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ENTERED

September 15, 2026

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

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:

The motion to compel filed by BNSF, CPKC, and CSX (the “non-applicant railroads”) highlights two points of pride for Union Pacific. First, Union Pacific has voluntarily produced a tremendous amount of information in discovery: it has received more than 450 document requests and interrogatories, produced 2,187,011 pages of documents, and offered eighteen witnesses for deposition. Second, hundreds of Union Pacific employees have contributed their knowledge and experience to support the merger process.

The non-applicant railroads have now asked for more witnesses, alleging that they have relevant and non-duplicative testimony. Not so. The eighteen witnesses that Union Pacific has offered for deposition together possess knowledge regarding the full spectrum of relevant topics, from pre-merger analysis, to merger integration planning, to the day-to-day business activities of Union Pacific. Requests for additional witnesses beyond what Union Pacific has already agreed to produce do not serve any purpose other than to harass.¹

The motion to compel the deposition of Lance Fritz should be denied because the non-applicant railroads have not followed the appropriate process for compelling testimony from Mr. Fritz, who is a non-party. The motion to compel the depositions of Carl Garrison and Rebecca Gregory should be denied because their testimony is likely duplicative of the testimony of existing deponents. In fact, as will be explained further, the documents that the non-applicant railroads cite in support of their motion to compel actually refute their motion; these documents show that individuals already offered for deposition were in the same meetings, on the same documents, and have knowledge of the same topics about which the non-applicant railroads want to question Mr. Garrison and Ms. Gregory. Therefore, Union Pacific opposes the motion to compel and cross-moves for a protective order preventing the depositions of Mr. Garrison and Ms. Gregory. *See* Decision No. 24, Section C(2)(A).² Moving forward with these depositions would cause “annoyance, embarrassment, oppression, or undue burden or expense” in light of

¹ On September 10, Union Pacific offered a date for the deposition of Jeff Pincock. Further, the parties are discussing the request for Mr. Hughes’ deposition on a separate track. The parties agree that the pending motion as it relates to Mr. Hughes’ deposition is not ripe for Friday’s hearing.

² Undersigned counsel also represent Mr. Fritz. It is premature for undersigned counsel to move for a protective order for Mr. Fritz because non-applicant railroads have not followed the correct process for compelling his deposition.

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the nine depositions of Union Pacific employees that have been taken to date, and the nine additional depositions of Union Pacific employees already scheduled. 49 C.F.R. § 1114.21(c).

A. Lance Fritz

Mr. Fritz is the former CEO of Union Pacific. He is not currently a Union Pacific employee. Non-applicant railroads must obtain a subpoena to compel his testimony, and they have failed to do so. Non-parties may be compelled to provide testimony only by subpoena. 49 C.F.R. § 1113.2. As the STB has recognized, “interrogatories, requests for production of documents, and notices of deposition are incorrect procedural devices for non-party witnesses.” *Lake Providence Port Comm’n—Feeder Line Application—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La.*, FD 36447, at 3 (STB served Jan. 16, 2026).

Nothing in the Discovery Guidelines changes this default rule. *See* Decision No. 24, Section A(2) (“The default rules for non-party discovery shall apply . . .”). In fact, this issue has already been agreed to by the parties and addressed with Your Honor. In Decision No. 22, Your Honor ordered that the parties should be prepared to discuss at the June 12 conference whether any changes to the proposed discovery guidelines “might be warranted for requested non-party discovery pursuant to 49 U.S.C. § 1321.” Decision No. 22. Union Pacific and non-applicant railroads conferred prior to the hearing, and agreed that “49 C.F.R. § 1113.2 provides the default rule for requesting subpoenas for non-party discovery and there is no need to modify that default rule in our Discovery Guidelines.” *See* Exhibit 1 (June 12 email from D. Donovan). Both Union Pacific and non-applicant railroads expressed this position during the conference. In line with this prior agreement, on August 26, Union Pacific notified non-applicant railroads that Mr. Fritz is a non-party witness and BNSF’s notice was ineffective as a procedural matter to compel his testimony. *See* Exhibit 2 (August 26 Letter to BNSF re Deposition Schedule).

Therefore, non-applicant railroads’ motion to compel Mr. Fritz’s testimony is procedurally improper because non-applicant railroads have not sought the required subpoena to compel Mr. Fritz’s testimony. Should non-applicant railroads seek a subpoena, undersigned counsel may oppose the subpoena and seek a protective order at that time.³

B. Carl Garrison

Union Pacific opposes the motion to compel and moves for a protective order preventing the deposition of Mr. Garrison. *See* Decision No. 24, Section C(2)(A). The documents cited by non-applicant railroads in their motion to compel confirm that Mr. Garrison’s testimony is likely duplicative of testimony of other deponents such as Eric Gehringer, John Turner, and Jeff

³ There are numerous reasons why Mr. Fritz’s deposition is not warranted. Mr. Fritz has not worked at Union Pacific since 2023. He left two years prior to the merger agreement with Norfolk Southern and has had no role in the merger analysis. To justify his deposition, non-applicant railroads cite to documents from 2015, 2021, and 2022. *See* Motion to Compel Ex. 23–27. In fact, Exhibit 25, an email and attached slide deck regarding {{ }} that non-applicant railroads cite as justification for deposing Mr. Fritz, was sent to four individuals that Union Pacific has already offered for deposition: Eric Gehringer, Jennifer Hamann, Kenny Rocker, and John Turner. To the extent that Union Pacific’s merger analysis from five years ago is relevant (it is not), there are many witnesses that can testify to this topic.

