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ENTERED

Office of Chief Counsel

September 24, 2026 September 24, 2026
 Part of
 Public Record

By E-Filing

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:

This Motion asks Your Honor to require CPKC and CSX to disclose by October 5, 2026 their proposed parameters for the searches they propose to conduct to identify custodial documents responsive to Applicants' First and Second Sets of Discovery Requests. Although CPKC and CSX both have agreed to produce custodial documents, neither has provided the parameters it proposes to use for its searches, and neither has committed to provide all such information by a date certain.¹

Applicants need to understand the custodial document searches that CPKC and CSX propose to conduct so that Applicants can negotiate, and if necessary seek resolution from Your Honor of any disputes relating to, the parameters of the searches. Providing the proposed parameters by October 5 will enable the parties to request and review iterative search term reports (which should be provided within 5 days for new custodians and within 3 days for agreed-upon custodians) in time to conclude negotiations by the October 22 deadline to raise disputes for the October 30 discovery conference. The resolution of any disputes on or shortly after the latter date will give CPKC and CSX sufficient time to conduct the searches and produce the documents in advance of depositions that Applicants seek to take in December. The schedule thus provides sufficient time to conduct this process in an orderly fashion, but only if the process begins promptly via the timely provision of CPKC's and CSX's proposed search parameters.

BACKGROUND

Applicants served their First and Second Sets of Discovery Requests on CPKC and CSX on May 29 and June 1, 2026. CPKC and CSX served written responses on June 15 and 16, 2026.

¹ In contrast to CPKC and CSX, BNSF has agreed to provide sufficient information about its proposed custodial searches on an adequate schedule, and therefore this motion does not seek relief as to BNSF. For the reasons set forth herein, Your Honor should direct CPKC and CSX to make commitments that are substantially similar to those BNSF has made.

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Applicants followed up repeatedly about the documents CPKC and CSX intended to produce, including in meet-and-confer sessions on June 30, August 6, August 24, and September 22, and in correspondence on July 6, July 13, August 12, September 9, September 11, and September 17. Non-Applicants' responsive applications and "comments, protests, requests for conditions, and any other evidence and argument in opposition to" the proposed merger are due on November 18, 2026, and Applicants' responses and rebuttals are due on February 16, 2027. Decision No. 30 at 13. Applicants have noticed depositions of CPKC and CSX witnesses beginning in December 2026.

Despite initially suggesting that they did not intend to make productions of custodial documents—and instead indicating that they would only make "go get" productions—CPKC and CSX since have acknowledged that they will need to produce custodial documents. Applicants therefore have sought to understand the scope of the custodial searches that they propose to undertake. For example, on September 11, 2026, Applicants asked CPKC and CSX to identify, among other information, **(i)** the RFPs (or other categories of documents or information) in connection with which each railroad proposes to conduct and not to conduct custodial searches, **(ii)** "the search terms you are using," and **(iii)** "the date cutoffs you are using." *See* Ex. A at 7–8; Ex. B at 4–5. Applicants additionally provided CPKC and CSX with lists of proposed custodians and asked each **(iv)** to confirm that it possesses ESI for each of the former employees on its list, and **(v)** to identify any of the proposed custodians whose documents it refuses to search. *See id.* Applicants also have asked CPKC and CSX **(vi)** to provide hit reports for the proposed search terms, dates, and custodians that they propose to use for their searches. *See* Ex. A at 2–3; Ex. B at 2.

Applicants conferred by videoconference with CPKC and CSX on September 22. Neither provided any of the information Applicants requested during the videoconferences or thereafter (with the exception of an identification of four custodians by CPKC), and neither has committed to provide the full set information by a date certain. CSX has stated that it "will do [its] best to provide [its] proposal during the week of October 13," but without search term hit reports, which CSX proposes to send "thereafter." *See* Ex. B at 1. CPKC has stated that it expects to provide some information by October 5, but that it "anticipates being able to provide" proposed search terms and hit reports only by October 16, and it has indicated that even that date is not firm. *See* Ex. A at 1.

ARGUMENT

Applicants need the six pieces of information identified in items (i) through (vi) above so that the parties can start the process of resolving the scope of the custodial document searches that CPKC and CSX will conduct in response to Applicants' First and Second Sets of Discovery Requests. CPKC and CSX do not dispute that they must provide these six pieces of information. Rather, they have indicated that they simply will not provide the information any time soon or by any fixed deadline.

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The positions taken by CPKC and CSX are not tenable in light of the schedule for this proceeding. Working backwards from the February 16, 2027 deadline for Applicants' responses and rebuttals, depositions of CPKC and CSX witnesses must take place in December and January. Custodial documents must be produced at least 10 business days in advance of each deposition. *See* Decision No. 24 ¶ C.6. For those productions to be feasible, the scope of the searches that will lead to the productions must be set by at least three to four weeks before the first production deadlines, *i.e.*, by early November. That means that the parties should seek to raise any disputes relating to the searches in time for resolution at the October 30 discovery conference. For that to be possible, the parties need to be able to have well-informed conversations in advance of the October 22 deadline for the filing of motions to be heard at the October 30 conference. To have those conversations, Applicants need the information they have requested by October 5 so that they can begin the process of requesting and reviewing iterative hit reports (which should be provided within 5 days for new custodians and within 3 days for agreed-upon custodians).

