

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

312354

ENTERED

Office of Chief Counsel

September 16, 2026

September 16, 2026

By E-Filing

Part of

Public Record

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

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

Dear Judge Soulikias:

Applicants submit the following brief description of the issues to be resolved at the September 18, 2026, discovery conference, as well as a list of known attendees for each party.

I. Issues to be Resolved

A. Applicants' Motion to Compel Production Deadline for Targeted Collections of Non-Custodial Materials (UP-102/NS-101)

On September 10, 2026, Applicants moved to compel BNSF, CPKC, and CSX to produce no later than September 25, 2025, the targeted collection of non-custodial materials that these railroads committed to produce in written responses served more than three months ago. These materials include the targeted non-custodial collections of documents that each railroad agreed to produce in their June 15 and June 16 written responses to the following requests:

- **BNSF:** Request Nos. 4, 6-8, 16, and 22
- **CPKC:** Request Nos. 2-4, 6-10, 12-14, and 16-17
- **CSX:** Request Nos. 2-4

On September 15, 2026, BNSF, CPKC, and CSX each filed an opposition to Applicants' motion. BNSF-55; CPKC-49; CSXT-27. To address BNSF, CPKC, and CSX's failure to make timely production of the materials that each railroad previously committed to producing, Applicants respectfully request that Your Honor order BNSF, CPKC, and CSX to complete production of the promised materials no later than September 25, 2026.

COVINGTON

Hon. Jenifer J. Soulikias
September 16, 2026
Page 2

B. Motion to Compel Depositions (BNSF-52/CPKC-45/CSXT-24)

On September 3, 2026, BNSF, CPKC, and CSX moved to compel Applicants to schedule the depositions of five current and former Union Pacific employees. BNSF-52/CPKC-45/CSXT-24. On September 15, Applicants responded, explaining why the Motion to Compel the depositions of Lance Fritz, Rebecca Gregory, and Carl Garrison should be denied. UP-104/NS-104. (The parties have now scheduled deposition of Jeff Pinncock, and are in the process of conferring concerning the deposition of David Hughes.) Applicants respectfully request that Your Honor deny the Motion to Compel the depositions of these former and current Union Pacific employees.

C. CSX Motion to Compel (CSXT-26)

On September 10, 2026, CSX moved to compel (i) Norfolk Southern to reconstruct productions from prior proceedings; and (ii) Applicants to produce various customer-specific materials responsive to Requests 4-13 of CSX's Third Set of Discovery Requests. On September 10, Norfolk Southern responded to the first part of CSX's motion by opposing the request for relief. NS-103. On September 10, Applicants also responded to the second part of CSX's motion to confirm that they had agreed to conduct reasonable searches for materials responsive to the identified requests, which resolves the dispute.

D. CPKC Motion to Compel (CPKC-47)

On September 10, 2026, CPKC moved to compel Applicants to produce four categories of documents or information in response to CPKC's Second Set of Discovery Requests to Union Pacific and Third Set of Discovery Requests to Norfolk Southern (CPKC-47). On September 15, 2026, Applicants responded, agreeing to produce a recording responsive to the request related the Vena Statement at the SWARS 2026 Annual Meeting, and opposing the relief requested by CPKC with respect to the Rocker Statement, the Orr Resignation Documents, and the Merger Agreement Drafts. Applicants respectfully request that Your Honor deny the Motion to Compel.

II. Issues Held in Abeyance

A. Remainder of Applicants' Motion to Compel Non-Applicant Railroads to Make Reciprocal Productions of Data (UP-75/NS-73)

Applicants respectfully request that the remainder of this motion continue to be held in abeyance while Applicants continue to work with the other railroads to ensure they comply with their production obligations.

COVINGTON

Hon. Jenifer J. Soulikias

September 16, 2026

Page 3

III. List of Attendees

A. Union Pacific

1. Laura Flahive Wu
2. Kevin M. Kelly
3. Michael L. Rosenthal
4. Michael Maya

B. Norfolk Southern

1. Matthew J. Warren
2. William Mullins
3. Marc Korman
4. Spencer Naake
5. Stephen S. Laudone

C. BNSF

1. Daniel Donovan
2. McClain Thompson
3. Tim Strafford

D. CPKC

1. Joseph J. Matelis
2. David L. Meyer
3. Noah P. M. Stern

E. CSX

1. Eric Enson
2. John Scheib
3. Luke van Houwelingen
4. Eric Fanchiang

COVINGTON

Hon. Jenifer J. Soulikias
September 16, 2026
Page 4

Sincerely,

/s/ Matthew J. Warren
Matthew J. Warren
Stephen S. Laudone
William A. Mullins
Spencer M. Naake
Carrie Mahan
*Attorneys for Norfolk Southern
Corporation and Norfolk
Southern Railway Company*

/s/ Laura Flahive Wu
Laura Flahive Wu
Kevin M. Kelly
*Attorneys for Union Pacific
Corporation and Union
Pacific Railroad Company*

cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th 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