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ENTERED
Office of Chief Counsel
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Part of
Public Record

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September 25, 2026

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

BNSF-58

Re: STB Docket No. FD 36873 – Letter Regarding In Camera Review

Dear Judge Soulikias:

On Monday, September 21, the Non-Applicant Railroads moved to challenge a claim of privilege over a document from the files of Mike McClellan, an NS witness who was scheduled to sit for deposition on Tuesday, September 29. *See* BNSF-57 / CPKC-51 / CSX-29. NS has responded to this challenge and provided a copy of the at-issue document to Your Honor for *in camera* review. *See* NS-109.

The parties have agreed to move Mr. McClellan's deposition to Friday, October 9 to provide time for Your Honor to resolve this privilege dispute and potentially others related to this witness. As a result, BNSF would be prepared to argue this privilege dispute at the upcoming hearing on Friday, October 2. In addition, there will likely be another dispute over a claim of privilege related to another document of Mr. McClellan's, and BNSF will file any additional challenges as soon as practicable.

/s/ McClain Thompson

McClain Thompson

cc: Counsel of Record, alj.soulikias.inbox@stb.gov

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 25, 2026