To be clear, Applicants are not requesting that CPKC and CSX produce any documents by October 5. All Applicants are requesting at this point is that Your Honor order CPKC and CSX to provide in a timely manner the information that Applicants have requested about CPKC's and CSX's proposed custodial searches. That information is necessary so that the parties can have informed—and timely—conversations about the appropriateness of CPKC's and CSX's plans, and so that any disputes about those plans can be resolved with sufficient time for CPKC and CSX to complete the resulting productions before depositions in December.

Contrary to CSX's assertions, *see* Ex. B at 1, the information Applicants seek is not burdensome to provide. All that CSX needs to do is come up with lists of proposed search terms, dates, and custodians whose documents it plans to search (including by eliminating any former employees for whom it no longer has any ESI); determine what information it does and does not agree to search for; and provide the resulting hit reports.²

Moreover, for most of the information Applicants have requested, Applicants are willing to permit CPKC and CSX to make initial proposals. For example, Applicants have not proposed sets of search terms and instead have asked that CPKC and CSX identify the terms that they propose to use to search their own documents.

The one exception to this principle is that Applicants have identified proposed custodians for both CPKC and CSX. A summary of the basis for the inclusion of each custodian is set forth in **Appendices A and B**. Even as to the custodians Applicants have listed, however, Applicants have invited CPKC and CSX to identify any that they contend do not possess responsive documents, are likely to possess only duplicative materials, or are not appropriate custodians. To date, neither railroad has identified any custodian that it asserts falls into any of those categories.

² CPKC has agreed to take some of these steps by October 5, but it has not agreed to a workable deadline for proposed search terms and hit reports.

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CONCLUSION

For the foregoing reasons, Applicants respectfully request that Your Honor grant this motion and order CPKC and CSX to provide the information identified in items (i) through (vi) above by no later than October 5, 2026.

Respectfully submitted,

/s/ Laura Flahive Wu

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cc: All Parties of Record

Enclosures

Appendix A
Applicants’ List of Proposed CPKC Custodians

Note: Individuals whose names are marked with an asterisk (*) have been agreed upon by CPKC to be included as custodians. *See* Ex. A at 2 (confirming that “CPKC’s custodial search will include Keith Creel, Mark Redd, John Brooks, and James Clements”).

Name	Title	Relevance
Keith Creel*	President and Chief Executive Officer, CPKC	- As President and CEO, Creel has direct oversight over CPKC’s strategic direction, operations, and competitive positioning. He led CPKC through the STB proceeding that resulted in the Board’s approval of the CP-KCS combination, giving him direct experience with the regulatory standards applicable to major rail mergers. - Creel has knowledge of CPKC’s assessment of and response to the proposed UP-NS merger, including CPKC’s internal analyses of the merger’s anticipated impact on CPKC’s network operations, competitive position, and ability to serve its customers. - Creel has publicly stated that the merger “is unnecessary and falls well short of meeting the high benchmark set out in the STB’s updated 2001 major merger rules,” that “[a] combined UP-NS could place nearly 50 percent of U.S. freight rail traffic in the hands of a single company,” and that additional mergers are “inevitable” if the UP-NS transaction is approved.
Mark Redd*	Executive Vice President and Chief Operating Officer, CPKC	- As COO, Redd has direct oversight of CPKC’s network operations, including transportation, engineering, mechanical, and service design functions across CPKC’s approximately 20,000-mile transnational network. He has served as Executive Vice President of Operations since September 2019 and was named Chief Operating Officer in April 2023. - Redd has knowledge of CPKC’s operational assessment of and response to the proposed UP-NS merger, including CPKC’s internal analyses of the merger’s anticipated impact on CPKC’s network operations, service performance, and competitive position, as well as CPKC’s evaluation of the merger’s effects on network fluidity, congestion, and service reliability. - Redd has publicly stated that “there is a way to do this even without a merger,” pointing to the interline service provided

