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By E-Filing

October 8, 2026

312673

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

ENTERED
Office of Chief Counsel
October 8, 2026
Part of
Public Record

Re: Docket No. FD 36873, *Union Pacific Corp., et al.—Control—*
Norfolk Southern Corp., et al.

Dear Judge Soulikias:

We write on behalf of Union Pacific Corporation and Union Pacific Railroad Company (together, “Union Pacific”) to request that Your Honor issue subpoenas, pursuant to 49 U.S.C. § 1321, to command Berkshire Hathaway Inc. (“Berkshire”) to produce the documents identified in Union Pacific’s First Set of Requests for Production, dated September 14, 2026, and to require Gregory Abel and Warren Buffett to provide deposition testimony, as contemplated by the notices of intent to depose dated September 14, 2026. *See* Exs. A–C.

Despite repeated efforts by Union Pacific to ascertain Berkshire’s position on the discovery Union Pacific has requested, Berkshire has declined to say which portions of the discovery, if any, it is willing to produce voluntarily. Given the schedule in this matter, Union Pacific respectfully requests that Your Honor issue subpoenas compelling Berkshire’s compliance.

I. BACKGROUND

Berkshire owns BNSF Railway Company (“BNSF”), one of the principal non-Applicant Class I railroads opposing the Proposed Transaction. *See, e.g.*, BNSF Railway Company’s Description of Responsive Application (Sept. 9, 2026) [BNSF-53]. BNSF has engaged in extensive discovery from Applicants.

Berkshire, BNSF’s corporate parent, possesses knowledge of BNSF’s strategic plans, competitive positioning, and the Proposed Transaction’s impact on Berkshire’s rail holdings, all of which are directly at issue in this proceeding. For example, in a February 2026 letter to shareholders, Mr. Abel, Berkshire’s CEO, stated that Berkshire “is not interested in acquiring one of the other Class I railroads, since the current economics would not work in our shareholders’ favor,” and that “BNSF’s focus on the proposed merger has been to ensure BNSF can continue to offer customers a compelling value proposition”¹ Similarly, Mr. Buffett, Berkshire’s former

¹ Gregory E. Abel, Berkshire Hathaway Inc., CEO’s Letter to Shareholders at 12 (Feb. 28, 2026), <https://www.berkshirehathaway.com/letters/2025ltr.pdf>.

Chairman and controlling shareholder, has told reporters that “Berkshire Hathaway is not in the market to buy a train company right now.”²

On September 14, 2026, Union Pacific served its First Set of Requests for Production on Berkshire, seeking documents relating to, among other topics, the competitive effects of the Proposed Transaction and Berkshire’s plans for its rail holdings. *See* Ex. A. That same day, Union Pacific served notices of intent to depose Gregory Abel, Berkshire’s Chief Executive Officer, and Warren Buffett, Berkshire’s former Chairman. *See* Exs. B, C. Union Pacific asked in its transmission of these materials that Berkshire inform Union Pacific by September 21, 2026, if it would provide the requested discovery voluntarily, or if subpoenas would be required. *See* Ex. D. Berkshire responded that it planned to hire outside counsel to advise on Union Pacific’s requests, and on September 30, 2026, Union Pacific met with those outside lawyers. During that meeting, Berkshire indicated that it was assessing what responsive materials, if any, Berkshire might be willing to provide voluntarily, but it declined to provide a date certain by which it would complete that assessment. On October 1, 2026, Berkshire proposed to take until October 13, 2026—nearly a month after Union Pacific served its requests—to provide initial positions on them. *See* Ex. E.

In light of the schedule in this matter, Union Pacific cannot agree to such an extended timeline. Union Pacific therefore seeks the issuance of subpoenas to ensure that Berkshire complies with its discovery obligations within a reasonable timeframe.

II. ARGUMENT

As Your Honor has explained, the Board’s subpoena “authority is found at 49 U.S.C. § 1321,” Decision No. 39 at 5, which authorizes the agency “to subpoena witnesses and records related to a proceeding of the Board,” 49 U.S.C. § 1321(c)(1); *see also* 49 U.S.C. § 1321(d)(2). This authority extends to non-party witnesses. Decision No. 39 at 5. In this matter, the Board has delegated its subpoena authority to Your Honor. *See* 49 C.F.R. § 1113.3; Decision No. 3 at 2; *see also, e.g.*, Decision No. 39 at 7.

Under 49 C.F.R. § 1114.21(a)(1), “[p]arties may obtain discovery under this subpart regarding *any matter*, not privileged, which is *relevant* to the subject matter involved in a proceeding.” (Emphasis added.) As discussed below, Berkshire, Mr. Abel, and Mr. Buffett indisputably possess information relevant to this proceeding, and the proposed subpoenas would not impose an undue burden on them.

