

September 14, 2026
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Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

BNSF-54 / CPKC-48 / CSX-27

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Office of Chief Counsel
September 14, 2026
Part of
Public Record

Re: STB Docket No. FD 36873 – Applicants’ Latest Waves of Changes to the Application (UP-100/NS-99; UP-103/NS-102)

Dear Chief of Case Administration:

On back-to-back Friday nights, UP and NS amended their application. The Application has now changed four times—and three times since the Board accepted it as complete. UP/NS revised their application in April. *See* UP-39/NS-37. They changed core aspects of their application in July. *See* UP-82/NS-80. They changed their diversion report and other aspects of their application on September 4. *See* UP-100/NS-99. And now the testimony of their key witness—the author of the diversion report—changed yet again Friday night. *See* UP-103/NS-102.

By the dozens, the key numbers and key contentions in the application keep changing. Whether or not the changes are “material” in the eyes of Applicants, the indisputable point is that Applicants keep finding errors that cascade throughout the application and declarations. Applicants have now submitted more than 200 pages of “errata” in the last 50 days. Hundreds of workpapers keep getting changed, modified, and/or replaced. On Friday night of Labor Day weekend, UP and NS submitted 2,446 new or replacement files that totaled 272 GB of data. And Applicants kept adding and replacing even more workpapers this weekend.

Applicants’ pattern of making serial changes is disruptive, and it is prejudicing participants who keep needing to address a moving target while already living under Board-set deadlines. Four witnesses’ verified statements—Powers, Janke, Turner, and Barr—changed after they were deposed. That is not how this process is supposed to work. UP and NS were to file one complete application, so that the Board and other stakeholders had a static target to conduct their assessments and prepare their responses. *See* Decision No. 9 at 2 (“Given the size of the original Application, the Board seeks to ensure that it has a single version of any revised application on which to base future action.”). Undoubtedly, the ever-changing nature of UP’s and NS’s application is particularly burdensome on less-resourced stakeholders, who must try to decipher hundreds of pages of “errata,” analyze waves of new workpapers, and piece back together the puzzle every time Applicants make more changes. With each change, any analysis that stakeholders completed based on Applicants’ then-workpapers must be discarded or updated.

At the appropriate time, we will explain why the application keeps changing and what it means for the merits of the Board’s public interest assessments. In short, there are fundamental errors that Applicants are trying to paper over. Because the foundation of the application (the Hunt/Oliver Wyman diversion report) is so broken, fixing one issue creates—or reveals—another

one. Those issues are for another day, but for current purposes, the procedural problem is that the admitted errors and changes continue.

The question for now is whether Applicants are done with the updates and changes. Comments are due in 65 days. All the stakeholders in this process are entitled to know whether Applicants have submitted the final version of the Hunt/Oliver Wyman diversion analysis and testimony—or whether it will change again. It is inefficient and prejudicial to respond to a moving target.

For the sake of good order, the Board should order Applicants to promptly certify that the Hunt/Oliver Wyman report and analysis will not change again. The Board should order Applicants to make that certification by no later than September 19, 2026 (*i.e.*, 60 days before comments are due). If Applicants are unwilling or unable to certify that there will be no further changes, then the Board should consider expedited letter briefing on the appropriate path forward.

Sincerely,

/s/ Dan Donovan

Daniel T. Donovan, P.C.

Counsel for BNSF

/s/ Eric Enson

Eric Enson

Counsel for CSX Transportation, Inc.

/s/ Joe Matelis

Joseph J. Matelis

Counsel for Canadian Pacific Kansas City

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 K. Williams

Attorney for BNSF Railway Company
September 14, 2026