Name	Title	Relevance
		by CPKC and CSX in Atlanta, New Jersey, and Florida, and has recent experience implementing the combination of two Class I railroads (the CP-KCS merger).
John Brooks*	Executive Vice President and Chief Marketing Officer, CPKC	- As CMO, Brooks is responsible for CPKC’s commercial business units and leads the company’s sales and marketing professionals across North America. He has held senior marketing responsibilities across multiple lines of business, including coal, chemicals, merchandise products, grain, and intermodal. - Brooks has knowledge of CPKC’s commercial assessment of and response to the proposed UP-NS merger, including CPKC’s evaluation of the merger’s anticipated impact on shipper choices, rail pricing, interline service options, and competitive conditions across CPKC’s network. - Brooks has publicly stated that the “UP-NS merger would extinguish the independence of two Class I rail competitors, reducing competition across the United States” and that the UP-Canadian National commercial agreements announced in connection with the merger would have “minimal impact” on CPKC.
James Clements*	Executive Vice President, Strategic Planning and Corporate Services, CPKC	- Clements leads CPKC’s strategic government relations, communications, and multi-year integration and change management efforts. Clements has more than 25 years of experience at CPKC (formerly Canadian Pacific), including extensive understanding of the company’s customers, processes, and systems, and leadership of CP-KCS integration planning. - As the executive responsible for government relations and strategic planning, Clements has knowledge of CPKC’s regulatory engagement strategies, communications with the STB and government officials regarding the proposed UP-NS merger, and CPKC’s internal assessment of the merger’s effects on rail industry structure and competitive dynamics.
Nadeem Velani	Executive Vice President and Chief Financial	As CFO, Velani oversees CPKC’s financial operations, including long-term strategic planning, financial planning, investor relations, reporting and accounting systems, procurement, treasury, and tax. He has served as CFO since

Name	Title	Relevance
	Officer, CPKC	2016, first of Canadian Pacific and then of the combined CPKC. • Velani has knowledge of CPKC’s financial assessment of and response to the proposed UP-NS merger, including CPKC’s internal financial analyses of the merger’s anticipated impact on CPKC’s revenues, competitive position, and ability to serve its customers, as well as CPKC’s financial modeling of alleged competitive harm scenarios. • Velani has publicly stated: “[W]e don’t think that putting that much power in the hands of one combined railroad is good for the economy. It’s not good for the supply chain. It puts a lot of risk . . . a lot of pricing power in the hands of one railroad.”
Larry Lloyd	Assistant Vice President, U.S. Government Affairs, CPKC	• As AVP of U.S. Government Affairs, Lloyd oversees CPKC’s engagement with federal lawmakers, regulatory agencies, and government stakeholders in the United States. • Lloyd has knowledge of CPKC’s communications with the STB, members of Congress, and other government officials regarding the proposed UP-NS merger, including CPKC’s advocacy efforts, policy positions, and coordination with state legislatures and other stakeholders opposing the merger.
Patrick Ottensmeyer	Former President and Chief Executive Officer, KCS	• Ottensmeyer served as President and CEO of Kansas City Southern from 2015 until April 14, 2023, upon the completion of the combination of Canadian Pacific and KCS that created CPKC. He led KCS through the CP-KCS merger process, including the STB regulatory proceedings, giving him direct experience with the regulatory standards applicable to major rail mergers. • Ottensmeyer has historical knowledge of KCS’s strategic direction, competitive positioning, and assessment of rail industry consolidation. He previously served as Executive Vice President of Sales and Marketing at KCS (2008-2015) and Executive Vice President and Chief Financial Officer (2006-2008), giving him broad knowledge of KCS’s commercial strategy, customer relationships, and financial operations.

Name	Title	Relevance
Michael Upchurch	Former Executive Vice President and Chief Financial Officer, KCS	- Upchurch served as Executive Vice President and Chief Financial Officer of KCS from October 2008 until April 2023, with oversight of KCS’s financial operations, pricing strategy, revenue performance, and capital allocation. - Upchurch has knowledge of KCS’s financial assessment of the CP-KCS merger, including internal financial analyses, modeling, and the financial implications of rail industry consolidation. He received a retention award in connection with the CP-KCS merger, reflecting his key role in the merger process and possession of information material to major rail transactions.
Jeffrey Songer	Former Executive Vice President and Chief Operating Officer; Former Executive Vice President, Strategic Merger Planning, KCS	- Songer served as Executive Vice President and Chief Operating Officer of KCS prior to the merger, with direct oversight of KCS’s network operations, transportation, engineering, and mechanical functions. He gained more than 18 years of experience at KCS in operations, engineering, and finance. - Songer was named Executive Vice President, Strategic Merger Planning in April 2021, with primary responsibility for managing the merger application process for the CP-KCS combination, including developing the joint network-wide operating plan, safety integration plan, environmental impact statement, and labor impact plan. - Songer participated in Surface Transportation Board approval hearings in Washington, D.C. and led merger and integration efforts for the CP-KCS merger, giving him direct knowledge of the STB’s merger review standards and procedures.
Michael Naatz	Former Executive Vice President and Chief Marketing Officer, KCS	- Naatz served as Executive Vice President and Chief Marketing Officer of KCS from October 2018 until the CP-KCS merger, responsible for KCS’s commercial strategy, customer relationships, sales, and marketing across all business lines. He previously served as Senior Vice President, Operations Support and Chief Information Officer. - Naatz has knowledge of KCS’s commercial assessment of the CP-KCS merger and the competitive landscape in the rail industry, including KCS’s evaluation of shipper options, pricing dynamics, and interline service arrangements. He

Name	Title	Relevance
		received a retention award in connection with the CP-KCS merger, reflecting his key role in the merger process.

