53313 SERVICE DATE – NOVEMBER 4, 2026
ALJ

SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

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

ORDER DENYING CSXT'S MOTION TO COMPEL
AND RESCHEDULING DISCOVERY CONFERENCE TO NOVEMBER 25, 2026

Decision No. 44

Decided: November 4, 2026

Discovery is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision (Aug. 28, 2025). The undersigned conducted a discovery conference on October 30, 2026. This decision memorializes the ruling made at that conference.

The Surface Transportation Board regulations provide for broad discovery. These regulations provide 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." 49 C.F.R. § 1114.21(a)(1). The Board has recognized that this regulation allows for broad discovery. See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery "[b]roadly"). An order may be entered for good cause and which justice requires, to protect from "annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of the issues untimely or inappropriate to the proceeding." 49 C.F.R. § 1114.21(c). Protective orders may include that discovery not be had or that discovery be had only on specified conditions. 49 C.F.R. § 1114.21(c)(1)-(2).

I. CSXT's Motion to Compel

On October 22, 2026, CSXT filed its motion to compel UP to produce documents in response to CSXT's Third Set of Discovery Requests to Applicants, Request No. 24, regarding UP and CN's agreement where CN will provide UP with expanded operating rights over CN's Elgin, Joliet & Eastern Railway corridor through Chicago, and CN will receive new rights over UP's network between Memphis, Tennessee, and Eagle Pass, Texas (called "Agreement"

herein[1]). (CSXT Letter Motion 1, Oct. 22, 2026.[2]) CSXT sought production of documents and communications regarding the negotiation of the Agreement between UP and CN. (See id.) UP produced the Memorandum of Understanding (MOU), (see id. at 2), and has agreed to produce the "Definitive Agreements" when finalized. (UP Oppn. Letter 1, Oct. 27, 2026.)

CSXT argued the discovery sought regarding communications and negotiations about the Agreement was relevant to the issues in this matter. (CSXT Letter Motion 2, Oct. 22, 2026.) CSXT argued communications and negotiations about the Agreement were "highly relevant to the Board's analysis of the merits and competitive implications of the proposed merger between UP and NS, including whether the claimed benefits can be attributed to the merger or could instead be achieved by closer interline collaboration, and to the adequacy of Applicants' Operating Plan[.]" (Id.) CSXT also argued that the communications and negotiations were relevant to the implications for the end-state industry structure. (Id. at 3.)

UP opposed CSXT's motion to compel in its letter, filed October 27, 2026. (UP Oppn. Letter, Oct. 27, 2026.) UP argued that it produced the MOU and would produce the Definitive Agreements (when executed). (Id. at 1.) UP explained that its negotiations with CN were ongoing. (Id.) CN filed a letter supporting the denial of the motion to compel, because negotiations were ongoing, and "[w]hatever marginal probative value the negotiation communications might have is far outweighed by the risk of harm their disclosure would cause." (CN Support Letter 1, Oct. 27, 2026.)

UP argued the communications and negotiations about UP and CN's Agreement sought by CSXT were overly broad and disproportionate to the needs of the proceeding. (Id. at 1.) Despite UP's objections, UP stated that it conducted a search for documents and communications between UP and CN regarding the Agreement's impact on future rail operations or capacity of the merged UP/NS entity (i.e., CSXT's third relevancy argument). (See UP Oppn. Letter 1, Oct. 27, 2026.) UP stated that it did not return any relevant documents from this search. (Id.)

At the discovery conference, it was made clear that CSXT knows the identities of the technical parties who are negotiating the Definitive Agreements for UP and CN. CSXT can ask at depositions about the Agreement, and CSXT has even questioned NS's COO and NS's sponsor of the Operating Plan about the Agreement. (CSXT Letter Motion 3, Oct. 22, 2026.) However, CSXT wants documents to use with the depositions.

The Board's regulations permit broad discovery. 49 C.F.R. § 1114.21(a)(1). It is not grounds for objection that the evidence will be inadmissible; however, the discovery requested

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[1] I am using the term "Agreement" for ease of reference.

[2] CSXT's October 22, 2026, Letter Motion was filed as Highly Confidential Under Seal with a redacted filing placed on the public record, in compliance with the Protective Order. See Decision No. 1 (Aug. 5, 2025). At the discovery conference, CSXT's counsel confirmed that "Exhibit A" was the "Public Version" for both the Highly Confidential and Redacted Public filings.

must be "reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(2).

