

September 16, 2026
312361

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

BNSF-56/CPKC-50/CSXT-28
ENTERED
Office of Chief Counsel
September 16, 2026
Part of
Public Record

Re: STB Docket No. FD 36873 – Issues for Resolution at September 18 Conference

Dear Judge Soulikias:

BNSF, CPKC, and CSXT (“Non-Applicant Railroads”) write regarding the agenda for the upcoming September 18, 2026 discovery conference.

I. CPKC’s Motion to Compel (CPKC-47)

CPKC moved to compel UP and NS to (1) produce audio or video recording of Jim Vena’s remarks at the Southwest Association of Rail Shippers (“SWARS”) 2026 Annual Meeting and any related materials; (2) describe the basis for Kenny Rocker’s July 9, 2026 allegation that customers who supported the proposed merger “faced real backlash” from CPKC and BNSF; (3) produce materials related to the departure of NS COO John Orr, a declarant in this proceeding; and (4) produce drafts of regulatory effort provisions of the merger agreement like Section 5.8 of the Merger Agreement, which describes what regulatory conditions give UP the right to walk away from the deal. CPKC-47 at 1-2. Because UP agreed to produce video of Vena’s comments at the SWARS meeting in its opposition yesterday, *see* UP-105/NS-105, CPKC requests that this portion of its motion be held in abeyance pending the promised production. UP and NS opposed the rest of CPKC’s motion on relevance and proportionality grounds. *Id.* at 2-4.

II. Non-Applicant Railroads’ Motion to Compel UP Depositions (BNSF-52/CPKC-45/CSXT-24)

Non-Applicant Railroads moved to compel the depositions of five senior leaders at Union Pacific who have personal knowledge about the benefits and harms of the proposed merger: Rebecca Gregory, Jeff Pincock, David Hughes, Carl Garrison, and Lance Fritz. *See* BNSF-52/CPKC-45/CSXT-24. Non-Applicant Railroads showed through documents and testimony that each witness has unique and relevant information bearing directly on the Board’s public interest analysis, including information about UP’s diversion projections, Committed Gateway Pricing, operations planning, and UP’s previous evaluations of railroad mergers. *See id.* at 2-4. UP has agreed to make Pincock available for deposition. UP continues to oppose depositions of Gregory and Garrison. UP also opposes a deposition of Fritz, although Fritz himself has apparently not. *See* UP-104/NS-104 at 2 (suggesting that UP’s lawyers also represent Fritz and UP’s lawyers “may” oppose a subpoena to compel his testimony). UP and NS further replied

that the motion should be denied as to Gregory and Garrison because Applicants contend their testimony is “likely” duplicative of other deponents. *Id.* at 2-4.¹

III. CSXT’s Motion to Compel Cross Production of Documents (CSXT-26)

CSXT moved to compel UP and NS to cross-produce documents that NS produced in the CP/KCS proceeding and in the various proceedings related to the Norfolk & Portsmouth Belt Line Railroad (NPBL), and to produce documents concerning interline services for three specific customers. *See* CSXT-26 at 2-4. CSXT argued that the CP/KCS and NPBL documents are relevant to assessing the impact of end-to-end mergers and competitive effects on NPBL, and that there is no meaningful burden to produce them since they have already been produced elsewhere. *Id.* at 2-3. CSXT understands that UP and NS have agreed to conduct reasonable searches relating to interline services for three specific customers. *See* UP-106/NS-106. Subject to CSXT’s review of the documents UP and NS produce and without waiving any rights as to the adequacy of that production, CSXT agrees that the parties’ dispute on this issue has been resolved for now and can be set aside. Thus, the only remaining dispute is cross-production of documents that NS produced in the STB’s CP/KCS proceeding and in the STB and federal district court litigation relating to NPBL.

IV. UP and NS’s Motion to Compel a Deadline for Non-Applicant Railroads’ Document Productions (UP-102/NS-101)

UP and NS moved to set a September 25 deadline for BNSF, CPKC, and CSXT to substantially complete their document productions in response to a certain set of requests. *See* UP-102/NS-101 at 1. While opposing a deadline of next week as unnecessary and artificial, BNSF said that it will continue to make rolling productions (including by October 2 and October 16), and that BNSF will substantially complete its productions well before Applicants’ next merits submission in five months. BNSF-55 at 1, 3. CPKC and CSXT have also agreed to make rolling productions. *See* CSXT-27; CPKC-49.

¹ As Applicants noted in their letter: The parties are discussing the request for the Hughes’ deposition on a separate track. The parties agree that the pending motion as it relates to Hughes’ deposition is not ripe for Friday’s hearing.

LIST OF ATTENDEES

A. BNSF

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

B. CSXT

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

C. CPKC

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

Based on recent hearings:

A. Union Pacific

1. Michael Rosenthal
2. Laura Flahive Wu
3. Kevin Kelly

B. Norfolk Southern

1. Matthew Warren
2. Carrie Mahan
3. Stephen Laudone
4. William Mullins
5. Spencer Naake

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Respectfully,

/s/ Dan Donovan

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SULLIVAN & CROMWELL LLP
Counsel for CPKC

/s/ Eric Enson

Eric Enson
CROWELL & MORING LLP
Counsel for CSXT

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 Williams

Attorney for BNSF Railway Company
September 16, 2026