Appendix B
Applicants' List of Proposed CSX Custodians

Name	Title	Relevance
Stephen Angel	President and Chief Executive Officer	- As President and CEO, Angel has oversight of CSX's strategic direction, operations, and competitive positioning, including CSX's public opposition to the proposed transaction and its evaluation of alternative merger transactions. - Angel has knowledge of CSX's assessment of the merger's effects on eastern U.S. rail competition, CSX's evaluation of Applicants' claimed public benefits, and CSX's development of proposed competitive conditions and responsive applications. - Angel has publicly stated that CSX's customers "depend on a competitive and healthy freight rail system" and that the merger would create challenges and opportunities for CSX.
Kevin Boone	Executive Vice President and Chief Financial Officer	- As CFO, Boone oversees CSX's financial operations, investor relations, procurement, tax, and treasury, and has extensive experience in finance, accounting, and mergers and acquisitions. - Boone has knowledge of CSX's financial and commercial assessment of the proposed merger, including CSX's evaluation of the merger's effects on rail pricing, shipper costs, and financial analyses supporting CSX's proposed competitive conditions and responsive applications. - Boone has publicly stated that the merger would affect CSX's established service partnerships, reasoning that those relationships have worked because there has not been one party in control.
Michael Cory	Executive Vice President and Chief Operating Officer	- As COO, Cory oversees CSX's operations strategy and coordinates performance across the Transportation, Mechanical, and Engineering departments, with 39 years of railroad experience, including service as CN's EVP and COO. - Cory has knowledge of CSX's operational capabilities, network capacity, and service performance, and his experience implementing scheduled railroading at CN gives him unique knowledge of railroad integration and related service issues.

Name	Title	Relevance
		• Cory has knowledge of CSX’s assessment of the merger’s operational effects, including impacts on interchange patterns, competitive service alternatives, network congestion, and potential service disruptions.
Eric Smith	Head of Strategy	• As Head of Strategy, Smith leads CSX’s response to the proposed UP-NS merger, with prior experience leading CSX’s Industrial Products business and TRANSFLO transloading business. • Smith has knowledge of CSX’s strategic assessment of the merger’s impact, the analyses underlying CSX’s characterization of the merger as causing “permanent, structural harm,” and CSX’s planned responsive applications, including the KC-ESL divestiture and Eastern Pennsylvania trackage rights.
Maryclare Kenney	Senior Vice President and Chief Commercial Officer	• As CCO, Kenney leads CSX’s commercial organization, overseeing growth strategies, customer service, and business development, with extensive experience in intermodal and automotive sales. • Kenney has knowledge of CSX’s competitive position, customer relationships, pricing dynamics, and the alleged commercial impact the proposed merger would have on CSX’s ability to compete for freight traffic, particularly intermodal movements. • Kenney has publicly stated that the merger would cause an imbalance in rail competition by eliminating options for shippers.
Tom Livingston	Vice President, Government and Community Affairs	• Livingston serves as Vice President of Government and Community Affairs at CSX, overseeing the company’s engagement with federal lawmakers, state legislatures, regulatory agencies, and community stakeholders across CSX’s 23-state network. • Livingston has knowledge of CSX’s communications with the STB, members of Congress, and other government officials regarding the proposed UP-NS merger, including CSX’s advocacy positions, regulatory strategy, and coordination with other stakeholders.

Name	Title	Relevance
Stephen Flippin	Assistant Vice President, Federal Affairs	• Flippin serves as Assistant Vice President of Federal Affairs at CSX, responsible for the company’s engagement with federal legislators and regulatory bodies on transportation policy matters. • Flippin has knowledge of CSX’s federal regulatory strategy and communications with the STB and Congress regarding the proposed UP-NS merger, including CSX’s advocacy efforts and policy positions.
Farrukh Bezar	Former Senior Vice President and Chief Strategy Officer	• Bezar served as Senior Vice President and Chief Strategy Officer at CSX from May 2019, leading the development of strategic initiatives to support CSX’s growth and value creation for customers and shareholders. • Bezar has more than 25 years of strategic leadership experience in the transportation and logistics industry, including prior experience at the Atchison, Topeka and Santa Fe Railway Company, giving him broad knowledge of rail industry competitive dynamics and consolidation. • Bezar has knowledge of CSX’s strategic assessment of and response to the proposed UP-NS merger, including CSX’s internal analyses of the merger’s anticipated impact on CSX’s competitive position and ability to serve its customers.
James Foote	Former President and Chief Executive Officer	• Foote served as President and CEO of CSX from December 2017 until September 2022, leading CSX through its implementation of precision scheduled railroading and achieving record operating and financial performance. • Foote had more than 40 years of diverse railroad industry experience in operations, marketing, and finance, including senior roles at Canadian National Railway, giving him direct experience with Class I railroad competitive dynamics and regulatory matters. • Foote has historical knowledge of CSX’s strategic direction, competitive positioning, and assessment of rail industry consolidation, including CSX’s evaluation of the merger landscape and competitive dynamics among Class I railroads.