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Pincock. Therefore, Mr. Garrison’s deposition is not warranted in light of the eighteen other witnesses that Union Pacific has already offered for deposition.

- UP-STB-D13-0000381 (Motion to Compel (“Mot.”), Ex. 18) is a slide deck that non-applicant railroads cite to support their argument that Mr. Garrison handled {{
}}. While the document shows that {{

}}. Therefore, non-applicant railroads already have several deponents whom they can question regarding {{
}}.
- UP 0374964 (Mot., Ex. 19) is a {{
}}. As to revenue synergies analysis pre-merger, non-applicant railroads have already deposed members of the pre-merger revenue synergies analysis team: David Welch, Michael Houston, Aaron Pfeifer, and Jacob Thomas. Union Pacific has also offered Jeff Pincock for deposition who, as the non-applicant railroads note in their motion, authored a February 2024 presentation about UP’s strategic options in watershed areas. *See* Mot. to Compel at 3. Another presenter of that watershed deck is Dan McLaughlin, who is also scheduled to be deposed. *See* Mot., Ex. 9.
- UP-STB-D13-0000430 (Mot., Ex. 13) is a slide deck for a working session meeting that non-applicant railroads claim Mr. Garrison attended. Based on the list of meeting participants on slide 3, it does not appear Mr. Garrison attended this meeting—although five individuals whom Union Pacific has offered for depositions (Todd Rynaski, Jeff Pincock, Jacob Thomas, Aaron Pfeifer, and Grant Janke) did attend.
- UP 1082282 (Mot., Ex. 20) is a calendar invite for {{
}}. Two individuals whom the non-applicant railroads have deposed—John Turner and Grant Janke—also participated in these {{
}} Non-applicant railroads could have asked Mr. Turner and Mr. Janke about these {{
}} but did not.
- UP 1486616 (Mot., Ex. 21) is an email thread between Carl Garrison {{
}}. John Turner and Eric Gehringer, who Union Pacific has offered for depositions, appear on this thread. Moreover, Union Pacific has offered for deposition the UP leads of the merger integration planning process—Mr. Rynaski and Mr. Pincock. Non-applicant railroads could have asked Mr. Rynaski about merger integration principles and will get the chance to ask Mr. Pincock.
- UP 1633001 (Mot., Ex. 22) is an email thread about {{
}}. The mention of the merger is ancillary to the discussion and this document has no relevance to the Board’s consideration of the proposed merger. Moreover, this is an email exchange between Mr. Garrison and Jim Vena, so to the extent the non-applicant railroads want to ask questions about this email, they can ask Mr. Vena.
- UP 0038318 (Mot., Ex. 7) is a slide deck that lists the individuals leading merger integration workstreams at that time. While one of the slides shows {{
}}, that same slide (UP_0038341) shows {{
}} Todd Rynaski, who the non-applicant railroads have deposed, and Jeff Pincock, who the non-applicant railroads are scheduled to depose. Because Mr. Rynaski and Mr. Pincock {{
}}

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}}. The non-applicant railroads will also have the opportunity to depose Union Pacific’s Chief Operating Officer, Eric Gehringer, who sponsored the post-merger Operating Plan for the combined network. Further, the non-applicant railroads have deposed John Turner, who sponsored the post-merger Service Assurance Plan for the combined network and who testified about merger integration during his deposition. *See* Exhibit 3 (excerpts from J. Turner deposition transcript). Nothing in the deck reflects that Mr. Garrison would have unique knowledge relevant to the non-applicants’ assessment of the merger.

C. Rebecca Gregory

Union Pacific opposes the motion to compel and moves for a protective order preventing the deposition of Ms. Gregory. *See* Decision No. 24, Section C(2)(A). The argument by non-applicant railroads can best be summed up as follows: Ms. Gregory’s name appears on many documents and she works closely with Mr. Vena. Yet, non-applicant railroads fail to show that Ms. Gregory has personal knowledge of issues relevant to the merger or knowledge that would not be duplicative of the knowledge of deposition witnesses, including Mr. Vena.

Non-applicant railroads cite five documents to support their motion to compel deposition testimony from Ms. Gregory. None of those documents shows that she has non-duplicative personal knowledge of relevant topics.⁴

- UP-STB-D13-0000361 (Mot. Ex. 1) is a {{

}}. *See* UP-36. Ms. Gregory’s name does not appear in the slide deck.
- NS 00320086 (Mot. Ex. 2) is a {{

}}. But the

document also shows that {{

}}. Further, the non-applicant railroads have deposed or will depose the Union Pacific witnesses with substantive responsibility for these aspects of the transaction (Messrs. Vena and Rynaski), the public interest justifications (Messrs. Vena, Rucker, Gehringer, Janke, Graham), and the public benefit calculation (Mr. Janke). Additionally, to the extent that non-applicant railroads intend to ask Ms. Gregory about the process for drafting the application, those questions would be improper because they would call for information protected by the work product protection and/or attorney-client privilege. In short, nothing about this document reflects that Ms. Gregory would provide unique, non-privileged testimony relevant to the evaluation of the merger.

