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By E-Filing

October 27, 2026

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

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ENTERED
Office of Chief Counsel
October 27, 2026
Part of
Public Record

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

Dear Judge Soulikias:

Your Honor should deny CSXT's motion to compel production of all documents and communications between Union Pacific and CN regarding an agreement under which each railroad will grant the other certain operating rights because the discovery requested is overly broad and disproportionate to the needs of the proceeding.

CSXT's motion relates to an agreement embodied in a July 22, 2026 memorandum of understanding ("MOU"). *See* Exhibit A. The MOU commits Union Pacific and CN to negotiate definitive written agreements ("Definitive Agreements") that will grant CN new rights on Union Pacific's lines between Memphis, Tennessee, and Eagle Pass and grant Union Pacific additional operating rights on CN's EJ&E line in the Chicago area. Those negotiations are ongoing.

In response to CSXT's discovery request, Union Pacific produced the signed MOU but objected to production of other documents and communications between Union Pacific and CN regarding the agreement. After Union Pacific produced the MOU, CSXT stated that it still believed production of communications between Union Pacific and CN regarding the agreement was necessary, including because those communications might contain discussions about traffic changes or growth contemplated by the MOU that could impact UP/NS operations post-merger. *See* CSXT-38, Exhibit B. Although Union Pacific maintained its objections to the discovery, it conducted a further search for any documents and communications between Union Pacific and CN regarding the MOU's impact on future rail operations or capacity of the merged UP/NS entity. Union Pacific did not identify any responsive materials and so informed CSXT. *See* CSXT-38, Exhibit B. Further, to resolve this dispute, Union Pacific would be willing to produce the signed Definitive Agreements after they are finalized, and subject to appropriate confidentiality restrictions pursuant to the Protective Order.

CSXT's motion conflates the claimed relevance of the final agreements (the MOU and Definitive Agreements) with the relevance of documents and communications between Union Pacific and CN regarding those agreements. CSXT makes three arguments as to relevance. First, CSXT claims that the documents and communications are relevant to whether "the purported benefits of the proposed merger could be achieved through independent interline collaboration" instead of a merger. CSXT-38, at 3. But CSXT does not explain why it needs more than the agreements themselves to make such an argument. CSXT has also had the opportunity to depose key individuals at Union Pacific regarding the agreement, and has in fact asked multiple deponents about the agreement.

Second, CSXT argues that the requested communications and documents are relevant to "the adequacy of Applicants' Operating Plan." CSXT-38, at 2. But CSXT does not explain what the negotiation documents might reveal that would not be apparent from the agreements themselves. The only agreed-upon operating terms are those in the MOU, which Union Pacific has already produced to CSXT, and those that will be contained in the Definitive Agreements, which Union Pacific would be willing to produce to CSXT to resolve the dispute. Further, Union Pacific has approximately 749 trackage rights agreements with other rail carriers, and Norfolk Southern has approximately 783 trackage rights agreements with other rail carriers. *See* UP-6; NS-6. Any arguments that CSXT is entitled to negotiation materials to uncover potential operating-related information that is not disclosed in the agreements themselves would apply equally to the approximately 1,500 other agreements. And, as discussed above, Union Pacific already searched for any documents and communications between Union Pacific and CN regarding the MOU's impact on future rail operations or capacity of the merged UP/NS entity and identified none.

Finally, CSXT argues that the documents and communications sought are relevant to the "end-state industry structure"—that is, potential further consolidation between CN and UP/NS. CSXT-38, at 3. But CSXT does not explain how the negotiation documents would provide evidence of "deep[er] operational integration between UP/NS and CN" that would not be shown by the agreements themselves. *Id.* There is no indication that the documents and communications between Union Pacific and CN contain discussions relevant to future potential railroad mergers. As noted, trackage rights agreements are common. Union Pacific and Norfolk Southern each has more than 700 trackage rights agreements with other rail carriers.

For the reasons stated above, Union Pacific respectfully requests that Your Honor deny CSXT's motion to compel.

Respectfully submitted,

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cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th 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 J. Soulikias.

/s/ Molly Brown
Molly Brown

EXHIBIT A
Filed under seal pursuant to the Protective Order