A. A Document Subpoena Should Issue to Berkshire.

Union Pacific seeks documents from Berkshire that are relevant to the central issues in this proceeding, including the potential competitive and downstream effects of the Proposed Transaction. For instance, Union Pacific seeks documents concerning Berkshire’s strategic plans

² CNBC TELEVISION, *Warren Buffett says Berkshire Hathaway is not in the market to buy a train company* (YouTube, Aug. 25, 2025), <https://youtu.be/G86GmcFM6WU>.

for BNSF, including any consideration of mergers, acquisitions, consolidation, or other transactions with other railroads. *See* Ex. A at 4–5. The Board in Decision No. 13 recognized the importance of such “ordinary course” documents, finding that they “will assist [the Board] in determining whether the proposed transaction is likely to have the effects attributed to it by Applicants and whether the transaction is consistent with the public interest.” Decision No. 13 at 5. The Board observed that these documents “are likely to provide valuable insight into the proposed transaction’s effects because they ‘reflect[] real-time business decisions and forecasts concerning the merging parties’ operations, and views of past, present, and future market conditions.” *Id.* at 5–6. Berkshire, as BNSF’s parent, likely possesses documents on these subjects.

The requested documents also include materials reflecting Berkshire’s long-term investment strategy for BNSF and Berkshire’s consideration of future rail industry consolidation. *See* Ex. A at 4–5, 7. As the sole owner of BNSF—one of the largest Class I railroads and a principal opponent of this merger—Berkshire is likely to possess uniquely relevant evidence concerning the competitive dynamics of the rail industry, Berkshire’s strategic plans for its rail holdings, and the anticipated effects of the Proposed Transaction on BNSF’s competitive position. Indeed, Mr. Buffett has stated publicly that Berkshire is “not in the market” to acquire another Class I carrier;³ the basis for that conclusion is directly relevant here.

Union Pacific also seeks documents relating to Berkshire’s communications with third parties regarding the Proposed Transaction. *See* Ex. A at 5–7. These materials are relevant to understanding the positions Berkshire has advanced to stakeholders and other parties regarding the merger. The documents include materials relating to an August 2026 meeting between Berkshire executives, including Mr. Buffett and Mr. Abel, and CSX’s CEO. *See id.* at 8. Such materials may illuminate Berkshire’s strategic considerations and any potential cooperative arrangements being contemplated in response to the Proposed Transaction.

In addition to being relevant, Union Pacific’s document requests also are proportional to the needs of this proceeding. The Board will evaluate “the potential benefits and harms of the proposed transaction.” Decision No. 20 at 4. Berkshire’s documents reflecting its own assessment of the transaction’s competitive effects, and its own plans for its rail holdings, are probative of these issues. Moreover, because Berkshire is BNSF’s parent company, Berkshire’s views and strategic direction necessarily inform BNSF’s positions in this proceeding.

B. A Deposition Subpoena Should Issue to Mr. Abel.

Gregory Abel is the Chief Executive Officer of Berkshire. As CEO, Mr. Abel has direct supervisory authority over BNSF and its management. He possesses unique, first-hand knowledge

³ Spencer Kimball, *Warren Buffett just told CNBC his plan for trains. The stocks are moving*, CNBC (Aug. 25, 2025), <https://www.cnbc.com/2025/08/25/warren-buffett-is-not-in-market-to-buy-another-railroad-but-he-met-with-csx-ceo-about-greater-cooperation.html> (“Warren Buffett is not in the market to buy another railroad . . . , he told CNBC’s Becky Quick . . .”).

regarding (1) Berkshire's oversight of BNSF and the strategic direction of Berkshire's rail holdings; (2) communications between Berkshire leadership and BNSF management concerning the Proposed Transaction; (3) Berkshire's assessment of the competitive effects of the Proposed Transaction on its rail holdings; and (4) any contingency planning by Berkshire in response to the Proposed Transaction. These matters are at the core of the Board's public interest inquiry, and Mr. Abel is uniquely positioned to testify about them.

The relevance of Mr. Abel's testimony and his unique knowledge outweigh any modest burden associated with appearing for deposition. As Your Honor noted in Decision No. 39, in response to a deposition subpoena, a witness "must only show up and answer questions—truthfully—to the best of his recollection." Decision No. 39 at 6.

C. A Deposition Subpoena Should Issue to Mr. Buffett.

Warren Buffett is the former Chairman and controlling shareholder of Berkshire. Mr. Buffett is one of the most prominent and influential investors in American history, and his strategic decisions regarding BNSF have profound implications for the rail industry. He orchestrated Berkshire's 2010 acquisition of BNSF—at the time the largest acquisition in Berkshire's history⁴—and has personally directed Berkshire's long-term strategy for its rail holdings. Although Mr. Abel now oversees Berkshire's overall corporate and investment strategies, including for BNSF, Mr. Buffett has set the strategic direction for Berkshire's major investments for decades. His testimony regarding Berkshire's long-term vision for BNSF, and any contingency planning in response to the Proposed Transaction, is directly relevant to the Board's assessment of the competitive effects of the merger and the future structure of the rail industry.

