

Eric Enson  
EEnson@crowell.com  
(213) 310-7977 direct

Crowell & Moring LLP  
515 South Flower Street  
41st Floor  
Los Angeles, CA 90071  
+1.213.622.4750 main  
+1.213.622.2690 fax

CSXT-27

September 15, 2026

312334

**By E-Filing**

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

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

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

Dear Judge Soulikias:

CSXT Transportation, Inc. (“CSXT”) submits this letter in opposition to Applicants’ unnecessary and unfair demands in its recent motion to compel. *See Union Pac. R.R. Co.’s Motion to Compel Discovery* (UP-102/NS-101), *Union Pac. Corp.–Control–Norfolk S. Corp.* (“UP/NS”), FD 36873 (Sep. 10, 2026). Applicants move to compel CSXT to complete production of documents in response to Applicants’ Discovery Request Nos. 2-4 by September 25, 2026.<sup>1</sup> CSXT recently explained to Applicants during a meet and confer that CSXT has been diligently working on collecting and reviewing documents in response to Applicants’ Discovery Request Nos. 2-4 and will be producing responsive documents soon.<sup>2</sup> *See Ex. A.* In light of this, it appears that the only dispute between CSXT and Applicants regarding these discovery requests is that Applicants want to rush CSXT to produce documents faster.

There is simply no reason for Applicants’ rush. First, according to the Board’s recent procedural schedule, Applicants’ responses to comments, protests, requests for conditions, and other oppositions and any rebuttal in support of the Revised Application are due February 16, 2027. *UP/NS*, Decision No. 30, FD 36873 (S.T.B. served Aug. 18, 2026), slip op. at 13. In other

---

<sup>1</sup> CSXT understands that Applicants’ motion as to CSXT only relates to Discovery Request Nos. 2-4, even though its motion may include other discovery requests for the other Non-Applicant Class Is. This makes sense, as Applicants have yet to meaningfully meet and confer with CSXT as to any of its other discovery requests (excluding Applicants’ data requests—there, CSXT has agreed to produce some data and is in the process of collecting and preparing productions of that data). *See Ex. A.* To the extent that Applicants have been meeting and conferring with the other Non-Applicant Class Is about other discovery requests, such meet and confer efforts did not involve CSXT and anything discussed or agreed to during those meet and confers that did not involve CSXT cannot be fairly applied to CSXT.

<sup>2</sup> CSXT is expecting to begin producing data sets requested by Applicants this week.

words, Applicants' next opportunity to file advocacy in support of the merger is not for another *five months*. CSXT is of course not suggesting that Applicants are not entitled to reasonable discovery until then, but there is simply no reason why Applicants need to rush the process and force CSXT, a non-Applicant, to bear undue burden regarding how fast it is producing documents right now.

Second, Applicants themselves have taken far longer to produce documents. CSXT served its First Set of Discovery Requests on January 7, 2026. *See CSX Transp., Inc.'s Motion to Compel Discovery* (CSXT-26), *UP/NS*, FD 36873 (Sept. 10, 2026), at Ex. A. Yet Applicants continue to produce documents in response to those requests.

Third, Applicants' own timeline of when they followed up with CSXT and when they are demanding documents demonstrates Applicants' unreasonableness. Prior to September 9, 2026, CSXT had not heard from Applicants on their discovery requests in weeks. *See* Ex. A. Then, Applicants contacted CSXT on September 9, 2026, to demand that CSXT commit to producing documents *two days* later on September 11, 2026, and to complete productions by September 25, 2026. *UP-102/NS-101, UP/NS*, FD 36873 (Sep. 10, 2026), at 2. If Applicants really did need these documents so quickly (they do not), they should have communicated this need much earlier than two days before when they wanted documents.

Again, CSXT is already in the process of collecting, reviewing, and preparing for production documents that are responsive to Applicants' Discovery Request Nos. 2-4, the only discovery requests raised as to CSXT in Applicants' motion. CSXT will begin producing those documents shortly. There is simply no reason for this unnecessarily rushed and arbitrary schedule that Applicants are demanding.

Sincerely,

Eric P. Enson

Attorney for CSX Transportation, Inc.

cc: Counsel of Record

**CERTIFICATE OF SERVICE**

I hereby certify that on this day of September 15, 2026, I have caused the foregoing document 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.

*Eric P. Enson*

\_\_\_\_\_  
Attorney for CSX Transportation, Inc.

