

**KIRKLAND & ELLIS LLP**

ENTERED  
Office of Chief Counsel  
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Part of  
Public Record

McClain Thompson  
To Call Writer Directly:  
+1 202 389 5292  
mcclain.thompson@kirkland.com

1301 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
United States

+1 202 389 5000

www.kirkland.com

Facsimile:  
+1 202 389 5200

October 1, 2026

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

BNSF-60

*Re: STB Docket No. FD 36873 – Status of BNSF’s Discovery Responses*

Dear Judge Soulikias:

Consistent with Your Honor’s request and BNSF’s agreement to provide rolling updates, BNSF writes to provide an update regarding its responses to discovery requests in this proceeding.

To date, BNSF has received 30 discovery requests from Applicants. BNSF continues to confer with Applicants regarding the scope of materials responsive to those requests, including what is necessary and appropriate in light of BNSF’s role as a non-applicant in this proceeding. To facilitate an efficient discovery process, BNSF has agreed to provide Applicants (1) on October 5, a proposed set of e-discovery custodians, a date range for BNSF searches, and a set of responsiveness criteria to guide BNSF’s review, and (2) on October 9, BNSF’s proposed search terms and the hit counts generated by the search parameters. As BNSF has informed Applicants, BNSF intends to use technology assisted review in responding to Applicants’ requests, and BNSF will disclose details about that program to Applicants.

BNSF has made three rolling productions. BNSF will make additional rolling productions the weeks of October 5 and October 12. BNSF will continue to make rolling productions until BNSF’s productions are complete. On top of the 2019-2025 traffic tape and waybill data BNSF exchanged with Applicants last fall, BNSF has produced over 6,500 pages of document discovery and 572 GB of data to date.

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The chart below summarizes the material BNSF has produced to date.

| BNSF Prod. Vol. | BNSF Prod. Date | Description of BNSF Production                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1               | Aug. 5, 2026    | <ul style="list-style-type: none"><li>• Train Event Data for 2019-2025 containing event dates and times, locations and states, event/event-status codes, train operating information, direction, train identifiers/symbols, scheduled departure information, and other attributes associated with train movements across the BNSF network.</li><li>• Intermodal/Container Event Data for 2019-2025 including equipment/container and chassis identifiers; attached railcar information where applicable; event date, time, and event code; station/location and state; loaded/empty status; TOFC/COFC indicator; train ID, symbol, type, priority, section, and scheduled departure date; and associated waybill and cycle identifiers.</li></ul> |
| 2               | Aug. 6, 2026    | <ul style="list-style-type: none"><li>• Railcar Event Data and Movement Records for 2019-2025, including car initial and number; event date, time, and event type/status; station/location and state; direction; loaded/empty status; associated train symbol, train date, priority, section, and sequence; and waybill identifiers and versions.</li><li>• Reciprocal Switching Data for 2019-2025, including date and time of switching events; total switch rates for interline switching and rate number used to calculate amount due for a switch; and car and equipment number.</li></ul>                                                                                                                                                   |
| 3               | Oct. 1, 2026    | <ul style="list-style-type: none"><li>• Correspondence from BNSF to its customers concerning the Proposed Transaction.</li><li>• Joint facilities and interline agreements.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

Respectfully,

/s/ McClain Thompson  
McClain Thompson

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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

October 1, 2026