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By E-Filing

November 5, 2026

312805

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

ENTERED
Office of Chief Counsel
November 5, 2026
Part of
Public Record

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

Dear Judge Soulikias:

This Motion asks Your Honor to order BNSF to conduct its custodial document searches using the custodians, date ranges, and responsiveness criteria that Applicants have proposed, as set forth in **Appendix A**, and to conduct an adequate search for non-privileged, non-custodial documents responsive to Applicants' First Set of Discovery Requests.

BNSF's custodial search proposal is deficient in three principal respects: (1) it excludes most of the custodians Applicants have identified; (2) it applies an unduly narrow date range for ordinary course documents; and (3) it omits crucial categories of responsiveness criteria. In addition, the information BNSF has disclosed about its non-custodial searches reflects that those searches have been inadequate.

I. BACKGROUND

On August 12, BNSF agreed to conduct custodial searches. *See* Ex. A at 6–7. On September 11, Applicants requested BNSF's proposed search parameters and identified 15 proposed custodians: Messrs. and Mmes. Farmer, Bischler, Andersen, Morehouse, Williams, Gabriel, Caddell, Hower, Smythers, Ice, Piggott, Igoe, Garland, Bobb, and Tanner. *Id.* Following a September 23 teleconference, BNSF agreed to provide its proposed custodians, date ranges, and responsiveness criteria by October 5, and search terms and hit reports by October 9. *Id.* at 1–3.

On October 5, BNSF proposed four custodians (Messrs. and Mme. Bischler, Farmer, Morehouse, and Williams), a July 29, 2024 to July 29, 2025 date range for all requests, and a bulleted list of responsiveness criteria. *See* Exs. B, C. On October 9, BNSF informed Applicants that it would forgo search terms in favor of a Technology Assisted Review ("TAR") process, *see* Ex. D at 1, and on October 16 it provided its proposed TAR protocol, *see id.*; Ex. E.

The parties thereafter conferred by telephone and email on October 16, 20, 22, and 27. The parties each made proposals that were premised on reaching a negotiated resolution of all issues relating to BNSF's document productions, but during the course of these conferrals it became clear that impasses had been reached on a significant number of custodians, most aspects of the date

ranges for BNSF's searches, and certain aspects of the responsiveness criteria that BNSF will apply to its documents. This Motion asks Your Honor to resolve those disputes.

Non-Applicants' responsive applications and "[c]omments, protests, requests for conditions, and any other evidence and argument in opposition to" the proposed merger are due on November 18, 2026, and Applicants' responses and rebuttals are due on February 16, 2027. Decision No. 30 at 13. Applicants have noticed depositions of BNSF witnesses beginning in December 2026, *see, e.g.*, Ex. F at 13–16, and, on September 29, Applicants asked BNSF for dates for seven witnesses (Messrs. and Mmes. Farmer, Caddell, Morehouse, Gabriel, Hower, Bischler, and Williams), *see id.* at 1–5. The parties have agreed on a January 28, 2027, date for the deposition of Ms. Farmer and a January 19, 2027, date for the deposition of Mr. Morehouse. No other dates have been set yet.

Separately, as of this filing, BNSF has not produced any documents responsive to Applicants' First Set of Discovery Requests, which seek non-privileged documents concerning BNSF's analyses of potential transactions and impacts relating to the proposed merger. Instead, BNSF has asserted a blanket privilege over all such documents.

II. ARGUMENT

A. BNSF's Proposed Custodial Search Parameters Are Deficient.

BNSF's proposed search parameters are deficient in multiple respects, as set forth below.