⁴ Non-applicant railroads also assert that Ms. Gregory was a member of UP’s “merger deal team” that received the Spirit of Union Pacific Award. This is not true. Ms. Gregory was not a member of the merger deal team, *see* Mot. to Compel, Ex. 3, UP_0041374, at -389 (listing Project Opal Team Members), and did not receive the Spirit of Union Pacific Award provided to the merger deal team.

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- UP 1635260 (Mot. Ex. 3) is a teams chat in which Mr. Vena asks Ms. Gregory to provide him {{ }}. The context of the document and an understanding of Ms. Gregory's role as Mr. Vena's chief of staff make clear that Mr. Vena was not asking Ms. Gregory to {{ }}, but rather was asking her to coordinate the collection of information. To the extent that non-applicant railroads want to ask about {{ }}, they can ask Mr. Vena. To the extent they want to ask about how {{ }}, they can ask the existing deponents, such as Mr. Gehringer, who was responsible for the proposed operating plan for the combined UP/NS, or they could have asked Mr. Turner, who sponsored testimony regarding operational changes and efficiencies and benefits for the shipping public. This document provides no evidence that Ms. Gregory would provide unique testimony relevant to the evaluation of the merger.
- UP 1377352 (Mot. Ex. 4) is an email in which {{ }}. If non-applicant railroads want to ask about the substance of the {{ }}, they can ask Ms. Hamann. The document does not indicate that Ms. Gregory would have any personal knowledge regarding the {{ }}.
- UP 1652393 (Mot. Ex. 5) is an email forwarding a {{ }}. If non-applicant railroads want to ask about {{ }}, the obvious witness is Mr. Vena, not Ms. Gregory.

In sum, of the “approximately 28,043 documents” that Ms. Gregory is identified on, non-applicant railroads have identified five documents that show, at most, that Ms. Gregory was involved in coordinating and summarizing information provided by others at Union Pacific. Additionally, of the produced documents that Ms. Gregory is identified on, either Mr. Vena, Mr. Rynaski, Mr. Pincock, Ms. Hamann, or Mr. Turner are identified on **99%** of those documents—further illustrating the duplicative nature of her testimony.

Finally, Ms. Gregory's prior role at Union Pacific cautions against her deposition, particularly where non-applicant railroads have not shown that Ms. Gregory has relevant and non-duplicative personal knowledge. Between February 2021 and November 2023, Ms. Gregory was the head of commercial litigation at Union Pacific, and information that Ms. Gregory has from that period is likely to be privileged. Ms. Gregory's deposition will involve an increased risk of inadvertent disclosure of privileged information because it may be difficult for Ms. Gregory to distinguish which knowledge she has due to her legal role and which she has due to her non-legal, chief of staff role. This increased burden, coupled with the fact that Ms. Gregory's testimony is duplicative of the testimony of Mr. Vena and other deponents, weighs against requiring her to be deposed. As the Second Circuit has explained, “the fact that the proposed deponent is a lawyer does not automatically insulate him or her from a deposition nor automatically require prior resort to alternative discovery devices, but it is a circumstance to be considered.” *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 72 (2d Cir. 2003); *see also Busey v. Richland Sch. Dist.*, No. 13-CV-5022-TOR, 2014 WL 1404580, at *1 (E.D. Wash. Apr. 10, 2014) (noting that courts “have cautioned that attorney depositions should be allowed only where the discovery sought cannot be obtained from another source”).

For the reasons described above, the motion to compel the depositions of Mr. Fritz, Mr. Garrison, and Ms. Gregory should be denied.

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Respectfully submitted,

/s/ Laura Flahive Wu

Michael L. Rosenthal

Derek Ludwin

James J. O'Connell

Laura Flahive Wu

Kevin M. Kelly

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CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of September, 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/ Molly Brown

EXHIBIT 1

REDACTED VERSION – TO BE PLACED ON PUBLIC RECORD

From: [Donovan, Daniel T.](#)
To: [Flahive Wu, Laura](#)
Cc: [Rosenthal, Michael](#); [Kelly, Kevin](#); [Brown, Molly](#); [Krovoza, Charlotte](#); [Korman, Marc](#); [Warren, Matthew J.](#); [Thompson, McClain](#)
Subject: RE: FD 36873 - Discovery Conference w/ ALJ Soulikias
Date: Friday, June 12, 2026 9:14:10 AM
Attachments: [image001.png](#)

[EXTERNAL]

Laura – I appreciate our conversation yesterday and your email below. Please see below for BNSF's responses in red below. The other Class Is are reviewing, and any agreements that we might would be subject to their views.

###

Hi Dan,

Thank you for the call today. As discussed, we expect that we can reach agreement on most of the disputed Discovery Guidelines issues. Below I've laid out the issues (as noted in the letter sent to the ALJ) and the Applicants' compromise positions. Please let me know if you accept our positions on behalf of BNSF and the other non-Applicant Class I Railroads.