Moreover, as Your Honor observed in Decision No. 39, "former employees do not carry the shackles of current employment to ensure they answer questions fully and completely." Decision No. 39 at 6. That conclusion applies with full force to Mr. Buffett, who stepped down as Chairman but retains unique knowledge of Berkshire's long-term strategy that current executives may be unable to provide.

Mr. Buffett also has made public statements relevant to the competitive analysis in this proceeding. In August 2025, a CNBC journalist reported that Mr. Buffett said "Berkshire Hathaway is not in the market to buy a train company right now." *See supra* note 2. Union Pacific is entitled to test this statement, to understand the basis for it, and to explore whether Berkshire's internal strategic documents are consistent with Mr. Buffett's public statements.

Union Pacific is mindful of Mr. Buffett's age and stature, and is prepared to work with Berkshire on reasonable accommodations for his deposition.

⁴ *See* Berkshire Hathaway Inc. to Acquire Burlington Northern Santa Fe Corporation (BNSF) for \$100 Per Share in Cash and Stock, *Berkshire Hathaway* (Nov. 3, 2009), <https://www.sec.gov/Archives/edgar/data/934612/000095015709000805/ex99-1.htm>.

Your Honor should reject the arguments that Berkshire has asserted in response to Union Pacific's proposed subpoenas.

Second, Berkshire has suggested that, as a non-party, its burden should carry greater weight in the discovery calculus than would be the case for a party. While the Board has recognized that non-party status may be a factor, this principle has limited application where, as here, the non-party is the sole owner of a principal party to the proceeding. Berkshire is not a “stranger to the litigation” with “no clear interest in the proceeding.” *Ballard Terminal R.R.—Acquisition—Woodinville Subdivision*, FD 35731, slip op. at 3 (STB served May 17, 2013). To the contrary, as BNSF’s sole owner, Berkshire has a direct and substantial interest in this proceeding. {{ [REDACTED] [REDACTED] [REDACTED] }} In any event, any burden on Berkshire is outweighed by the relevance of the requested information.

For the foregoing reasons, Union Pacific respectfully requests an order:

- Insofar as Your Honor grants the requested relief, Union Pacific will work with counsel for Berkshire to agree on the dates and locations referenced above, and Union Pacific thereafter will endeavor to submit agreed-upon forms of the subpoenas for Your Honor to sign.

COVINGTON

October 8, 2026

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Respectfully submitted,

/s/ Laura Flahive Wu

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cc: All Parties of Record

Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD
COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

**UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS
TO BERKSHIRE HATHAWAY INC.**

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September 14, 2026

Pursuant to 49 C.F.R. §§ 1114.21-.31, Union Pacific Railroad Company and Union Pacific Corporation (collectively “Union Pacific”) request that Berkshire Hathaway, Inc. (“Berkshire Hathaway”) respond to and produce Documents responsive to the following discovery requests in accordance with the Surface Transportation Board’s rules and the definitions and instructions set forth below.

Responses should be served as soon as possible, and in no event later than October 5, 2026, unless otherwise agreed to by the parties. Please contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS

1. “Applicants” means Union Pacific Railroad Company, Union Pacific Corporation, Norfolk Southern Corporation, and Norfolk Southern Railway Company.
2. “BNSF” means BNSF Railway Company.
3. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.
4. “CSXT” or “CSX” means CSX Transportation Inc.

5. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained.

6. “KCT” means Kansas City Terminal Railway.

7. “Norfolk Southern” or “NS” means Norfolk Southern Corporation and Norfolk Southern Railway Company.

8. “PPU” means Peoria and Pekin Union Railway Company.

9. “Produce” means to make legible, complete, and exact copies of responsive Documents and send them by expedited delivery to the undersigned counsel.

10. “Proposed Transaction” means the proposed combination of NS and UP for which NS and UP are seeking STB approval in Finance Docket No. 36873.

11. “TRRA” means Terminal Railroad Association of St. Louis.

12. “TTX” means TTX Company.

13. “Union Pacific” or “UP” means Union Pacific Corporation and Union Pacific Railroad Company.

14. “You” and “Your” refer to Berkshire Hathaway Inc. and its predecessors and successors in interest, as well as its present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on its behalf.

INSTRUCTIONS

1. References to railroads, shippers, consultants, or companies (including Applicants) include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.

2. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

3. If any information or Document is withheld on the ground that it is privileged or otherwise not discoverable: (a) identify the type of Document (*e.g.*, letter, memorandum, report, chart); identify the author, each addressee and each recipient; state the number of pages, title and date of the Document, and (b) state the basis for the claim that it is privileged or otherwise not discoverable.