1. BNSF Omits Custodians With Unique, Relevant Documents.

BNSF's original search protocol proposal omitted 11 of the 15 custodians that Applicants identified, *see* Ex. C; a later compromise proposal, premised on reaching a negotiated resolution of all document production issues, identified just one additional custodian, Jon Gabriel, *see* Ex. G at 1. With the exception of Mr. Gabriel, the custodians that BNSF has proposed occupy only the highest levels of BNSF's leadership, and all are current employees. BNSF has not represented that any of Applicants' other proposed custodians lack relevant information or that they would be duplicative of the four to five custodians BNSF has proposed. *See* BNSF-34/CSX-12/CPKC-28 at 1, 2 (making similar arguments as to proposed list of Applicants' custodians). Moreover, limiting the custodians to executive-level employees is unlikely to capture day-to-day documents from functions relevant to Applicants' requests. Your Honor should order BNSF to search the files of the following additional custodians, each of whom also is described in Appendix A.

Group Vice Presidents and Other Non-Executives. BNSF's proposal excludes current employees below the executive level—namely, Angela Caddell (Group Vice President, Agriculture & Energy Products), Katie Hower (Group Vice President, Industrial Products), Zak Andersen (Chief of Staff and Vice President, Communications), and Mike Smythers (Vice President, Federal Government Affairs)—whose files are likely to contain unique, relevant documents. Ms. Caddell and Ms. Hower lead the commercial units responsible for BNSF's relationships with agricultural and industrial shippers, respectively. BNSF proposed during the

conferral process to search the files of Mr. Gabriel, its Group Vice President of Consumer Products; Ms. Caddell and Ms. Hower hold similar positions for BNSF's other business units, and BNSF has offered no reason to treat them differently. Moreover, Mr. Andersen has acted as a BNSF spokesperson against the merger, and Mr. Smythers leads BNSF's engagement with federal officials and regulators. As explained in Appendix A, each of these individuals possesses documents relevant to BNSF's assessment of, response to, and alleged competitive concerns regarding the proposed merger.

Former Executives. BNSF's proposal excludes former employees Carl Ice (former President and CEO), Julie Piggott (former Executive Vice President and CFO), Matt Garland (former COO), Matt Igoe (former Executive Vice President of Operations), Stevan Bobb (former Executive Vice President and CMO), and Colby Tanner (former Group Vice President of Industrial Products), all of whose files are likely to contain unique, relevant documents. Applicants seek the files only of former employees who (a) left BNSF's employment relatively recently and within the period for which Applicants seek ordinary course documents; and (b) held roles equivalent to those of the custodians BNSF has agreed to search. Because these individuals performed the same functions as BNSF's current custodians during the relevant period, their files are a principal source of BNSF's historical ordinary course documents responsive to Requests 2, 10, 11, 16, and 22–29—including BNSF's pricing and growth strategies, its assessment of rail industry consolidation, and its evaluation of the competitive landscape and interline arrangements. *See* App'x A.

2. BNSF's Proposed Date Range Excludes Relevant Ordinary Course Materials.

BNSF initially proposed a single date range of July 29, 2024 to July 29, 2025 for all requests. *See* Ex. C. On October 20, BNSF proposed a compromise date range of January 1, 2024 through February 17, 2026. *See* Ex. G at 1. Applicants are willing to accept July 29, 2024 as the start date for searches relating to impacts of the Proposed Transaction; Applicants also are willing to accept February 17, 2026 as the end date for all searches. BNSF's proposal, however, remains deficient with respect to the start date for searches directed to ordinary course documents.

As Your Honor has explained, information from "a few years before the proposed transaction was announced is relevant" and such "[c]orresponding information and data from non-Applicants is proportional." Decision No. 31 at 3. A January 1, 2019 start date should therefore apply to all requests other than those seeking documents relating to the impacts of the Proposed Transaction (i.e., this date should apply to Requests 2, 10, 11, 16, and 22–29). This start date also would reach the files of the former BNSF executives discussed above for the period in which they held their roles.

3. BNSF's Responsiveness Criteria Are Insufficient.

Because BNSF does not plan to use search terms, BNSF's responsiveness criteria are the means by which it (or its TAR system) will identify responsive documents within the files of the custodians whose materials BNSF collects. Applicants have largely agreed to BNSF's

responsiveness criteria, but modifications are necessary in two principal areas to align BNSF's production efforts with what Non-Applicants "sought and obtained from Applicants." *Id.* at 3.