1. The scope of discovery. § A.1

We understand that you wish to delete the Applicants' proposed language that "all discovery requests, responses, and objections must be tailored to be consistent with the procedural schedule adopted in the proceeding." During our discussion in which I explained that this is intended to require discovery to fit within any schedule ordered by the STB, you represented that you may be able to accept this language.

We don't know what that clause means in practice, and we have concerns with how a party may seek to later apply it. Per our discussion yesterday, Applicants could not explain what it meant either. Accordingly, we maintain that it should be struck until it can be explained further and we can consider any implications.

2. Limitations on who may be deposed. § C.2.a.

You proposed adding to the Guidelines that "any party opposing a deposition shall have the burden to secure a protective order if they believe the deponent does not have case-relevant information."

Applicants can accept this provision, except to the extent it modifies the standard for obtaining a protective order from that contained in 49 C.F.R. § 1114.21(c). We propose the following modification: "Any party opposing a deposition shall have the burden to secure a protective order in accordance with 49 C.F.R. § 1114.21(c)."

We are considering.

3. The ability to recall witnesses. § C.2.b.

The Non-Applicant Class I Railroads proposed adding to the Guidelines that "failure to timely produce a witness's documents or respond to other relevant discovery requests before the deposition

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constitutes good cause to recall the witness.”

The Applicants can accept this proposal if we agree that the party seeking to recall a witness demonstrates material prejudice, and that any subsequent deposition should be limited to the new, substantively non-duplicative documents or information produced.

We therefore propose the following provision: “Failure to timely produce a witness’s documents or respond to other relevant discovery requests before the deposition constitutes good cause to recall the witness if the party seeking recall demonstrates material prejudice. Any subsequent deposition should be limited to the new documents or information produced.”

Material prejudice is too high a bar and improperly puts the burden on the wrong party. Please consider this alternative:

“Failure to timely produce a witness’s documents or respond to other relevant discovery requests before the deposition constitutes good cause to recall the witness **unless the party opposing the subsequent deposition establishes good cause (by agreement or by letter motion to the ALJ) that the subsequent deposition shall not proceed.** Any subsequent deposition should be limited to the new documents or information produced.”

4. The length of expert depositions. § C.2.c.

You proposed that the limit of seven hours should not apply to depositions of expert witnesses, and that “with respect to the deposition of any expert witness, the parties shall meet and confer regarding an extended hours cap on an expert-by-expert basis.”

We disagree with the position that there should be separate time limits for expert and fact witnesses. A seven-hour default limit for both is consistent with Federal Rule of Civil Procedure 30(d)(1). However, we understand that experts may require more time to depose and would consider in good faith any request to extend the deposition limit. Ultimately, if the parties do not agree on the time limit for a particular witness’s deposition, any Participant can file a motion with the ALJ.

We’ll need to get guidance. Some of the experts (including Israel and Bailey) plainly need more than 7 hours. We are willing to negotiate expert by expert, but cannot agree to a 7 hour presumption for all experts at this time.

5. Procedure for scheduling depositions. § C.4.a.

You proposed deleting the provision tying notices of deposition to the deadline for notices of intent to participate in the proceeding (“After the deadline for notices of intent to participate in the Proceeding . . .”). We agree with deleting this language given the progress of the merger proceeding.

Good.

6. Disclosure of deposition exhibit sets 24 hours before depositions. § C.8 (deleted in redline).

You objected to Applicants’ proposal that “at least 24 hours prior to the scheduled start of the deposition, any party intending to examine the witness shall advise the counsel to the party with whom the witness is affiliated of the cause or reason why such deposition will be taken and disclose the documents as to which the questioning will concern.”

We agree to withdraw this proposal, and appreciate your offer to discuss ways to coordinate participation in advance of depositions.

Good.

7. Access to deposition transcripts. § C.8 (added in redline).

You proposed a new provision stating that “all parties shall have access to and shall be entitled to use the transcript of any deposition, regardless of whether that party participated in the deposition.”

We accept this new provision so long as access is provided consistent with the Protective Order. Therefore, we propose a slight modification: “all parties shall have access to and shall be entitled to use the transcript of any deposition, consistent with the Protective Order, regardless of whether that party participated in the deposition.”

Good.

8. Timeline to meet and confer regarding disputes. § F.1.

You proposed that if the party against whom relief is sought fails to meet and confer in good faith within 4 calendar days of the request, the party seeking relief may proceed directly to the ALJ. Applicants accept this proposal.

Good.

9. Page limits for expedited letter briefing. § F.1.a-c.

We note that the body of your Reply to Applicant’s Motion to Enter Proposed Discovery Guidelines proposes “five pages for opening and opposition briefs and three pages for supporting briefs” (p. 8) but your proposed guidelines include limits of 5 pages for opening briefs, 3 pages for supporting briefs, 3 pages for opposition letter briefs with up to 5 additional pages for each supporting letter brief filed (§ F.1.a-c.). Could you please clarify what your proposal is?

Regardless, we are willing to accept a modest expansion of our initial page limits, as long as there are symmetrical limits for opening and opposition briefs. We propose 4 pages for opening and opposition briefs and 2 pages for supporting briefs.

Are we agreed at 5 pages for opening briefs and 5 pages for opposition briefs – with 3 pages for supporting briefs?