4. To the extent materials called for herein are confidential, Union Pacific will treat them in accordance with the Protective Order entered in this proceeding in the Decision served August 5, 2025.

5. Unless otherwise specified, these requests cover the period January 1, 2019 to the present.

6. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

REQUESTS

1. Describe all railroad mergers, acquisitions, or other control transactions involving BNSF and any other Class I railroad that You are

considering or have considered within the last 18 months, whether in response to the Proposed Transaction or otherwise.

2. Produce all Documents and Communications relating to all railroad mergers, acquisitions, or other control transactions involving BNSF and any other Class I railroad that You are considering or have considered within the last 18 months, whether in response to the Proposed Transaction or otherwise.

3. Produce all Documents and Communications relating to the Proposed Transaction's impacts or potential impacts on potential future mergers involving Class I railroads, including but not limited to any mergers You have considered executing between BNSF and any other Class I railroads.

4. Produce all Documents and Communications relating to any potential or actual transaction, combination, joint venture, alliance, partnership, initiative, other form of cooperative arrangement or other strategic response that You have considered or implemented on behalf of BNSF, or are considering or are implementing on behalf of BNSF, as a result of the Proposed Transaction.

5. Produce all Documents and Communications relating to the Proposed Transaction that You have sent to, received from, or submitted to any persons other than Applicants, including but not limited to customers, shippers, industry groups, labor organizations, labor officials, government agencies or officials, other rail carriers, public officials, ports, rail industry suppliers, the Surface Transportation Board, the United States Department of Justice, the United States Department of Transportation, the Federal Railroad Administration, the governor of any state, the

attorney general of any state, the White House, or any other federal or state government agency.

6. Produce all Documents concerning or consisting of any talking points or prepared messaging relating to the Proposed Transaction that You used for communications to persons other than Applicants, including but not limited to customers, shippers, industry groups, labor organizations, labor officials, government agencies or officials, other rail carriers, public officials, ports, rail industry suppliers, the Surface Transportation Board, the United States Department of Justice, the United States Department of Transportation, the Federal Railroad Administration, the governor of any state, the attorney general of any state, the White House, or any other federal or state government agency.

7. Identify all individuals and/or entities from whom You have sought, solicited, or discussed a potential comment, letter, or statement of opposition relating to the Proposed Transaction.

8. Produce all Documents and Communications that You have created or received from January 1, 2019, to the present relating to potential railroad mergers, acquisitions, or other control transactions (collectively, “mergers”) involving BNSF, CSX, NS, or UP, or discussing railroad mergers or alternatives to railroad mergers generally, including any mergers between BNSF, CSX, NS, or UP and any other Class I railroads and any mergers You have considered involving BNSF, CSX, NS, or UP.

9. Produce all Documents and Communications relating to competition in the railroad industry, consolidation in the railroad industry, BNSF's position in the railroad industry, and UP's or NS's position in the railroad industry.

10. Produce all Documents and Communications relating to the Proposed Transaction's potential impacts on BNSF's, the Applicants', or any other rail carrier's rates, routes, services, revenues, costs, expenses, operations, investments, traffic volumes, service offerings, markets, market shares, growth, financial viability, competitive position, relationships with other railroads, or relationships with customers.

11. Produce all Documents and Communications relating to the Proposed Transaction's potential or projected public benefits, diversions of railroad or truck traffic, operating efficiencies, or cost savings; the Proposed Transaction's potential or projected impacts on railroad or truck competition, You or other Class I railroads, short line railroads, or ports; and the potential or projected impacts of the Applicants' proposed Committed Gateway Pricing program.

12. Produce all Documents and Communications relating to potential requests for conditions or responsive applications relating to the Proposed Transaction.

13. Produce all Documents and Communications relating to any actual or potential joint ventures, alliances, partnerships, initiatives, or other forms of cooperative arrangements between BNSF and any other Class I railroad, regardless of whether such arrangements were implemented.

14. Produce all Documents and Communications relating to Your policies or strategies for the pricing of BNSF's rail transportation services, including without limitation any pricing targets, goals, or level of returns that You provide, recommend, or otherwise communicate to BNSF.

15. Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss Your plans or strategies for retaining or increasing the revenues obtained from BNSF's rail customers (whether by growing traffic, increasing prices, or otherwise).

16. Produce all Documents and Communications relating to the August 3, 2026 meeting in Omaha, Nebraska between Berkshire executives Warren Buffett and Greg Abel and CSX CEO Joseph Hinrichs.

17. Produce all Documents and Communications that concern, discuss, or support any aspect of Your claims in the following publications:

- a) "Buffett to CNBC: We won't be acquiring CSX, or any other railroad," available at <https://link.cnbc.com/public/41356995>;
- b) "Alongside BNSF's own improvements, there is also potential consolidation in the rail industry with the proposed Union Pacific–Norfolk Southern merger. Berkshire has been clear that it is not interested in acquiring one of the other Class I railroads, since the current economics would not work in our shareholders' favor. BNSF's focus on the proposed merger has been to ensure BNSF can continue to offer customers a compelling value proposition, including full and competitive access to Eastern rail markets." Greg Abel, 2025 Letter to Shareholders, available at <https://www.berkshirehathaway.com/letters/2025ltr.pdf>.