First, two new criteria Applicants have proposed are necessary to identify (1) non-privileged materials related to BNSF's responses to the Proposed Transaction (*see* App'x A, Criterion 10), and (2) non-privileged materials related to BNSF's pricing and growth strategies (*see id.*, Criterion 11).

As to the first criterion, BNSF acknowledges that its leadership analyzed the potential transaction and "how other market participants might respond," and it has agreed to search for non-privileged documents regarding arrangements it "evaluated as a result of the Proposed Transaction." Ex. H, Resps. to Req. Nos. 1, 4. The criterion simply implements that commitment as to BNSF's custodial searches; without it, BNSF's process will not identify those materials.

As to the second criterion, BNSF's pricing and growth strategy documents are ordinary course materials of the kind Your Honor has recognized are "highly relevant," Decision No. 31 at 9, and they are central to evaluating any claim that the Proposed Transaction will harm competition or BNSF's ability to serve its customers. Moreover, Non-Applicants "sought and obtained from Applicants" these same categories of documents, *see id.* at 3, including custodial searches directed to Applicants' pricing and growth strategies, *see id.* at 3 n.4 (noting that Union Pacific "was conducting those searches" in response to CPKC's requests for pricing and growth strategies). BNSF should be held to the same standard.

Second, BNSF's responsiveness criterion on public benefits should be augmented to include terms relating to truck competition, short line railroads, ports, and committed gateway pricing, all of which are within the scope of Applicants' Request 14, and all of which relate to areas in which the Proposed Transaction may benefit the public. The criterion addressing BNSF's actual or potential joint ventures, alliances, partnerships, or other cooperative arrangements should be augmented in a similar manner to cover combinations and to capture documents relating to Class II/III railroads, ports, and other partners, all of which likewise are arrangements that potentially could be impacted by the Proposed Transaction.

B. BNSF Must Conduct an Adequate Search for Non-Privileged Documents Responsive to Applicants' First Set of Discovery Requests.

On September 11, BNSF served its First Supplemental Responses and Objections to Applicants' First Set of Discovery Requests, which relate to, among other issues, BNSF's consideration of "control transactions" involving other Class I railroads, and the Proposed Transaction's impacts on potential future mergers involving Class I railroads. *See* Ex. H. In describing its search for non-privileged, non-custodial documents responsive to Applicants' requests, BNSF stated that its counsel consulted with two individuals—Chief Legal Officer Jill Mulligan and Chief Executive Officer Katie Farmer—and that, between May 29, 2025 and May 29, 2026, BNSF "did not take steps to acquire another Class I railroad, whether in response to the Proposed Transaction or otherwise." *Id.*, Resps. to Req. Nos. 1–2.

That statement answers only part of what Applicants requested: Request 2 seeks documents concerning transactions BNSF has "considered," *id.* at 3–4, not merely those in which it took "steps to acquire" another railroad, *id.* at 4. BNSF has acknowledged that documents responsive to Applicants' actual request exist, stating, for example, that beginning in spring 2025, its "leadership team analyzed the potential transaction involving Union Pacific . . . , potential impacts on the industry of a merger between Class I railroads, and how other market participants might respond." *Id.* at 4. BNSF nonetheless has asserted that all such documents are privileged. *Id*.

In contrast to BNSF, Applicants, CPKC, and CSX all have produced non-privileged documents relating to their analyses of potential transactions. *See, e.g.*, Ex. I, UP_1464518; Ex. J, UP_0039385; Ex. K, NS_00038037; Ex. L, CPKC-000002793; Ex. M, CSXT_0000001.

BNSF's responses, coupled with the documents produced by the other Class I railroads, suggest that BNSF has not actually conducted a search for non-custodial documents responsive to this set of requests beyond its lawyers' conversations with two executives. Applicants therefore asked BNSF to identify the additional steps it had taken to search for such documents, but BNSF declined to answer, stating during the parties' October 16 conference that it does not believe Applicants are entitled to that information.