10. Whether any changes might be warranted for requested non-party discovery pursuant to 49 U.S.C. § 1321.

As we discussed, we expect to address tomorrow whether any changes might be warranted for requested non-party discovery pursuant to 49 U.S.C. § 1321, consistent with the ALJ’s order setting this conference. Applicants’ position is that changes are not warranted, as 49 C.F.R. § 1113.2 provides the default rule for requesting subpoenas for non-party discovery and there is no need to modify that default rule in our Discovery Guidelines.

We agree.

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You indicated that BNSF may be willing to defer its motion to compel if the parties can agree to a schedule for certain discovery milestones. We look forward to your proposal.

As Applicants agree responsive documents need to be produced in response to these requests but have not yet produced them (with the understanding you said they would be forthcoming), we suggest the ALJ enter an order compelling the production of responsive documents on the following schedule:

- **June 19** – Parties either (i) reach agreement on comprehensive search protocol (custodians, date ranges, search terms) or (ii) submit letter briefing to ALJ for resolution on the remaining issues.
- **June 26** – UP and NS complete non-custodial productions in response to the four categories in BNSF's second motion to compel.
- **July 10** – UP and NS complete custodial productions in response to the four categories in BNSF's second motion to compel.

Let us know if you agree and we can submit as a joint agreed order.

Best regards,

Laura

Daniel Donovan, P.C.

KIRKLAND & ELLIS LLP

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DDonovan@kirkland.com

From: Flahive Wu, Laura <lflahivewu@cov.com>

Sent: Thursday, June 11, 2026 10:18 PM

To: Donovan, Daniel T. <ddonovan@kirkland.com>

Cc: Rosenthal, Michael <mrosenthal@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; Thompson, McClain <mccclain.thompson@kirkland.com>

Subject: FD 36873 - Discovery Conference w/ ALJ Soulikias

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2. Limitations on who may be deposed. § C.2.a.

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Applicants can accept this provision, except to the extent it modifies the standard for obtaining a protective order from that contained in 49 C.F.R. § 1114.21(c). We propose the following modification: "Any party opposing a deposition shall have the burden to secure a protective order in accordance with 49 C.F.R. § 1114.21(c)."

3. The ability to recall witnesses. § C.2.b.

The Non-Applicant Class I Railroads proposed adding to the Guidelines that "failure to timely produce a witness's documents or respond to other relevant discovery requests before the deposition constitutes good cause to recall the witness."

The Applicants can accept this proposal if we agree that the party seeking to recall a witness demonstrates material prejudice, and that any subsequent deposition should be limited to the new, substantively non-duplicative documents or information produced.

We therefore propose the following provision: "Failure to timely produce a witness's documents or respond to other relevant discovery requests before the deposition constitutes good cause to recall the witness if the party seeking recall demonstrates material prejudice. Any subsequent deposition should be limited to the new documents or information produced."

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You proposed that the limit of seven hours should not apply to depositions of expert witnesses, and that "with respect to the deposition of any expert witness, the parties shall meet and confer regarding an extended hours cap on an expert-by-expert basis."

We disagree with the position that there should be separate time limits for expert and fact witnesses. A seven-hour default limit for both is consistent with Federal Rule of Civil Procedure 30(d)(1). However, we understand that experts may require more time to depose and would consider in good faith any request to extend the deposition limit. Ultimately, if the parties do not agree on the time limit for a particular witness's deposition, any Participant can file a motion with the ALJ.

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You indicated that BNSF may be willing to defer its motion to compel if the parties can agree to a schedule for certain discovery milestones. We look forward to your proposal.

Best regards,

Laura

Laura Flahive Wu

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EXHIBIT 2

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By Email

August 26, 2026

McClain Thompson
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

*Re: STB Docket No. FD 36873 – Response to BNSF Deposition
Notices*

Counsel:

On behalf of Union Pacific Corporation and Union Pacific Railroad Company (“Union Pacific”) and Norfolk Southern Corporation and Norfolk Southern Railway Company (“Norfolk Southern,” and together with Union Pacific, “Applicants”), this letter responds to BNSF’s August 21, 2026 letter (the “August 21 Letter”), which purports to notice the depositions of fifteen additional witnesses. Applicants have made 19 witnesses available for deposition and remain committed to good-faith discovery. The August 21 Letter nevertheless raises serious concerns about the scope, proportionality, and propriety of the proposed depositions. Applicants provide the witness-specific responses below and reserve all rights and objections.

In addition, Union Pacific also writes in response to BNSF’s August 24, 2026 e-mail in which BNSF stated that Union Pacific must complete additional productions before the depositions of Eric Gehringer, Kenny Rocker, and Jim Vena take place. This is wrong. Section C.4 of the Discovery Guidelines requires substantial completion of a witness’s custodial documents 10 business days prior to the witness’s deposition. The productions of custodial documents for Gehringer, Rocker, and Vena were substantially complete by August 17. Under the Discovery Guidelines, no other productions are required before the depositions of Gehringer, Rocker, and Vena may proceed. Union Pacific offered these witnesses, and their documents, on an expedited basis to meet the Board’s procedural deadlines. Moreover, Union Pacific has made several concrete scheduling proposals and, where practicable, has proposed dates and locations that reduce travel and other logistical burdens on counsel taking the depositions. However, BNSF has continued to unreasonably reject dates offered for these witnesses.