# EXHIBIT A

## Fanchiang, Eric

---

**From:** Fanchiang, Eric  
**Sent:** Thursday, September 10, 2026 2:06 PM  
**To:** 'Kelly, Kevin'; Thompson, McClain; Donovan, Daniel T.; McCarrick, T.J.; Cunningham, Rich; \*pdenton@steptoe.com; \*tstrafford@steptoe.com; Matelis, Joseph J.; Judge, Kiera S.; Aluise, Dylan M.; Enson, Eric; van Houwelingen, Luke; Hynes, Samantha F.; Gardiner, Kent; Golden, Nathan H.; David Meyer; Scheib, John M.; Stern, Noah P. M.; Brier, Grace C.; sara.razi@stblaw.com; \*AEllis@stblaw.com2; lindsey.bohl@stblaw.com; \*Avia.Gridi@stblaw.com  
**Cc:** Flahive Wu, Laura; Rosenthal, Michael; Ludwin, Derek; Maya, Michael; OpalDisco; Warren, Matthew J.; Korman, Marc; Laudone, Stephen S.; Mahan, Carrie; ratkins; William Mullins; Spencer Naake  
**Subject:** RE: FD 36873 - Productions in Response to Applicants' Requests

Kevin,

CSXT objects to Applicants' unilateral imposition of these arbitrary deadlines. As we told you during our meet and confer earlier this week, CSXT is working diligently on collecting documents and will begin productions soon. CSXT is also working diligently on collecting data and will begin producing data soon. There is simply no reason for the imposition of these deadlines, particularly given the STB's procedural schedule—Applicants' response to CSXT's responsive application and comments is not due until February of next year. I will also note that our meet and confer this week was the first time we had heard from Applicants on any of Applicants' discovery requests in weeks, and the first time at all about major parts of Applicants' Second Set of Requests. While Applicants may have been meeting and conferring with others, those meet and confers which *did not* include CSXT cannot be counted as engagement with CSXT.

Nonetheless, CSXT can represent that it will likely begin producing data early next week and will likely be producing documents shortly thereafter.

Best,

Eric Fanchiang

### Eric Fanchiang

Crowell & Moring LLP

[efanchiang@crowell.com](mailto:efanchiang@crowell.com)

+1.949.798.1338 direct

---

**From:** Kelly, Kevin <Kkelly@cov.com>  
**Sent:** Wednesday, September 9, 2026 10:01 AM  
**To:** Thompson, McClain <mccclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; \*pdenton@steptoe.com <pdenton@steptoe.com>; \*tstrafford@steptoe.com <tstrafford@steptoe.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Gardiner, Kent <KGardiner@crowell.com>; Golden, Nathan H. <goldenn@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Scheib, John M. <scheib@gentrylocke.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Brier, Grace C. <grace.brier@kirkland.com>; sara.razi@stblaw.com; \*AEllis@stblaw.com2 <AEllis@stblaw.com>; lindsey.bohl@stblaw.com; \*Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>

**Cc:** Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Maya, Michael <mmaya@cov.com>; OpalDisco <OpalDisco@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; Korman, Marc <mkorman@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Mahan, Carrie <carrie.mahan@sidley.com>; ratkins <ratkins@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>  
**Subject:** FD 36873 - Productions in Response to Applicants' Requests

Counsel,

We write regarding BNSF, CPKC, and CSX's failure to produce documents in response to Applicants' First and Second Sets of Discovery Requests, which were served on May 29 and June 1, and which non-Applicants railroads responded to on June 15 and June 16. In their responses, each non-Applicant railroad committed to producing a subset of the documents requested by Applicants, but more than twelve weeks later, BNSF, CPKC, and CSX have failed to produce **any** of the documents promised in their responses. CPKC and CSX have produced **zero** documents in response to Applicants' discovery requests, and BNSF has only produced datasets that were not among the items it committed to producing back in June.

BNSF, CPKC, and CSX's failure to live up to their discovery obligations is unacceptable. **Please confirm that BNSF, CPKC, and CSX will begin rolling productions of responsive documents no later than September 11 and complete production of the documents they previously agreed to produce no later than September 25.** Without a firm production commitment by Thursday at 1 PM ET, Applicants intend to raise this issue with Judge Soulikias.

Beyond the narrow subset of documents that non-Applicant railroads previously agreed to produce, Applicants have also raised disputes with BNSF, CPKC, and CSX regarding additional documents that must be produced in discovery and each railroad's obligation to undertake diligent searches of custodial and non-custodial sources for responsive documents. While BNSF, CPKC, and CSX have indicated a willingness to address some of these concerns, they have failed to provide any substantive updates regarding the status of their production efforts, including the custodial parameters being applied (if any), the sources being searched, the expected date of production, or any other information that would allow Applicants to assess the scope of the searches purportedly underway. The absence of any such update—combined with the lack of production to date—raises serious concerns regarding BNSF, CPKC, and CSX's compliance with their discovery obligations. We will be in touch separately with each railroad to further address these concerns.

Best,

Kevin

**Kevin Kelly**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5613 | [kkelly@cov.com](mailto:kkelly@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**

---

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.