Your Honor should order BNSF to conduct an adequate search for non-privileged, non-custodial documents responsive to Applicants' First Set of Discovery Requests. Given the existence of such documents in the files of every other Class I railroad, it is highly likely that BNSF likewise possesses documents that it can and should produce. It is no answer to say that two executives do not think such documents exist. BNSF should not be permitted to take their word without further investigation, and instead should be required to conduct an actual search.

III. CONCLUSION

For the foregoing reasons, Applicants respectfully request that Your Honor grant this Motion and enter an order directing BNSF to:

(1) conduct custodial document searches using the parameters in Appendix A; and

(2) conduct an adequate search for non-privileged, non-custodial documents responsive to Applicants' First Set of Discovery Requests.

Respectfully submitted,

/s/ Laura Flahive Wu

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cc: All Parties of Record

Appendix A
Applicants' Proposed Custodial Search Parameters[1]

I. Custodians

Name	Title	Relevance
Katie Farmer*	President and Chief Executive Officer	• As President and CEO, Farmer has direct oversight over BNSF's strategic direction, operations, and competitive positioning. • Farmer has knowledge of BNSF's assessment of and response to the proposed merger, including consideration of alternative transactions, internal analyses of competitive and operational impact, development of responsive applications, and evaluation of the merger's public benefits and alleged harms. • Farmer has issued public statements in opposition to the merger, arguing that the transaction would eliminate competition, raise costs for consumers, and destabilize the supply chain, and that BNSF can achieve similar benefits through partnership and collaboration rather than consolidation.
Paul Bischler*	Executive Vice President and Chief Financial Officer	• As CFO, Bischler oversees BNSF's financial operations, pricing strategy, revenue performance, and capital allocation. • Bischler has knowledge of BNSF's financial assessment of and response to the proposed UP-NS merger, including BNSF's internal financial analyses of the merger's anticipated impact on revenues, pricing, shipper costs, and competitive position, as well as financial modeling supporting BNSF's responsive applications. • Bischler has knowledge relevant to BNSF's public statements characterizing the merger as "a plan to create a railroad far larger than its rivals that will exert market power and leverage to maximize prices on shippers."

[1] An asterisk (*) indicates the aspects of these parameters that Applicants understand have been agreed upon with BNSF.

Name	Title	Relevance
Tom Williams*	Executive Vice President and Chief Marketing Officer	• As CMO, Williams is responsible for BNSF's commercial strategy, customer relationships, intermodal and consumer products business lines, and competitive positioning within the rail industry. • Williams has knowledge of BNSF's commercial assessment of and response to the proposed UP-NS merger, including BNSF's internal analyses of the merger's anticipated impact on BNSF's competitive position, shipper options, pricing, and service quality. • Williams has served as one of BNSF's public spokespersons regarding the merger, issuing numerous communications to customers and stakeholders from January through September 2026.
Craig Morehouse*	Executive Vice President and Chief Operations Officer	• As COO, Morehouse has direct oversight of BNSF's network operations and service design, with extensive operations leadership experience since 2006. • Morehouse has knowledge of BNSF's operational assessment of the merger's anticipated impact on network operations, service performance, interchange traffic, and interline arrangements. Morehouse was likely involved in the operational judgments and analyses underlying BNSF's responsive application seeking overhead trackage rights.
Jon Gabriel*	Group Vice President, Consumer Products	• Gabriel oversees BNSF's intermodal and automotive business units and previously served as VP of Network Strategy, Design and Innovation. • Gabriel has knowledge of BNSF's commercial assessment of the merger as it relates to intermodal traffic and consumer products, including the commercial analysis supporting BNSF's responsive applications. • Gabriel has publicly discussed BNSF's capacity investments, including more than 8,000 new intermodal parking spaces and 100 miles of new main track on its LA-Chicago transcontinental route.

