

September 30, 2026
312609

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

BNSF-59/CPKC-55/CSXT-32

ENTERED
Office of Chief Counsel
September 30, 2026
Part of
Public Record

Re: STB Docket No. FD 36873 – Issues for Resolution at October 2 Conference

Dear Judge Soulikias:

BNSF, CPKC, and CSXT (“Non-Applicant Railroads”) write regarding the agenda for the October 2, 2026, discovery conference.

I. Non-Applicant Railroads’ Request for *In Camera* Review of NS_00330539 (BNSF-57/CPKC-51/CSXT-29)

Non-Applicant Railroads asked Your Honor to review NS_00330539 *in camera*, a one-page email that NS produced and then clawed back under a claim of attorney work product. There are no lawyers on the chain. It is a business communication between two NS executives (Mike McClellan and David Lehlbach) and consultants at Oliver Wyman. NS opposes the privilege challenge and provided the document to Your Honor for *in camera* review. NS-109 at 1. If the work product assertion is overruled, Non-Applicant Railroads intend to use the document at the October 9 deposition of Mike McClellan.

II. CPKC Motion for Subpoena for John Orr’s Deposition Testimony (CPKC-53)

CPKC asked Your Honor to issue a subpoena for the deposition of John Orr. CPKC argued that his testimony is relevant and necessary because Mr. Orr was the then-Chief Operating Officer of NS who signed the Operating Plan. Orr is represented by separate counsel, who informed CPKC that Mr. Orr required a subpoena to testify. CPKC shared the motion and proposed subpoena with counsel for Mr. Orr after the motion was filed. Neither NS nor Mr. Orr has opposed the subpoena’s issuance.

III. Supplemental Briefing on Motion to Compel Lance Fritz Deposition (CPKC-52)

Your Honor requested further briefing on whether a subpoena is required to compel the deposition of Lance Fritz, the former CEO of Union Pacific. In its filing, CPKC argued that 49 C.F.R. § 1114.22(a) authorizes the deposition of a person without a subpoena. Alternatively, CPKC requested that Your Honor issue a subpoena for Lance Fritz. UP replied that § 1114.22(a) does not identify the means for compelling depositions of non-parties unwilling to appear voluntarily, and that the relevant rules and precedents indicate a subpoena is needed to compel a non-party’s deposition. UP-109 at 1-2. UP also provided argument as to why a subpoena should not be issued, reiterating their view that Mr. Fritz is unlikely to have relevant testimony of interest to the Board. *Id.* at 3.

IV. UP and NS's Motion to Compel Custodial Discovery Parameters (UP-110/NS-111)

UP and NS moved to compel CPKC and CSX to disclose their custodial search parameters by October 5, 2026. UP and NS argued that providing those parameters by October 5 will allow the parties to negotiate and, in the event of a dispute, raise any concerns at the October 30 discovery conference. *Id.* CPKC has agreed to provide much of the information Applicants seek by October 5 and has agreed to provide the remainder on a rolling basis within a reasonable timeframe that is faster than Applicants themselves provided discovery. CPKC-54. CSXT responds that it has reasonably offered to provide Applicants with most of the custodial search information they are requesting by the week of October 13 except for the requested hit report, which CSXT will provide as soon as possible after providing the other information. CSXT-31.

V. CSXT Motion to Compel NPBL-Related Documents (CSXT-26; CSXT-30)

CSXT previously moved to compel NS to cross-produce materials it produced in three NPBL-related proceedings and one federal case. *See* CSXT-26. This motion was discussed during the September 18, 2026 conference. Since that time, CSXT has offered to narrow the scope of its request to just NS materials reflected in briefing and other documents submitted to the Board in the three NPBL-related Board proceedings, including any materials cited or relied on in those briefs and submissions to the Board. CSXT-30. NS rejected this offer, replying that NPBL-related documents are irrelevant and that CSXT's requests are an attempt to relitigate disputes concerning NPBL. NS-110 at 2-3. CSXT has submitted its narrowed request to Your Honor for consideration. CSXT-30.

RESOLVED MOTION PENDING COMPLIANCE

I. CPKC's Motion to Compel (CPKC-47)

CPKC previously moved to compel UP 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; and (4) produce drafts of regulatory effort provisions of the merger agreement, like Section 5.8. CPKC-47 at 1-2. UP agreed to produce video of Vena's comments and otherwise opposed CPKC's motion. *See* UP-105/NS-105.

At the September 18 conference, UP was ordered to amend its interrogatory response and identify the number of customers who "faced real backlash" (broken down as to BNSF and CPKC); NS was ordered to produce documents related to Mr. Orr's departure; and both UP and NS were ordered to produce drafts of the regulatory effort provisions of the merger agreement that were

exchanged before signing. To date, UP has not produced video of Mr. Vena's remarks and has not amended its interrogatory response. NS has not produced documents concerning Mr. Orr's departure, and neither UP nor NS have produced draft regulatory effort provisions.

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

Respectfully,

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/s/ Dan Donovan

Daniel T. Donovan, P.C.
KIRKLAND & ELLIS LLP
Counsel for BNSF Railway Company

/s/ Joseph J. Matelis

Joseph J. Matelis
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 30, 2026