n.5.

Applicants complied. After circulating a proposed schedule and conferring with the non-Applicant participants on July 20, 2026, and having received no counterproposal, Applicants submitted their proposal on July 22, 2026 in advance of the July 24 conference. *See* UP-77/NS-75. Applicants proposed deadlines for substantial completion of Applicants' custodial and non-custodial productions, a common deadline for serving requests directed to the Amended Application, a common deadline for all parties to substantially complete responsive productions, a rolling 20-day deadline for requests directed to the assertions in any party's filing, deposition

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scheduling under the Discovery Guidelines, and a good-cause standard for limited secondary discovery. *Id.*

No deadlines were entered. On August 18, 2026, the Board removed these proceedings from abeyance and adopted a procedural schedule under which comments, protests, requests for conditions, and responsive applications are due November 18, 2026, and responses and rebuttal are due February 16, 2027. *See* Decision No. 30. Applicants have meanwhile continued to produce material. As of August 21, 2026, Applicants had produced more than 2.5 million pages of documents and more than 2,600 GB of data, and had substantially completed custodial productions for their 16 Initial Custodians and non-custodial productions responsive to requests served before June 30, 2026. *See* UP-92/NS-91 at 1.

II. ARGUMENT

With the Board's establishment of a procedural schedule, the time is ripe to revisit the establishment of discovery production deadlines. The Board has now fixed the dates by which every participant must submit comments, protests, requests for conditions, responsive applications, responses, and rebuttal. Discovery must be sequenced to conclude in time to prepare those submissions, and that cannot be meaningfully accomplished without deadlines binding all interested parties.

Applicants' proposal warrants adoption because it tracks the categories Your Honor identified in Decision No. 26, applies evenhandedly to all interested parties, and preserves each party's authority to determine a reasonable, efficient, and defensible process for identifying and producing responsive documents. It has also already been circulated and available to all other interested parties since July 22, and no participant has proposed an alternative. Entering Applicants' proposed deadlines now offers the most efficient path forward.

Finally, fixed deadlines would advance the orderly and expeditious resolution of this proceeding and reduce further motion practice. The Board has observed that discovery disputes remain ongoing and may continue into the comment period, and expects all parties to respond expeditiously to outstanding requests. *See* Decision No. 30 at 10. Common deadlines give each participant a definite date against which to plan collections, productions, and depositions. To the extent Your Honor concludes that the abeyance period warrants adjusting any individual date, Applicants respectfully submit that the structure of their proposal should be adopted. Applicants would remain available to confer regarding reasonable targeted modifications.

III. REQUEST FOR RELIEF

For the foregoing reasons, Applicants respectfully request that Your Honor enter an order adopting the discovery deadlines and accompanying discovery parameters set forth in UP-77/NS-75, applicable to all interested parties in this proceeding.

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Respectfully submitted,

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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
Daniel Damitio