Name	Title	Relevance
Katie Hower	Group Vice President, Industrial Products	• Hower oversees BNSF's industrial segments, including chemicals, building products, construction, beverages, and perishables, and serves on the STB's Railroad-Shipper Transportation Advisory Council. • Hower has knowledge of BNSF's commercial assessment of the merger as it relates to industrial products traffic, including the alleged risk of exacerbated captive shipper exposure to higher rates in the Gulf Coast region. • Hower has made public statements demonstrating knowledge of BNSF's efforts to improve rail service without a merger, relevant to evaluating the merger's claimed benefits.
Angela Caddell	Group Vice President, Agriculture & Energy Products	• Caddell has direct oversight of BNSF's agricultural and energy products business, including BNSF's commercial relationships with U.S. agricultural producers and shippers. • Caddell has knowledge of BNSF's assessment of, response to, and alleged competitive concerns regarding the proposed UP-NS merger as it relates to the agricultural community.
Zak Andersen	Chief of Staff and Vice President, Communications	• As Chief of Staff and VP of Communications, Andersen has knowledge of BNSF's response to the merger, including public communications strategy and engagement with regulators, lawmakers, and stakeholders. • Andersen has made numerous public statements demonstrating knowledge in these areas and criticizing the merger, including by characterizing the merger as "a straight Wall Street transaction" that would be "bad for competition and only lead to higher rates and fewer options for shippers." *See BNSF Slams Proposed UP-Norfolk Southern Merger*, Hastings Tribune (Oct. 31, 2025).

Name	Title	Relevance
Mike Smythers	Vice President, Federal Government Affairs	• As VP of Federal Government Affairs, Smythers oversees BNSF's engagement with federal lawmakers, regulatory agencies, and government stakeholders. Smythers thus likely has knowledge of BNSF's communications with the STB, members of Congress, and other government officials regarding the merger, including BNSF's advocacy efforts and policy positions. • Smythers also likely possesses information concerning BNSF's coordination with other stakeholders—including shippers, agricultural groups, and labor unions—opposing the merger and BNSF's assessment of the regulatory and political landscape surrounding the STB's review.
Carl Ice	Former President and CEO	• Ice previously served as BNSF's President and Chief Executive Officer with ultimate executive authority over the railroad's strategic direction, operations, and competitive positioning. Ice thus has historical knowledge of BNSF's strategic planning, competitive positioning, and prior assessments of rail industry consolidation, including any consideration of merger transactions or strategic combinations during his tenure. • Ice likely possessed information concerning BNSF's long-term views on industry structure, competitive dynamics among Class I railroads, and the potential effects of further consolidation on BNSF's business.
Julie Piggott	Former Executive Vice President and Chief Financial Officer	• Piggott previously served as BNSF's Chief Financial Officer with oversight of the railroad's financial operations, pricing strategy, and capital allocation. • Piggott has knowledge of BNSF's historical perspective on rail industry consolidation and the regulatory landscape governing major railroad mergers. Indeed, Piggott has made public statements regarding regulatory challenges facing rail industry mergers. *See, e.g.*, Claire Boston, *Buffett's Rail CFO Sees Challenges for Rivals Seeking to Merge*, Bloomberg (Nov. 10, 2015).