Respectfully submitted,

/s/ Laura Flahive Wu
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*Attorneys for Union Pacific
Corporation and Union Pacific
Railroad Company*

September 14, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 14th 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/ Daniel Damitio

Exhibit B

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD
COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

UNION PACIFIC’S NOTICE OF DEPOSITION OF GREGORY ABEL

Counsel for Union Pacific Corporation and Union Pacific Railroad Company (collectively, “Union Pacific”), pursuant to 49 C.F.R. § 1114.22, will take the deposition of **GREGORY ABEL**, Chief Executive Officer, Berkshire Hathaway Inc., 3555 Farnam Street, Omaha, NE 68131. The deposition will occur at a mutually agreeable date and location in December 2026. The deposition will be in person and recorded by stenographic means and videotape. The deposition will be taken before a Notary Public or other officer authorized by law to administer oaths.

Mr. Abel is the current Chief Executive Officer of Berkshire Hathaway Inc. and has served in that role since January 1, 2026, having previously served as Vice Chairman overseeing Berkshire Hathaway’s non-insurance operations. Berkshire Hathaway is the sole owner of BNSF Railway Company, having acquired the railroad in 2010. In his role as CEO, Mr. Abel exercises direct oversight of Berkshire Hathaway’s major subsidiaries, including BNSF, and has publicly spoken about BNSF’s competitive position and the proposed Union Pacific–Norfolk Southern

merger. Mr. Abel has knowledge of Berkshire Hathaway’s assessment of and response to the proposed Union Pacific–Norfolk Southern merger. He thus possesses information relevant to this proceeding.

Indeed, Mr. Abel has made public statements demonstrating his direct knowledge of Berkshire Hathaway’s analysis of the proposed merger and rail competition. In his first annual letter to Berkshire Hathaway shareholders, Mr. Abel stated that “[a]longside BNSF’s own improvements, there is also potential consolidation in the rail industry with the proposed Union Pacific–Norfolk Southern merger” and that “Berkshire has been clear that it is not interested in acquiring one of the other Class I railroads, since the current economics would not work in our shareholders’ favor.”¹ He further stated that “BNSF’s focus on the proposed merger has been to ensure BNSF can continue to offer customers a compelling value proposition, including full and competitive access to Eastern rail markets.”² On August 3, 2025, Mr. Abel and Berkshire Hathaway Chairman Warren Buffett met with CSX CEO Joseph Hinrichs to discuss increased cooperation between the two railroads that could achieve some of the same benefits that would come from a merger.³

¹ Gregory E. Abel, Berkshire Hathaway Inc., CEO’s Letter to Shareholders at 12 (Feb. 28, 2026), <https://www.berkshirehathaway.com/letters/2025ltr.pdf>.

² *Id.*

³ Spencer Kimball, *Warren Buffett Just Told CNBC His Plan for Trains. The Stocks are Moving*, CNBC (Aug. 26, 2025), <https://www.cnbc.com/2025/08/25/warren-buffett-is-not-in-market-to-buy-another-railroad-but-he-met-with-csx-ceo-about-greater-cooperation.html>.

Mr. Abel has further spoken about BNSF's competitive standing within the railroad industry, observing in 2026 that BNSF must improve its profitability.⁴ He wrote that "[t]he gap to the industry's best remains too wide" and that "closing it will require continued improvements in efficiency and service."⁵ At the 2026 Berkshire Hathaway Annual Shareholder Meeting, Mr. Abel discussed BNSF's operations in detail, including an operating-margin comparison showing that "BNSF ranked fifth out of six railroads in profitability" but moved up to the fourth in the first quarter of 2026.⁶

These statements reflect Mr. Abel's direct knowledge of the analyses and competitive concerns underlying Berkshire Hathaway's opposition to the proposed transaction, as well as his knowledge of BNSF's competitive position and the potential impact of further consolidation on the railroad industry.

Pursuant to 49 C.F.R. § 1114.22(b)(2), the cause or reason why the deposition will be taken is—among other things, and without limiting the scope of the deposition—to explore Berkshire Hathaway's response to the proposed merger, Mr. Abel's knowledge of the railroad industry's competitive dynamics and the impact of further consolidation, Berkshire Hathaway's consideration of alternative mergers or strategic transactions involving BNSF, Berkshire Hathaway's assessment of

⁴ *New Berkshire CEO: BNSF Needs to Improve Its Profitability*, FreightWaves (March 2, 2026), <https://www.freightwaves.com/news/new-berkshire-ceo-bnsf-needs-to-improve-its-profitability>.