BNSF’s refusal to accept the earlier dates provided is a deliberate choice that will result in a compressed discovery process. Union Pacific will nonetheless consider October dates it can offer

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for these three witnesses. The chart attached hereto provides updated tracking of all deposition dates. New and modified entries are shown in bold.

GENERAL OBJECTION

Among other things, the August 21 Letter relies on boilerplate justifications for every witness. BNSF repeats the same formulaic language—that it intends “to explore the witness’s roles and responsibilities (including in connection with the merger process); to test contentions that Applicants have made in connection with the merger application . . . ; to understand the development of the transaction and alternatives considered; and to evaluate the impacts the transaction would have on various constituencies.” Applying that language without differentiating among fifteen individuals with different levels of seniority demonstrates that the notices are overbroad and untailored to each witness’s actual knowledge.

UNION PACIFIC WITNESSES

Rebecca Gregory (SVP – Administration)

BNSF identifies Ms. Gregory as a member of UP’s Merger Deal Team who received the Spirit of Union Pacific Award for playing a “critical role[] in developing the business case for the deal.” BNSF has already taken the deposition of several witnesses related to this topic, and the specific topics BNSF identifies are not commensurate with Ms. Gregory’s role. The cited [REDACTED] (UP_1636120, UP_1377352, UP_1770618) are routine departmental reporting she received in her capacity as chief of staff—not Deal Team work product—and are available from the departments that generated them. Moreover, although Ms. Gregory may have received the presentations BNSF cites—UP-STB-D13-0000035 at -036 and UP-STB-D13-0000361 at -367—BNSF has not shown she has personal knowledge of underlying assumptions beyond what the documents themselves reflect.

Jennifer Hamann (EVP and Chief Financial Officer)

BNSF points to Ms. Hamann’s role in “due diligence, merger planning, and potential synergies” as reported in the Form S-4, and to her designation as a Decision No. 13 custodian. Applicants acknowledge that Ms. Hamann has relevant knowledge concerning the financial aspects of the transaction. BNSF seeks testimony on UP pricing practices and post-merger pricing intentions, pointing to Ms. Hamann’s public statements on the Q3 2024 and Q4 2024 earnings calls. Asking her to repeat those public statements is cumulative. The question of whether UP “intends to change” pricing post-merger calls for speculation, not factual testimony.

Notwithstanding its objections and reserving all rights, Union Pacific will produce Ms. Hamann for deposition on nonprivileged matters within her knowledge of the transaction’s financial aspects, including due diligence and synergy analysis. The examination should not be used to elicit testimony that merely repeats her public earnings-call statements, and BNSF may not seek speculation about post-merger pricing intentions. Ms. Hamann is available to be deposed on October 16.

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Dan McLaughlin (AVP – Marketing & Sales Ops)

BNSF seeks Mr. McLaughlin's deposition in connection with his role as [REDACTED] (UP_0038318 at -341). The examination may not extend to [REDACTED] (UP_1390610), which concerns [REDACTED] irrelevant to the merger's competitive effects, or to open-ended inquiry into [REDACTED] (UP_0034295 at -300) beyond what bears directly on current integration work. The scope must also exclude matters duplicative of testimony provided by Jacob Thomas and Kenny Rocker's testimony, which has yet to be taken.

Notwithstanding its objections and reserving all rights, Union Pacific will produce Mr. McLaughlin for deposition on nonprivileged matters within his knowledge related to post-merger integration efforts. Mr. McLaughlin is available to be deposed on September 30.

Jeff Pincock (VP – Strategy & Corporate Development)

BNSF identifies Mr. Pincock as a Merger Deal Team member who received the Spirit of Union Pacific Award for playing a "critical role[] in developing the business case for the deal," and as [REDACTED] (UP_0038318 at -341). BNSF has already taken the deposition of several witnesses related to this topic, including Messrs. Houston, Welch, Pfeifer, and Thomas. Union Pacific objects to the deposition of Mr. Pincock as cumulative and duplicative of Todd Rynaski's testimony.

Reserving all rights, Union Pacific suggests that the parties defer the issue of Mr. Pincock's deposition until after BNSF has taken the deposition of Mr. Rynaski.

Andrew Brady (VP – External Relations)

The documents BNSF cites for Mr. Brady do not bear on the competitive merits of the proposed merger. The [REDACTED] (UP_1540769) and [REDACTED] (UP_1540884) concern advocacy strategy and public messaging developed in anticipation of this proceeding. The [REDACTED] (UP_0082355) relates to government-affairs outreach. These materials address [REDACTED] —none of which is relevant to whether the merger will harm competition or the public interest under the Board's substantive review criteria.

Carl Garrison (VP – Network Planning & Ops)

BNSF seeks Mr. Garrison's deposition in connection with his role as [REDACTED] (UP_0038318 at -341). Union Pacific objects to the deposition of Mr. Garrison as duplicative of Eric Gehringer's testimony and/or Mr. Pincock's testimony, both of which have yet to be provided.

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Reserving all rights, Union Pacific suggests that the parties defer the issue of Mr. Garrison's deposition until after BNSF has taken the depositions of Mr. Gehringer and/or Mr. Pincock.