Name	Title	Relevance
Stevan Bobb	Former Executive Vice President and Chief Marketing Officer	• Bobb previously served as CMO with oversight of BNSF's commercial strategy, marketing operations, and customer relationships. Bobb has historical knowledge of BNSF's commercial assessment of mergers, including internal analyses of their anticipated impacts on shipper options, pricing, and BNSF's competitive position. • Bobb likely possessed information concerning BNSF's customer communications regarding the proposed merger and BNSF's development of commercial strategies in response to the anticipated competitive landscape following the merger.
Matt Igoe	Former Executive Vice President of Operations	• Igoe previously served as BNSF's Executive Vice President of Operations with direct oversight of the railroad's network operations, service performance, and operational efficiency. Igoe thus has historical knowledge of BNSF's operational capabilities, network capacity, service design, and competitive positioning that is relevant to evaluating Applicants' claims regarding operational efficiencies and service improvements from the proposed merger. • Igoe likely possessed information concerning BNSF's prior assessments of interline operations, interchange arrangements, and the operational challenges historically associated with major rail mergers.
Matt Garland	Former COO	• Garland previously served as BNSF's COO with responsibility for day-to-day operations, network performance, and service delivery. Garland thus has historical knowledge of BNSF's operational strategy, capacity planning, and service performance that is relevant to assessing the merger's potential impact on rail service and competition. • Garland likely possessed information concerning BNSF's historical experience with post-merger service disruptions in the rail industry and BNSF's internal views on the operational risks of further industry consolidation.

Name	Title	Relevance
Colby Tanner	Former Group Vice President of Industrial Products	• Tanner previously served as BNSF's Group Vice President of Industrial Products with oversight of sales and marketing for BNSF's industrial segments, including chemicals, building products, and manufacturing-related freight. Tanner thus has historical knowledge of BNSF's commercial relationships with industrial shippers and BNSF's competitive positioning in industrial freight markets that may be affected by the proposed merger. • Tanner likely possessed information concerning the competitive dynamics in industrial freight markets, shipper concerns regarding rail service options, and the potential impact of reduced competition on industrial customers—including those in the Gulf Coast chemical corridor.

II. Date Ranges

- Start Date:
    - July 29, 2024 for searches relating to impacts of the Proposed Transaction (Requests 3–9, 12–15, 17, and 30).*
    - January 1, 2019 for all other requests (Requests 2, 10, 11, 16, and 22–29).
- End Date: February 17, 2026.*

III. Responsiveness Criteria

1. Non-privileged materials related to actual or potential *combinations*, joint ventures, alliances, partnerships, or other cooperative arrangements between BNSF and other Class I railroads, customers, intermodal marketing companies, *ports, and Class II/III railroads*.[2]

2. Non-privileged materials related to competition, consolidation, and growth in the rail industry.*

3. Non-privileged materials related to the impacts of the Proposed Transaction on rates, routes, services, revenues, costs, expenses, operations, investments, traffic volumes,

[2] Agreed-upon except with respect to the italicized, underlined text.

service offerings, markets, market shares, growth, financial viability, or competitive positions.*

4. Non-privileged materials related to risks of the Proposed Transaction, including risks related to costs, services, interchanges, competition, *integration,* or personnel.[3]

5. Non-privileged materials related to the impacts of the Proposed Transaction on KCT, PPU, TRRA, TTX, and/or other shared industry assets or joint ventures.*

6. Non-privileged materials related to the alleged potential or projected public benefits of the Proposed Transaction, including diversions of railroad or truck traffic, operating efficiencies, cost savings, *and benefits relating to short lines, ports, and committed gateway pricing*.[4]

7. Non-privileged materials related to the efficacy and benefits of interline arrangements.*

8. Non-privileged materials related to the Proposed Transaction's impacts on interline arrangements or other cooperative arrangements with other rail carriers.*

9. Non-privileged final studies, analyses, and reports relating to the 1997 I-5 Proportional Rate Agreement.*

10. Non-privileged materials related to BNSF's responses to the Proposed Transaction, including consideration of alternative transactions.

11. Non-privileged materials related to BNSF's pricing and growth strategies, including (but not limited to) materials relating to Precision Scheduled Railroading and offers to customers opening new facilities.

[3] Agreed-upon except with respect to the italicized, underlined text.

[4] Agreed-upon except with respect to the italicized, underlined text.