⁵ Abel, *supra* note 2, at 12.

⁶ Bill Stone, *Key Takeaways From Berkshire Hathaway's Annual Meeting*, Forbes (May 3, 2026), https://www.forbes.com/sites/bill_stone/2026/05/03/berkshire-hathaway-annual-meeting-2026-key-takeaways/.

competitive conditions in the rail industry, and Mr. Abel's involvement in discussions and other communications concerning the proposed merger and its anticipated impact on BNSF and rail competition.

For the foregoing reasons, the deposition of Mr. Abel complies with the discovery rules that govern STB proceedings, which state that “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21.

Respectfully submitted,

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September 14, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding.

/s/ Daniel Damitio

Exhibit C

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD
COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

UNION PACIFIC’S NOTICE OF DEPOSITION OF WARREN BUFFETT

Counsel for Counsel for Union Pacific Corporation and Union Pacific Railroad Company (collectively, “Union Pacific”) pursuant to 49 C.F.R. § 1114.22, will take the deposition of **WARREN BUFFETT**, Chairman, Berkshire Hathaway Inc., 3555 Farnam Street, Omaha, NE 68131. The deposition will occur at a mutually agreeable date and location in December 2026. The deposition will be in person and recorded by stenographic means and videotape. The deposition will be taken before a Notary Public or other officer authorized by law to administer oaths.

Mr. Buffett is the current Chairman of Berkshire Hathaway Inc. and has served in that role since 1970. In addition, he served as the company’s Chief Executive Officer (“CEO”) through December 31, 2025.

Berkshire Hathaway is the sole owner of BNSF Railway Company, having acquired the railroad in 2010. As a result, when Union Pacific and Norfolk Southern announced their proposed merger on July 28, 2025, Mr. Buffett was both Chairman and CEO of BNSF’s owner. He likewise served in both roles when BNSF formulated

and implemented its strategy of opposition to the merger even before Applicants filed their initial merger application with the Surface Transportation Board on December 19, 2025.

In his role as Chairman, Mr. Buffett exercises oversight of Berkshire Hathaway's major subsidiaries, including BNSF, and has publicly spoken about the strategic importance of BNSF to Berkshire Hathaway's business. Berkshire Hathaway's annual reports, which Mr. Buffett signed when he served as CEO, likewise discuss BNSF's financial performance and the competitive conditions it faces, including identifying Union Pacific as BNSF's "primary rail competitor in the Western region of the U.S."¹ Mr. Buffett thus possesses information relevant to this proceeding.

Indeed, Mr. Buffett has made public statements demonstrating his direct knowledge of Berkshire Hathaway's analysis of the proposed merger and rail competition. He publicly stated, after the proposed merger was announced, that Berkshire Hathaway does not have plans to acquire another railroad.² In addition, on August 3, 2025, Mr. Buffett and Berkshire Hathaway CEO Greg Abel met with CSX CEO Joseph Hinrichs to discuss increased cooperation between the two railroads that could achieve some of the same benefits that would come from a merger.³ Shortly

¹ Berkshire Hathaway Inc., 2024 Annual Report K-7, K-123 (2025), <https://www.berkshirehathaway.com/2024ar/2024ar.pdf>.

² Spencer Kimball, *Warren Buffett Just Told CNBC His Plan for Trains. The Stocks are Moving*, CNBC (Aug. 26, 2025), <https://www.cnbc.com/2025/08/25/warren-buffett-is-not-in-market-to-buy-another-railroad-but-he-met-with-csx-ceo-about-greater-cooperation.html>.

³ *Id.*

thereafter, BNSF and CSX announced new coast-to-coast intermodal rail services, which BNSF has presented to the industry as a competitive alternative to consolidation.⁴

Statements by BNSF Railway CEO Katie Farmer additionally make clear that the decision to not pursue a merger between BNSF Railway and another railroad rests solely with Berkshire Hathaway: Ms. Farmer has stated that “our owner has been very clear that we have no interest in acquiring another railroad.”⁵ BNSF Railway’s “owner” is Berkshire Hathaway, of which Mr. Buffett is the Chairman. The current Berkshire Hathaway CEO, Greg Abel, echoed that position in a 2026 letter to shareholders, stating that “Berkshire has been clear that it is not interested in acquiring one of the other Class I railroads, since the current economics would not work in our shareholders’ favor.”⁶ Ms. Farmer’s attribution of BNSF’s position to its owner, together with Mr. Abel’s statement, confirms that the decision not to pursue a merger originated with Berkshire Hathaway’s senior leadership during Mr. Buffett’s tenure as CEO.