David Hughes (AVP – Joint Facilities & Interline Ops)

BNSF seeks Mr. Hughes's deposition, among other things, in connection with his role as [REDACTED] (UP_0038318 at - 341). Union Pacific objects to the deposition of Mr. Hughes as duplicative of Mr. Pincock's testimony, which has yet to be provided.

Reserving all rights, Union Pacific suggests that the parties defer the issue of Mr. Hughes's deposition until after BNSF has taken the deposition of Mr. Pincock.

Lance Fritz (former CEO)

Mr. Fritz is a non-party witness no longer employed by Union Pacific and has not provided written testimony in this matter. As a result, he is not subject to the Discovery Guidelines and BNSF's notice is ineffective as a procedural matter to compel Mr. Fritz's testimony. Union Pacific will not offer dates for Mr. Fritz's deposition.

Setting aside the procedural objection, the only documents BNSF cites to justify its request to depose Mr. Fritz are a September 2022 meeting with CN executives (UP_0199071) and an August 2020 meeting with CSX executives (UP_1784473). Those meetings occurred approximately three and five years before the UP/NS merger agreement was announced—well before any merger-specific planning, due diligence, or negotiation took place. They concern [REDACTED] unrelated to this transaction. Mr. Fritz left UP before the merger was conceived, had no role in negotiating or planning it, and BNSF has not identified a single document connecting him to the merger deal. General discussions about interline opportunities years before this merger was contemplated do not establish relevance under 49 C.F.R. § 1114.21.

If BNSF wants testimony about UP's current interline arrangements or how historical arrangements inform the merger, that information is available from current Union Pacific leadership—including CEO Vena, whose deposition has been offered—and from the extensive documentary record already produced.

Beth Whited (former President)

Ms. Whited is a non-party witness who departed Union Pacific on July 1, 2025. She has not provided written testimony in this matter. As a result, she is not subject to the Discovery Guidelines and BNSF's notice is ineffective as a procedural matter to compel Ms. Whited's testimony.

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NORFOLK SOUTHERN WITNESSES

John Orr (former EVP and Chief Operating Officer)

Mr. Orr is a non-party witness who left his employment at Norfolk Southern on May 31, 2026. Brian Barr was substituted for Mr. Orr as the sponsoring witness of the Operating Plan and adopted Mr. Orr's previously filed verified statement with Eric Gehringer of Union Pacific. Norfolk Southern therefore objects to the deposition of Mr. Orr as duplicative.

BNSF's notice is also ineffective under the Discovery Guidelines because Sidley Austin LLP does not represent Mr. Orr, as Applicants previously explained in their August 20, 2026 letter concerning deposition scheduling. Mr. Orr is represented by Cody Reaves of Torridon Law.

Yannik Thomas (VP – Network Planning & Optimization)

BNSF seeks Mr. Thomas's deposition in connection with, among other things, his role as [REDACTED] (UP_0038318 at -341). Mr. Thomas reports up through Brian Barr's organization, and NS therefore objects to the deposition of Mr. Thomas as duplicative of Mr. Barr's testimony, which will be provided on September 3. The scope of Mr. Thomas's examination must exclude matters duplicative of testimony provided by Mr. Barr.

Notwithstanding its objections and reserving all rights, Norfolk Southern will produce Mr. Thomas for deposition on nonprivileged matters within his knowledge. Mr. Thomas is available to be deposed on October 13.

Shawn Tureman (VP – Intermodal & Automotive Marketing)

BNSF seeks Mr. Tureman's deposition in connection with, among other things, his knowledge of past and current interline arrangements. To justify this deposition, BNSF points to email chains from 2020 and 2023 concerning then-existing interline service opportunities that are unrelated to this transaction (NS_00146206; NS_00163316). Mr. Tureman also reports up through Ed Elkins' organization, and Norfolk Southern therefore objects to the deposition of Mr. Tureman as duplicative of Mr. Elkins' testimony, which will be provided on September 9. The scope of Mr. Tureman's examination must exclude matters duplicative of testimony provided by Mr. Elkins.

Notwithstanding its objections and reserving all rights, Norfolk Southern will produce Mr. Tureman for deposition on nonprivileged matters within his knowledge related to interline arrangements and [REDACTED] with respect to downstream effects. Mr. Tureman is available to be deposed on October 20.

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Frank Voyack (VP – Government Relations)

The documents BNSF cites for Mr. Voyack do not bear on the competitive merits of the proposed merger. NS_00095625, NS_00126363, and NS_00126366 concern advocacy strategy and public messaging developed in anticipation of the proceeding. BNSF lists various topics that it intends “to explore” with the witness, but there is no basis for concluding that Mr. Voyack has knowledge of these topics, particularly where other deponents are plainly better positioned to respond. For example, one of the issues raised is “alternatives considered” to the transaction, but no link is made between Mr. Voyack and such alternatives. Mr. Voyack’s deposition would be duplicative of the many other depositions being taken in this proceeding, and BNSF has not established any need for his deposition.

Marybeth Flournoy (Director – Strategic Partnerships)

BNSF seeks Ms. Flournoy’s deposition in connection with, among other things, her role as a [REDACTED]. To justify a deposition, BNSF cites UP_0089651 at -52, [REDACTED]. BNSF further cites NS_00156165 at -67 to support discussion of how “shared industry assets may be treated post-merger,” although nothing in the cited slide demonstrates that the [REDACTED] referenced therein relate to “shared industry assets.”