First, CSXT argued that the discovery sought is relevant to demonstrate alternatives to merger. (CSXT Letter Motion 2, Oct. 22, 2026.) The MOU itself demonstrates CSXT's point. The Definitive Agreements (if and when executed) also will demonstrate CSXT's argument. Negotiations and communications about the Agreement are reasonably calculated to lead to discoverable evidence about the MOU and the Definitive Agreements. But the requested negotiations and communications about the Agreement are an overly broad discovery request where CSXT's stated relevance was to demonstrate alternatives to the proposed merger. CSXT does not articulate the discovery requested more precisely. (See id. at 2-3 & n.3) ("As shown above, UP's documents and communications with CN concerning their Agreement are highly relevant, full stop, and UP cannot seriously contest that relevance.") An alternative to the proposed merger is the interline agreements between UP and CN found in the Agreement. Although its terms need to be finalized and reduced to Definitive Agreements, the basis for the Agreement between UP and CN is found in the MOU. Thus, CSXT has not shown how the request for negotiations and communications about the UP and CN Agreement is not overly broad.

As its second argument, CSXT argued the communications and negotiations are relevant to the Operating Plan. (CSXT Letter Motion 3, Oct. 22, 2026.) CSXT argued the negotiations and communications regarding UP and CN's Agreement are relevant to evaluating the proposed merger's Operating Plan regarding "potential discussions regarding anticipated traffic volumes, capacity requirements, and operational integration[.]" (Id.) I agree with the general basis of CSXT's argument; however, CSXT did not serve a discovery request that matches its argument. As served, CSXT's request is overly broad. CSXT requested discovery about negotiations and communications regarding UP and CN's Agreement. CSXT did not narrow its request to communications about the Operating Plan, or how the UP and CN Agreement will affect traffic volumes, capacity requirements, and operational integration. Because CSXT did not tailor (or narrow) its request for the Operating Plan (or its components), its request is overly broad.

For its third argument, CSXT argued that the negotiations and communications are relevant to the Board's evaluation of competitive effects of the proposed merger, including implications for the end-state industry structure. (CSXT Letter Motion 3, Oct. 22, 2026.) CSXT argued that the Agreement "would deepen the operational integration between UP/NS and CN along precisely those lines, confirming the prospect of further alignment or consolidation between UP/NS and CN is more than hypothetical." (Id.) CSXT argued that the "documents and communications are thus highly relevant to the Board's assessment of the future structure of the Class I rail industry, and whether that structure would be good for shippers and competition." (Id. at 3-4.) The MOU (and Definitive Agreements, when executed) proves CSXT's point here, too. CSXT has not articulated how the negotiations and communications would be reasonably calculated to lead to discoverable evidence about the end-state industry structure. To that end, UP searched for documents and communications between UP and CN regarding the Agreement's impact on future rail operations or capacity of the merged UP/NS entity but returned no responsive documents. (See UP Oppn. Letter 1, Oct. 27, 2026.) CSXT failed to demonstrate that its document request for the negotiations and communications regarding UP and CN's

Agreement is reasonably calculated to lead to discoverable evidence regarding the competitive effects of the proposed merger (e.g., the end-state industry structure).

For all these reasons, CSXT's motion to compel UP regarding CSXT's Third Set of Discovery Requests to Applicants, Request No. 24, is denied.

II. Rescheduling Discovery Conference to Wednesday, November 25, 2026

Upon review of the calendar for scheduled discovery conferences, there is a discovery conference scheduled for Friday, November 27, 2026 (i.e., the day after Thanksgiving). In the event there are discovery issues that need to be resolved that week, I am **rescheduling** the discovery conference for **Wednesday, November 25, 2026, at 10:00 a.m. ET/9:00 a.m. CT**.

For this conference, the deadlines prior to the discovery conference are modified as set forth below.

It is ordered:

1. CSXT's Motion to Compel is DENIED.

2. The discovery conference for Friday, November 27, 2026, is RESCHEDULED to Wednesday, November 25, 2026, at 10:00 a.m. ET/9:00 a.m. CT. The deadlines prior to the discovery conference are modified as follows:

    a. Opening Letter Briefs—due by 6:00 p.m. ET, Thursday, November 19, 2026;
    b. Supporting Letter Briefs—due by 6:00 p.m. ET, Friday, November 20, 2026;
    c. Opposition Letter Briefs—due by 12:00 p.m. ET, Monday, November 23, 2026;
    d. Letter to ALJ from Parties to the Discovery Dispute(s)—due by 6:00 p.m. ET, Monday, November 23, 2026; and
    e. Email Letters to ALJ from Parties Who Want to Attend—due by 12:00 p.m. ET, Tuesday, November 24, 2026.

3. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.