Name	Title	Relevance
Joseph Hinrichs	Former President and Chief Executive Officer	• Hinrichs served as President and CEO of CSX from September 2022 until September 2025, succeeding James Foote and overseeing CSX’s continued execution of its operating model and growth strategies. • Hinrichs has knowledge of CSX’s assessment of and response to the proposed UP-NS merger, including CSX’s strategic analysis of the merger’s anticipated impact on CSX’s competitive position, network operations, and ability to serve its customers. • Hinrichs has direct knowledge of the regulatory standards applicable to major rail mergers through his oversight of CSX’s regulatory affairs and engagement with the STB and other government officials regarding industry consolidation matters.
Sean Pelkey	Former Executive Vice President and Chief Financial Officer	• Pelkey served as Executive Vice President and Chief Financial Officer at CSX from January 2022 until October 2025, overseeing all financial operations, including accounting, financial planning, investor relations, procurement, tax, and treasury. • Pelkey joined CSX in 2005 and held various positions in capital markets, performance analysis, IT finance, and investor relations, giving him deep institutional knowledge of CSX’s financial operations and competitive position. • Pelkey has knowledge of CSX’s financial assessment of and response to the proposed UP-NS merger, including CSX’s internal financial analyses of the merger’s anticipated impact on revenues, pricing, shipper costs, and competitive position.
Edmond Harris	Former Executive Vice President of Operations	• Harris served as Executive Vice President of Operations at CSX from January 2018 to 2020, responsible for mechanical, engineering, transportation, and network operations across CSX’s 20,000-mile network. • Harris has more than 40 years of railroad industry experience in an operating capacity, including nearly two decades at Illinois Central and Canadian National, and served as Chief Operating Officer at Canadian Pacific from 2010 to 2012, giving him direct experience implementing precision scheduled railroading at multiple Class I railroads.

Name	Title	Relevance
		Harris has knowledge of CSX’s operational assessment of rail industry consolidation, including network operations, service performance, and competitive position.
Jamie Boychuk	Former Executive Vice President of Operations	- Boychuk served as Executive Vice President of Operations at CSX from October 2019 until August 2023, responsible for transportation, mechanical, engineering, intermodal, and network operations. - Boychuk joined CSX in 2017 and played a key role in the implementation of scheduled railroading, previously serving as Vice President of Scheduled Railroading and Senior Vice President of Network Operations, driving improvements in network fluidity and service performance. - In his role at CSX, Boychuk had knowledge of CSX’s operational assessment of rail industry dynamics, including network operations, service design, and the efficiencies achievable through operational improvements without a merger.
Mark Wallace	Former Executive Vice President, Sales and Marketing	- Wallace served as Executive Vice President, Sales and Marketing at CSX from July 2018 until his passing in November 2021, delivering strategies that advanced CSX’s sales and marketing organization and helping the company capitalize on service improvements. - Wallace worked in the railroad industry for 25 years, including service at Canadian National Railway and Canadian Pacific Railway alongside E. Hunter Harrison, giving him deep knowledge of Class I railroad commercial strategy, customer relationships, and competitive positioning. - In his role at CSX, Wallace had historical knowledge of CSX’s commercial assessment of the rail industry landscape, including shipper options, pricing dynamics, and interline service arrangements.

EXHIBIT A

From: Judge, Kiera S. <judgeks@sullcrom.com>
Sent: Thursday, September 24, 2026 3:38 PM
To: Kelly, Kevin; Matelis, Joseph J.; Maya, Michael; Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Magcale, Jamie Dominique U; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; OpalDisco
Cc: David Meyer; Stern, Noah P. M.; Clyburn, Rachel P.
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]

Kevin,

We anticipate being able to provide the information you're requesting by October 16 and will let you know if we're not on track to meet that date as we get closer to it. But we cannot commit to that date given the complexities involved in custodial productions. If you want to file a motion, that's fine and we will explain the same thing to Judge Soulikias.

Thanks,

Kiera S. Judge

(202) 956-7611 (Office) | (732) 648-5426 (Cell)

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, September 24, 2026 2:39 PM
To: Judge, Kiera S. <judgeks@sullcrom.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; zzExt-dludwin <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Kiera,

Can CPKC agree to provide items 2 and 6 by October 9? Please let us know within the next 90 minutes so that we hopefully can avoid a motion on this.

Best,

Kevin

Kevin Kelly

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From: Judge, Kiera S. <judgeks@sullcrom.com>

Sent: Thursday, September 24, 2026 2:28 PM

To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]

Kevin,

CPKC expects to provide a proposal regarding items 1, 3, and 5, by October 5.

While CPKC can't commit that it will be in a position to fully respond to items 2 and 6 by October 5, we will endeavor to provide you this information as soon as it is available. As we have told you previously, CPKC is working diligently to process the custodial data necessary to provide a meaningful search term proposal with hit counts. We anticipate utilizing search terms and a review process similar to Applicants' process.