⁴ *BNSF, CSX Announce New Intermodal Services, Offering Seamless Coast-to-Coast Rail Solutions*, BNSF Ry. (Aug. 22, 2025), <https://www.bnsf.com/news-media/news-releases/newsrelease.page?relId=bnsf-csx-announce-new-intermodal-services-offering-seamless-coast-to-coast-rail-solutions>. See also BNSF Ry. Co.’s Description of Responsive Application at 4, Finance Docket No. 36873 (STB filed Sept. 9, 2026) [BNSF-53] (“Of course, a merger is not required in order to convert truck containers to rail. Both UP and NS (and other railroads) have worked together for decades to offer services with minimal dwell/interchange time (when sufficient demand exists), and railroads have invested in better intermodal service capabilities.”).

⁵ David Lassen, *Farmer Reiterates That BNSF Has ‘No Interest’ in Merger*, TrainsPro (Jan. 14, 2026), <https://www.trains.com/pro/freight/class-i/farmer-reiterates-that-bnsf-has-no-interest-in-merger/>.

⁶ Gregory E. Abel, Berkshire Hathaway Inc., CEO’s Letter to Shareholders at 12 (Feb. 28, 2026), <https://www.berkshirehathaway.com/letters/2025ltr.pdf>.

Mr. Buffett also has a documented history of personal engagement with BNSF's competitive performance compared to its railroad peers. In his 2023 and 2024 shareholder letters, Mr. Buffett wrote that BNSF's "profit margins have slipped relative to all five" of the other major North American railroads "since our purchase" and that BNSF had "much left to accomplish."⁷ Mr. Abel echoed this theme in his 2026 letter, writing that "[t]he gap to the industry's best remains too wide."⁸ At Berkshire Hathaway's May 2, 2026 annual shareholders meeting, Mr. Abel similarly told shareholders that BNSF ranked "fifth out of six railroads" on operating margin but moved up to fourth in the first quarter of 2026.⁹ Any assessment of BNSF's ability to compete against a combined Union Pacific–Norfolk Southern necessarily builds on these analyses, which Mr. Buffett oversaw during his tenure as CEO. The statements above reflect Mr. Buffet's knowledge of those analyses, as well as alleged competitive concerns underlying Berkshire Hathaway's opposition to the proposed transaction, along with his knowledge of the competitive dynamics of the railroad industry, interline partnerships, and the potential impact of further consolidation.

Pursuant to 49 C.F.R. § 1114.22(b)(2), the cause or reason why the deposition will be taken is—among other things, and without limiting the scope of the

⁷ Warren E. Buffett, Berkshire Hathaway Inc., Chairman's Letter to Shareholders at 13 (Feb. 24, 2024), <https://www.berkshirehathaway.com/letters/2023ltr.pdf>; Warren E. Buffett, Berkshire Hathaway Inc., Chairman's Letter to Shareholders at 4 (Feb. 22, 2025), <https://www.berkshirehathaway.com/letters/2024ltr.pdf>.

⁸ Abel, *supra* note 7, at 12.

⁹ Bill Stone, *Key Takeaways From Berkshire Hathaway's Annual Meeting*, Forbes (May 3, 2026), https://www.forbes.com/sites/bill_stone/2026/05/03/berkshire-hathaway-annual-meeting-2026-key-takeaways/.

deposition—to explore Berkshire Hathaway’s response to the proposed merger, Mr. Buffett’s knowledge of the railroad industry’s competitive dynamics and the impact of further consolidation, Berkshire Hathaway’s consideration of alternative mergers or strategic transactions involving BNSF, Berkshire Hathaway’s assessment of competitive conditions in the rail industry, and Mr. Buffett’s involvement in discussions and other communications concerning the proposed merger and its anticipated impact on BNSF and rail competition.

For the foregoing reasons, the deposition of Mr. Buffett complies with the discovery rules that govern STB proceedings, which state that “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21.

Respectfully submitted,

/s/ Laura Flahive Wu
MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
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1400 Douglas Street
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*Attorneys for Union Pacific
Corporation and Union Pacific
Railroad Company*

September 14, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Daniel Damitio

Exhibit D

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Michael M. Maya

Covington & Burling LLP
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850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5547
mmaya@cov.com

Via Overnight Mail

September 14, 2026

Mr. Michael J. O'Sullivan
Senior Vice President and General Counsel
Berkshire Hathaway Inc.
3555 Farnam Street
Omaha, NE 68131

Re: STB Docket No. FD 36873, *Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company*

Dear Mr. O'Sullivan:

On behalf of Union Pacific Corporation and Union Pacific Railroad Company (collectively, "Union Pacific"), enclosed please find Union Pacific's first set of discovery requests to Berkshire Hathaway Inc. and notices of intent to depose Mr. Warren E. Buffett and Mr. Gregory Abel in connection with the above-captioned matter.

We request that you please advise us by September 21, 2026, if Berkshire Hathaway will agree to produce the documents sought and will make available for deposition the two witnesses whose testimony we have requested.