Exhibit A

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, September 24, 2026 2:35 PM
To: Maya, Michael; Kelly, Kevin; Donovan, Daniel T.; Joseph, Neil; McCarrick, T.J.; Durling, Gabi; Volbrecht, Tate D.
Cc: Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Magcale, Jamie Dominique U; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; OpalDisco
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
We'll provide our proposal for custodians + date range + responsiveness criteria on Oct. 5 – with search terms and hit reports to follow.

McClain Thompson

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From: Maya, Michael <mmaya@cov.com>
Sent: Thursday, September 24, 2026 1:58 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for your response. Could you send everything in your proposal except the hit reports on October 5, and then follow up with the hit reports later that week as they are ready? That would be fine with us and would promote the objective of moving this process forward as efficiently as possible.

Thanks,

Mike

Michael Maya

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COVINGTON

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: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, September 24, 2026 12:42 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Mike –

We should stick with October 9 as the target, but if our proposal + hit counts are ready by October 5, we'll provide it then. We expect that some of the business days the week of October 5 will be needed to complete the processing and hit report preparation. In all events, when the proposal and hit counts are ready, we'll provide it. Our October 9 target date applies to the custodians from whom we are preparing to agree to collect.

BNSF will provide a responsiveness criteria sheet when we make our proposal.

Thanks,

McClain

McClain Thompson

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From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, September 23, 2026 4:19 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for speaking earlier today. We appreciate BNSF's proposal to provide by October 9 the custodians, search terms, and date ranges, as well as the resulting hit reports, that BNSF proposes to use for its custodial document productions in response to Applicants' First and Second Discovery Requests.

We request two modest modifications to your proposal. First, we request that you provide BNSF's proposed search parameters by October 5, rather than October 9, so that the parties can begin meeting and conferring by October 8 and then have a full two weeks to negotiate before the October 22 deadline for submissions to be heard by the ALJ on October 30. Second, we request that BNSF's proposed search parameters include either proposed responsiveness criteria or, in the alternative, a list of the RFPs in response to which you do and do not propose to conduct custodial searches (as well as any buckets or categories of otherwise responsive documents for which you do not intend to perform custodial searches).

Please let us know by 10 am Eastern tomorrow if these two modifications are acceptable.

Thanks,

Mike

Michael Maya

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T +1 202 662 5547 | mmaya@cov.com
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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Monday, September 21, 2026 7:52 AM

To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Let's start with UP's specific basis for each of the requested custodians below. I'm free Wednesday afternoon.

McClain Thompson

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Sent: Friday, September 18, 2026 4:08 PM
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Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Please let us know BNSF's availability to confer as requested below.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956

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From: Kelly, Kevin
Sent: Thursday, September 17, 2026 1:41 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
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Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Other than indicating that your review protocol likely will involve TAR and that you likely will not agree to produce documents from all of the custodians we identified, your email does not provide the information we sought. BNSF's refusal or inability to provide that information more than a month after your August 12 communication is not reasonable, especially in light of the schedule in this matter. Please let us know when you are available to meet and confer about this between mid-day on Tuesday and the end of the day on Wednesday.

On the same call, in addition to discussing the information we requested in our September 11 email, we also would like to discuss a schedule for (1) search term hit reports, (2) search term and custodian negotiations, (3) briefing and hearing of any disputes relating to the foregoing, (4) the commencement of custodial productions, and (5) substantial completion of custodial productions.

We look forward to receiving your availability for next Tuesday and Wednesday.

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Wednesday, September 16, 2026 6:16 PM

To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Kevin –

Thanks for the note. We are actively working to scope a custodial search protocol, and we will circle back with a proposal that we believe will appropriately target case-relevant information from a non-applicant in a proportional matter. Once we complete that work, we will confer with you about our search process. Our custodian proposal will include some – but not all – of the names in UP's email, which is overbroad and not tailored to target case-relevant information.

We do expect that our search process will include some technology assisted review, and we will provide a disclosure about our protocol once we finalize it.

We are working on amendments to our responses to UP's second set of discovery requests and will serve those amendments once we complete our assessments with our client.

Meanwhile, we will continue to make rolling productions.