CPKC's custodial search will include Keith Creel, Mark Redd, John Brooks, and James Clements. We will provide you our view about other potential custodians as our assessment of your requests continues.

Please let us know when you have an update on the questions we raised, including about additional discovery.

Best,

Kiera S. Judge

(202) 956-7611 (Office) | (732) 648-5426 (Cell)

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Wednesday, September 23, 2026 4:27 PM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; zzExt-dludwin <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer

Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S.

<judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

Thank you for speaking yesterday. We write to follow up on our request that CPKC commit to providing its proposal for custodial document searches in response to Applicants' First and Second Discovery Requests by a date certain. To move this process along, we request that CPKC confirm that it will provide its proposal by October 5, 2026, and that the proposal will do the following:

1. Identify the RFPs in response to which you do and do not propose to conduct custodial searches (as well as any buckets or categories of otherwise responsive documents for which you do not intend to perform custodial searches);
2. Identify the search terms that you propose to use to search for responsive custodial documents;
3. Identify the date ranges that you propose to apply to your proposed searches;
4. Identify the custodians whose documents you propose to search;
5. Identify any custodians that we identified in our September 11, 2026 email for whom you do not possess ESI; and
6. Provide hit reports for the proposed search terms, dates, and custodians that you propose to use for your custodial searches.

We ask that you please provide the requested confirmation by 10 am Eastern tomorrow in light of the 6 pm Eastern filing deadline for the next round of discovery motions.

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Monday, September 21, 2026 6:15 PM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S.

<judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

We will send an invite to meet and confer tomorrow morning at 10 ET. Please provide the information we have requested ahead of that call. It will help to narrow the scope of any disputes, including with respect to the specific custodians that we have requested.

We can also discuss the Orr documents at that time.

Best,

Kevin

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Monday, September 21, 2026 11:47 AM

To: Kelly, Kevin <Kkelly@cov.com>; Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]

Kevin,

We are mindful of the discovery guidelines and what they say about attempting to meet within four days of requests for meet-and-confer sessions. Despite them, CPKC has sought to accommodate Applicants' scheduling requests when we raised questions about Applicants' progress on responses CPKC's discovery requests, which are of course more time sensitive given the upcoming November deadline. For instance, just last month, CPKC requested Applicants to provide availability for a meet and confer about CPKC's discovery requests. We asked for your availability on August 12. Applicants waited 7 days to even offer dates, and then the only date that was offered was August 24. And I am sure you recall that

Applicants often took markedly longer to respond to our requests to meet and confer over the course of the previous ten months during which CPKC's requests for discovery have been outstanding.

With regard to the questions raised in your email, we have already told you that CPKC intends to conduct a custodial search and will provide Applicants additional details about that process. And we will of course be providing a report in response to the Judge's order. As a preview, we intend to complete our responses on a quicker schedule than Applicants, whose productions are still not done ten months after CPKC's December 2025 requests and four+ months after Applicants' filing of the amended application.

Nonetheless, if Applicants are now choosing to insist on meeting and conferring before Friday, we are available for a discussion on Tuesday morning between 9:30 and 11. Your offered window does not work because I am travelling starting Tuesday afternoon and don't get back to DC until late Thursday.

Finally, please let us know what limits you had in mind when you asked the Judge for a meet and confer respecting our request relating to Mr. Orr. In our view, that request is the more time sensitive one given the upcoming deadline to file comments.

Joe

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, September 18, 2026 4:52 PM

To: Stern, Noah P. M. <sternn@sullcrom.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; zzExt-dludwin <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah,

The Discovery Guidelines call for meet and confers to take place within 4 days. Because you are not agreeing to meet with us within that timeframe, we reserve the right to seek appropriate relief from the ALJ. We would prefer, however, not to have to take that step without speaking; we therefore reiterate our request that you provide times when someone on your team can be available on Tuesday or Wednesday. If there is truly no one who can speak with us either day, please let us know if you can speak on 9/24.

Best,

Kevin

Kevin Kelly

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One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956

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From: Stern, Noah P. M. <sternn@sullcrom.com>

Sent: Thursday, September 17, 2026 7:53 PM

To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]

Kevin,

We are not available on the dates you proposed. We are available to meet and confer on September 25 at any time after 2:30 PM (ET). Please let us know if a time in that window works for you.

Best,

Noah

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, September 17, 2026 10:42 AM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; zzExt-dludwin <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

We have not received a response to the email below. Please let us know when you are available to meet and confer about this between mid-day on Tuesday and the end of the day on Wednesday.

On the same call, in addition to discussing the information we requested in our September 11 email, we also would like to discuss a schedule for (1) search term hit reports, (2) search term and custodian negotiations, (3) briefing and hearing of any disputes relating to the foregoing, (4) the commencement of custodial productions, and (5) substantial completion of custodial productions.