Ms. Flournoy reports up through Ed Elkins’ organization. NS, therefore, objects to the deposition of Ms. Flournoy as duplicative of Mr. Elkins’ testimony, which will be provided on September 9. The scope of Ms. Flournoy’s examination must exclude matters duplicative of testimony provided by Mr. Elkins.

Notwithstanding its objections and reserving all rights, Norfolk Southern will produce Ms. Flournoy for deposition on nonprivileged matters within her knowledge related to [REDACTED], industrial development, and shared industry assets. Ms. Flournoy is available to be deposed on October 9.

Jason Zampi (EVP and Chief Financial Officer)

BNSF seeks Mr. Zampi’s deposition. To support its request, BNSF cites NS STB 00000567 at -584, and [REDACTED]. BNSF also cites a public analyst call where, not surprisingly, Mr. Zampi spoke in his role as NS’s Chief Financial Officer; NS STB 00001215, [REDACTED] and [REDACTED] NS STB 00001483, [REDACTED]. BNSF has not specifically demonstrated what information related to the Board’s substantive review criteria Mr. Zampi’s testimony would be probative of. Moreover, asking Mr. Zampi to repeat his public statements from an analyst call is cumulative.

Notwithstanding its objections and reserving all rights, Norfolk Southern will produce Mr. Zampi for deposition on nonprivileged matters within his knowledge of the transaction’s financial aspects. The examination should not be used to elicit testimony that merely repeats his public call statements. Mr. Zampi is available to be deposed on October 7.

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Unless dates have been offered above, Applicants expect BNSF to respond with narrowed, relevant, and particularized scope proposals for each witness before dates will issue. If the parties cannot reach agreement on scope and relevance, Applicants will seek appropriate relief from the Board. All rights, objections, and privileges are reserved.

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Sincerely,

/s/ Laura Flahive Wu

Laura Flahive Wu

*Attorney for Union Pacific
Corporation and Union Pacific
Railroad Company*

/s/ Carrie Mahan

Carrie Mahan

*Attorney for Norfolk Southern
Corporation and Norfolk Southern
Railway Company*

cc: ALJ Soulikias
Parties of Record

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Deposition Dates	Location	Status	Deponent	Title
July 29	Omaha	Taken	David Welch	General Director, Corporate Strategy, UP
July 30	Omaha	Taken	Mike Houston	Director, Corporate Strategy, UP
Aug. 20	Omaha	Taken	Aaron Pfeifer	General Director, Pricing & Equipment Management, UP
Aug. 21	Omaha	Taken	Jacob Thomas	General Director, Planning & Product Development, UP
Aug. 28	Omaha	Confirmed	Matthew Graham	General Director of Environmental Management, UP
Aug. 31	Omaha	Confirmed	Carrie Powers	VP, Controller and Chief Accounting Officer, UP
Sept. 1	Omaha	Confirmed	Grant Janke	Assistant VP, Capital Planning & Finance, UP
Sept. 2	Omaha	Confirmed	John Turner	SVP Operations – Northern Region, UP
Sept. 3	D.C.	Confirmed	Brian Barr	COO, NS
Sept. 4	D.C.	Confirmed	Maqui B. Parkerson	VP, Labor Relations, UP
Sept. 9	Omaha	Confirmed	Todd Rynaski	SVP Strategy
Sept. 9	D.C.	Confirmed	Ed Elkins	Executive VP and Chief Commercial Officer, NS

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Deposition Dates	Location	Status	Deponent	Title
Sept. 10	D.C.	Confirmed	David Lehlbach	AVP, Strategic Planning, NS
Sept. 10	Omaha	Rejected – Additional dates to be offered	Eric Gehringer	Executive VP – Operations, UP
Sept. 15	Omaha	Rejected – Additional dates to be offered	Kenny Rocker	Executive VP, Marketing & Sales, UP
Sept. 16	Omaha	Confirmed	Joshua Perkes	SVP and Chief Human Resources Officer, UP
Sept. 17	D.C.	Offered	Mark George	CEO, NS
Sept. 18	Omaha	Rejected – Additional dates to be offered	V. Jim Vena	CEO, UP
Sept. 24	Omaha	Accepted	Katherine N. Novak	General Director of Interline Operations, UP
Sept. 29	D.C.	Accepted	Mike McClellan	Chief Strategy Officer, NS
Sept. 30	Omaha	Offered	Dan McLaughlin	AVP – Marketing & Sales Ops, UP

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Deposition Dates	Location	Status	Deponent	Title
Oct. 7	Atlanta	Offered	Jason Zampi	EVP and Chief Financial Officer, NS
Oct. 9	D.C.	Offered	Marybeth Flournoy	Director – Strategic Partnerships, NS
Oct. 13	D.C.	Offered	Yannik Thomas	VP – Network Planning & Optimization, NS
Oct. 16	Omaha	Offered	Jennifer Hamann	EVP and Chief Financial Officer, UP
Oct. 20	D.C.	Offered	Shawn Tureman	VP – Intermodal & Automotive Marketing, NS

EXHIBIT 3

Filed under seal pursuant to the Protective Order