If it would be helpful to discuss this matter, please do not hesitate to contact me at mmaya@cov.com or (202) 662-5547.

Yours sincerely,

/s/ Michael M. Maya
Michael M. Maya

Attorney for Union Pacific Corporation and Union Pacific Railroad Company

Enclosures

Exhibit E

From: Maya, Michael
Sent: Friday, October 2, 2026 4:06 PM
To: Nicholas Martin
Cc: David Elsberg; Flahive Wu, Laura; Rosenthal, Michael; Gerson, Jessica M; Magcale, Jamie Dominique U; Kelly, Kevin; Ludwin, Derek
Subject: RE: Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 (STB)

Nic,

We welcome the opportunity to continue to meet and confer about the document requests and deposition notices we have served.

We do not agree, however, that we delayed in serving those materials or that the schedule in this matter will permit us to wait until October 13 to receive Berkshire's initial positions on our requests. If you are able to identify by Monday any aspects of the discovery we've sought that Berkshire is willing to provide voluntarily, please let us know. We also are happy to continue to discuss Berkshire's responses to our requests during the pendency of a petition for issuance of subpoenas, as ALJ Soulikias repeatedly has encouraged the parties to do in connection with other discovery motions in this matter. But in light of the schedule – and the ALJ's ruling that parties must petition for subpoenas to pursue non-party discovery where the non-party does not voluntarily participate – we will need to file a petition.

Regards,
Mike

Michael Maya

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This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Nicholas Martin <nmartin@elsberglaw.com>
Sent: Thursday, October 1, 2026 7:33 PM
To: Maya, Michael <mmaya@cov.com>
Cc: David Elsberg <delsberg@elsberglaw.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Gerson, Jessica M <JGerson@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>
Subject: RE: Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 (STB)

EXTERNAL

Dear Mike,

Thanks for your call yesterday.

As discussed, we were only recently retained and need some time to assess the issues, determine what responsive materials, if any, our client possesses, and understand our client's position on the scope of any production. We also need some time to meet and confer with you.

To allow for that process while still moving expeditiously we propose that Berkshire will respond to Union Pacific's requests in writing by October 13, which leaves the parties nine days to meet and confer before Union Pacific's deadline to file any brief to tee up any remaining issues for October 30 conference.

That proposal is consistent with STB precedent, including precedent from ALJ Soulikias, establishing that parties are expected to meet and confer in advance of any application seeking a subpoena. *E.g., Lake Providence Port Comm'n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La.*, FD 36447, slip op. at 3–4 (ALJ served Jan. 16, 2026) (ALJ Soulikias denying request for subpoenas without prejudice and ordering the proponent, before refiling, to “confer . . . in an attempt to resolve any disputed issues”); *Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 6 (STB served June 25, 2012) (full Board affirming decision by Director of the Office of Proceedings to defer issuing non-party subpoena so that the parties could meet-and-confer in an effort to reach “resolution of these issues by agreement”).

We note that Union Pacific has known since mid-June that BNSF would not respond to discovery requests on non-party Berkshire's behalf, but it did not serve Berkshire until September 14. Berkshire then needed to retain outside counsel. Union Pacific's requests are expansive, so responding properly takes time.

Please let us know by end of day tomorrow if you agree to our proposal and will not seek to argue the issue until the October 30 conference.

Berkshire expressly reserves, and does not waive, all rights, remedies and defenses.

Best,
Nic

Nicholas Martin

Associate [[Bio](#)]

ELSBURG BAKER & MARURI PLLC [[Web](#)]

212.597.2609 (o)

929.334.1299 (m)

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

Sent: Monday, September 28, 2026 1:44 PM

To: Nicholas Martin <nmartin@elsberglaw.com>

Cc: David Elsborg <delberg@elsberglaw.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Gerson, Jessica M <JGerson@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>

Subject: RE: Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 (STB)

Nicholas,

Thank you for your email. Are you available to discuss this matter on Wednesday? I can be available any time that day until 5 pm Eastern. Please let me know if there is a time that works.

Thanks,
Mike

Michael Maya

Covington & Burling LLP
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This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Nicholas Martin <nmartin@elsberglaw.com>
Sent: Friday, September 25, 2026 8:24 PM
To: Maya, Michael <mmaya@cov.com>
Cc: David Elsberg <delsberg@elsberglaw.com>
Subject: Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 (STB)

[EXTERNAL]

Dear Mr. Maya,

We were recently retained by Berkshire Hathaway Inc. in connection with the discovery requests and notices of deposition you sent to Mr. O'Sullivan on September 14. We are getting up to speed on the matter and will be back to you with a response.

Best,

Nicholas Martin

Associate [[Bio](#)]

ELSBURG BAKER & MARURI PLLC [[Web](#)]

212.597.2609 (o)

929.334.1299 (m)

Exhibit F

Filed under seal pursuant to the Protective Order

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of October, 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