We look forward to receiving your availability for next Tuesday and Wednesday.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, September 11, 2026 5:02 PM

To: Matelis, Joseph J. <Matelisi@nullcrom.com>; Stern, Noah P. M. <sternn@nullcrom.com>; Judge, Kiera S. <judgeks@nullcrom.com>; Aluise, Dylan M. <aluised@nullcrom.com>; Clyburn, Rachel P. <clyburnr@nullcrom.com>; David Meyer <david@meyerlawdc.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

On August 24, you indicated that CPKC would be conducting searches for additional documents in response to Applicants' discovery requests by collecting and searching custodial ESI. You further stated that CPKC would provide a proposal regarding the custodians and search parameters that CPKC intended to use. Since you provided that update, CPKC has provided no additional information regarding its search parameters.

Please provide no later than Wednesday, September 16, information regarding the search parameters that CPKC intends to use to identify documents responsive to Applicants' discovery requests. At a minimum, please:

1. Explain whether you are conducting custodial and/or non-custodial searches to identify responsive documents for each of Applicants' RFPs.
2. Explain whether you are limiting your searches to a subset of the documents requested by each RFP. If so, explain what limitations you are applying for each RFP.
3. Identify the custodians whose ESI you are collecting and processing to search.

4. Disclose the search terms you are using.
5. Disclose the date cutoffs you are using.
6. Explain whether you are employing TAR. If so, explain how you are employing TAR.

Although CPKC has an independent obligation to identify custodians to search for responsive documents, Applicants have identified the following individuals likely to possess responsive documents who should be included as custodians. For the former employees that are listed, please confirm whether CPKC still possesses custodial ESI for these employees. To the extent CPKC no longer possesses custodial ESI for the former employees, we will need to identify other individuals to cover the relevant time periods and subject matter. Please let us know promptly if you are refusing to search these custodians' files for responsive documents.

- Keith Creel
- Nadeem Velani
- Mark Redd
- John Brooks
- James Clements
- Larry Lloyd
- Patrick Ottensmeyer
- Michael Upchurch
- Jeffrey Songer
- Michael Naatz

Best,

Kevin

Kevin Kelly

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****This is an external message from: kkelly@cov.com ****

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EXHIBIT B

From: Fanchiang, Eric <EFanchiang@crowell.com>
Sent: Thursday, September 24, 2026 11:33 AM
To: Maya, Michael; Kelly, Kevin; Gardiner, Kent; van Houwelingen, Luke; Enson, Eric; Lesser, Rachel
Cc: Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Magcale, Jamie Dominique U; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; OpalDisco
Subject: RE: FD 36873 - Applicants' Discovery Requests to CSX

[EXTERNAL]

Mike,

Thank you for your email. As discussed during this week's meet and confer, CSXT served its responses and objections to Applicants' discovery requests in June. Prior to Applicants' September 11 email, CSXT had not heard from Applicants in many weeks on those responses, including many where CSXT expressly indicated its willingness to meet and confer. We came to this week's meet and confer prepared to walk through Applicants' RFPs to discuss CSXT's objections and your positions with respect to each, including where we seek to better understand your position on the relevance of the information sought from CSXT. You were not willing to do that. Instead, Applicants asked that CSXT provide a comprehensive custodial search proposal covering custodians, search terms, date ranges, and hit reports, effectively skipping ahead several important steps.

Nevertheless, CSXT is willing to engage in a process along the lines of what Applicants request. The timeframe on which you request it do so is simply not workable, however. While we understand that Applicants have been meeting and conferring with BNSF and CPKC about their responses, including potential custodial searches, for a number of weeks now, those discussions did not include CSXT. You are thus asking CSXT, among other things, to stand up a process to reconsider each of your requests (without the benefit of discussions with Applicants), confer with our client to determine revised positions, investigate and identify appropriate custodians for each request, assess ESI processes including the technology and tools it may use, and develop search terms and parameters—and to do so all in a week-and-a-half. CSXT cannot reasonably be expected to complete that process in such a compressed timeframe, particularly during a period when it must review Applicants' large-volume—and tardy—discovery productions (including UP's most recent productions totaling over 200 GB of data), take depositions with limited time to review those materials, and prepare CSXT's upcoming comments to the Board. You have not identified any basis for CSXT to take on such an extraordinary burden, when Applicants' next evidentiary submission is five months away.

CSXT is willing to engage in this process in good faith and move it forward as efficiently as possible. With respect to items 1 through 5 in your email, we will do our best to provide our proposal during the week of October 13. We do not anticipate being in a position to provide hit reports on that same timeframe and will provide them as soon as we reasonably can thereafter.

