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Office of Chief Counsel
September 15, 2026
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Public Record
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September 15, 2026

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

BNSF-55

*Re: STB Docket No. FD 36873 – Opposition to Applicants’ Motion to Compel
(UP-102/NS-101)*

Dear Judge Soulikias:

Applicants are asking BNSF to complete productions in response to certain requests by next Friday (September 25). That is an unnecessary and artificial deadline; it will lead to the inefficient duplication of work; there is no valid purpose or benefit to that particular date for those particular requests; and there will be zero prejudice to Applicants if Your Honor rejects that date. Overall, BNSF supports discovery milestones that facilitate an orderly process and align with the sequenced nature of the merits submissions in this proceeding. BNSF made its first rolling production on August 5. BNSF has produced more than 572 gigabytes of data in discovery. BNSF will make its next rolling production by October 2. BNSF will make another rolling production by October 16. BNSF’s rolling productions will continue thereafter, and those productions will be substantially complete well before Applicants’ next merits submission in five months (on February 16).

First, Applicants’ proposed deadline is artificial. The next time Applicants will be heard in this proceeding is in mid-February—more than five months from now. As Your Honor knows, this is not a classic, plaintiff vs. defendant litigation schedule. The Board has instead ordered a specific sequence of evidentiary submissions. Comments and responsive applications from non-applicants are due November 18, 2026. *See* Decision No. 30 at 13. Responses to those comments and responsive applications (which would include any rebuttals from Applicants) are due February 16, 2027. *Id.*

Second, Applicants’ proposed deadline is unnecessary. There is no reason—and Applicants provide none—that they need BNSF to complete a particular set of productions next week. Lacking any legitimate reason, Applicants’ proposal suggests a tactic—attempts to unduly strain non-applicants’ resources during the short period in the Board’s procedural schedule when they must review Applicants’ document productions, take depositions of Applicants about

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the Application, and prepare their own comments and responsive application. And during this entire time, Applicants keep amending and correcting their application and testimony. There is no need to create an artificial constraint on non-applicant resources. That is particularly true here, where (i) BNSF has agreed to specific additional rolling productions, and (ii) there is sufficient time for BNSF to complete productions in the 154 days before Applicants make their rebuttal case.

Third, Applicants' proposed deadline risks the duplication of work. BNSF has agreed to conduct custodial searches, and that process is ongoing. In fact, last Friday, UP sent a list of proposed BNSF custodians—for the first time. BNSF will confer with UP about that list, and the process will advance. Some individuals on UP's proposed list are among those that BNSF is searching and/or is considering searching in response to the requests at issue in UP's motion and other requests. Meanwhile, Applicants will serve more discovery on BNSF; they have said they intend to serve discovery on BNSF after BNSF makes its comments on November 18. There will inevitably be overlap. Ordering BNSF to artificially accelerate some searches and productions now—when UP and NS have said more requests are coming, and when the parties are conferring about the scope of parallel searches—will lead to inefficiencies. Here, there is no reason to risk that inefficiency given the sequenced nature of the parties' submissions to the Board.

Fourth, Applicants are proposing a considerably more accelerated production schedule for BNSF than they followed themselves. BNSF served discovery requests on Applicants in October 2025. Applicants declined to begin *negotiating* custodial parameters until May 2026 (seven months from receipt of the requests), and they did not claim to be substantially complete on *some* non-custodial productions until August 2026 (nearly a year from receipt of the requests). *See* UP-92/NS-91. Put differently, Applicants are asking BNSF to do in a matter of weeks what took Applicants at least ten months. There is no principled reason why non-applicants should be held to greater obligations than Applicants. Nor is there a principled reason why non-applicants were required to wait months *after* Applicants' filings to receive substantive productions, but Applicants should receive substantive productions months *before* non-applicant comments are due.

Fifth, Applicants' proposed deadline is not necessary to ensure meaningful BNSF participation in discovery. Productions and the meet and confer process are ongoing. BNSF has already produced more than 572 gigabytes of data in response to what Applicants said was a priority request for them; BNSF has agreed to conduct custodial searches and is conferring with Applicants about those parameters; and BNSF has agreed to amend its responses to Applicants' second set of requests to search for additional types of documents.

In short, BNSF's search and production plan is fully consistent with the Board's procedural schedule, and it appropriately gives Applicants sufficient time to review productions and prepare their rebuttal filing in mid-February. Applicants' artificial deadline is unnecessary, and there will be zero prejudice to Applicants if Your Honor rejects it. Nonetheless, BNSF's rolling productions

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have begun and will continue as outlined above, and those productions will be substantially complete well before Applicants' next merits submission on February 16.¹

/s/ Daniel T. Donovan

Daniel T. Donovan, P.C.

cc: Counsel of Record

¹ As previously briefed, BNSF also supports setting deposition milestones, including that non-applicants like BNSF should provide dates for their witnesses such that the depositions can be completed no later than February 2, 2027 (*i.e.*, 14 days before the February 16, 2027 submission deadline).

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
September 15, 2026