Best,

Eric Fanchiang

Eric Fanchiang

Crowell & Moring LLP

efanchiang@crowell.com

From: Maya, Michael <mmaya@cov.com>

Sent: Wednesday, September 23, 2026 3:22 PM

To: Fanchiang, Eric <EFanchiang@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEnson@crowell.com>

Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CSX

Eric,

Thank you for speaking yesterday. We write to follow up on our request that CSX commit to providing its proposal for custodial document searches in response to Applicants' First and Second Discovery Requests by a date certain. To move this process along, we request that CSX confirm that it will provide its proposal by October 5, 2026, and that the proposal will do the following:

1. Identify the RFPs in response to which you do and do not propose to conduct custodial searches (as well as any buckets or categories of otherwise responsive documents for which you do not intend to perform custodial searches);
2. Identify the search terms that you propose to use to search for responsive custodial documents;
3. Identify the date ranges that you propose to apply to your proposed searches;
4. Identify the custodians whose documents you propose to search;
5. Identify any custodians that we identified in our September 11, 2026 email for whom you do not possess ESI; and
6. Provide hit reports for the proposed search terms, dates, and custodians that you propose to use for your custodial searches.

We ask that you please provide the requested confirmation by 10 am Eastern tomorrow in light of the 6 pm Eastern filing deadline for the next round of discovery motions.

Thanks,

Mike

Michael Maya

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From: Fanchiang, Eric <EFanchiang@crowell.com>

Sent: Thursday, September 17, 2026 1:58 PM

To: Kelly, Kevin <Kkelly@cov.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEnson@crowell.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CSX

[EXTERNAL]

Kevin,

Thanks for this e-mail. As mentioned on our call last week, CSXT has not agreed that custodial searches are required, nor have Applicants even sought to meet and confer about CSXT's responses to each of the RFPs in Applicants' Second Set of Requests until now, including many where CSXT expressed its willingness to do so. Prior to your last e-mail, CSXT had not heard from Applicants in weeks on any of this. To the extent Applicants have been meeting and conferring with BNSF or CPKC about their responses, including potential custodial searches, those meet and confers did not include CSXT and anything discussed during those meet and confers cannot be applied to CSXT. Your requests below are thus extremely premature.

That being said, we are of course open to begin meeting and conferring regarding Applicants' Second Set of Requests. We are available next Tuesday between 1 and 2 pm ET or after 3 pm ET.

Best,

Eric Fanchiang

Eric Fanchiang

Crowell & Moring LLP

efanchiang@crowell.com

+1.949.798.1338 direct

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, September 17, 2026 10:42 AM

To: Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEnson@crowell.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone,

Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Applicants' Discovery Requests to CSX

Eric,

We have not received a response to the email below. Please let us know when you are available to meet and confer about this between mid-day on Tuesday and the end of the day on Wednesday.

On the same call, in addition to discussing the information we requested in our September 11 email, we also would like to discuss a schedule for (1) search term hit reports, (2) search term and custodian negotiations, (3) briefing and hearing of any disputes relating to the foregoing, (4) the commencement of custodial productions, and (5) substantial completion of custodial productions.

We look forward to receiving your availability for next Tuesday and Wednesday.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, September 11, 2026 5:07 PM

To: Fanchiang, Eric <EFanchiang@crowell.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEnson@crowell.com>

Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: FD 36873 - Applicants' Discovery Requests to CSX

Eric,

As discussed on our meet and confer call earlier this week, Applicants require information regarding the searches that CSX will be conducting for additional documents responsive to Applicants' discovery requests beyond the limited set of documents that CSX agreed to produce in its initial written responses. As we have previously stated, custodial searches in addition to searches of non-custodial locations are necessary to respond to Applicants' requests.

To ensure we understand CSX's position on Applicants' requests, please provide no later than Wednesday, September 16, information regarding the search parameters that CSX intends to use to identify documents responsive to Applicants' discovery requests. At a minimum, please:

1. Explain whether you are conducting custodial and/or non-custodial searches to identify responsive documents for each of Applicants' RFPs.
2. Explain whether you are limiting your searches to a subset of the documents requested by each RFP. If so, explain what limitations you are applying for each RFP.
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4. Disclose the search terms you are using.
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6. Explain whether you are employing TAR. If so, explain how you are employing TAR.

Although CSX has an independent obligation to identify custodians to search for responsive documents, Applicants have identified the following individuals likely to possess responsive documents who should be included as custodians. For the former employees that are listed, please confirm whether CSX still possesses custodial ESI for these employees. To the extent CSX no longer possesses custodial ESI for the former employees, we will need to identify other individuals to cover the relevant time periods and subject matter. Please let us know promptly if you are refusing to search these custodians' files for responsive documents.

- Stephen Angel
- Kevin Boone
- Michael Cory
- Maryclare Kenney
- Eric Smith
- Tom Livingston
- Stephen Flippin
- Ferrukh Bezar
- James Foote
- Joseph Hinrichs
- Sean Pelkey
- Kevin Boone
- Edmond Harris
- Jamie Boychuk
- Mark Wallace

Best,

Kevin

Kevin Kelly

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CERTIFICATE OF SERVICE

I hereby certify that, on this 24th 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/ Jamie Dominique U. Magcale
Jamie Dominique U. Magcale