We will be in touch.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 11, 2026 4:57 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *mmaya@cov.com <mmaya@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J.

<mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

On August 12, you indicated that BNSF would be agreeing to search for additional documents in response to Applicants' discovery requests. You further stated that BNSF would be amending its written responses and objections and would be conducting ESI collections and review. Since you provided that update more than for weeks ago, BNSF has neither amended its written responses nor provided any additional information regarding its search parameters.

Please provide no later than Wednesday, September 16, information regarding the search parameters that BNSF intends to use to identify documents responsive to Applicants' discovery requests. At a minimum, please:

1. Explain whether you are conducting custodial and/or non-custodial searches to identify responsive documents for each of Applicants' RFPs.
2. Explain whether you are limiting your searches to a subset of the documents requested by each RFP. If so, explain what limitations you are applying for each RFP.
3. Identify the custodians whose ESI you are collecting and processing to search.
4. Disclose the search terms you are using.
5. Disclose the date cutoffs you are using.
6. Explain whether you are employing TAR. If so, explain how you are employing TAR.

Although BNSF has an independent obligation to identify custodians to search for responsive documents, Applicants have identified the following individuals likely to possess responsive documents who should be included as custodians. For the former employees that are listed, please confirm whether BNSF still possesses custodial ESI for these employees. To the extent BNSF no longer possesses custodial ESI for the former employees, we will need to identify other individuals to cover the relevant time periods and subject matter. Please let us know promptly if you are refusing to search these custodians' files for responsive documents.

- Katie Farmer
- Paul Bischler
- Zak Anderson
- Craig Morehouse
- Tom Williams
- Jon Gabriel
- Angela Caddell
- Katie Hower
- Mike Smythers
- Carl Ice
- Julie Piggott
- Matt Igoe
- Matt Garland
- Stevan Bobb
- Colby Tanner

Best,

Kevin

Kevin Kelly

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Exhibit B

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Monday, October 5, 2026 7:47 PM
To: Maya, Michael; Kelly, Kevin; Donovan, Daniel T.; Joseph, Neil; McCarrick, T.J.; Durling, Gabi; Volbrecht, Tate D.
Cc: Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Magcale, Jamie Dominique U; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; OpalDisco
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF
Attachments: 2026.10.05 BNSF Search Proposals.pdf

[EXTERNAL]
Please see attached for BNSF's October 5 disclosure.

McClain Thompson

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Washington, D.C. 20004
T +1 202 389 5292
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mcclain.thompson@kirkland.com

From: Thompson, McClain
Sent: Friday, October 2, 2026 12:49 PM
To: 'Maya, Michael' <mmaya@cov.com>; 'Kelly, Kevin' <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins' <wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Since Kevin might have inadvertently misstated our agreement at today's hearing, we said: BNSF will provide our proposal for custodians + date range + responsiveness criteria on Oct. 5 – with search terms and hit reports to follow.

Per that agreement, on Monday, BNSF will provide our custodian, date range, and responsiveness criteria proposals.

We remain on track to provide the search terms and hit reports next week, and we will do so by no later than Oct. 9. If the search terms and hit reports are ready before Oct. 9, we will provide them before Oct. 9.

Please see the thread below.

McClain Thompson

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M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Thompson, McClain
Sent: Thursday, September 24, 2026 2:35 PM
To: 'Maya, Michael' <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
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To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
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Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for your response. Could you send everything in your proposal except the hit reports on October 5, and then follow up with the hit reports later that week as they are ready? That would be fine with us and would promote the objective of moving this process forward as efficiently as possible.

Thanks,

Mike

Michael Maya

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Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
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[EXTERNAL]
Mike –

We should stick with October 9 as the target, but if our proposal + hit counts are ready by October 5, we'll provide it then. We expect that some of the business days the week of October 5 will be needed to complete the processing and hit report preparation. In all events, when the proposal and hit counts are ready, we'll provide it. Our October 9 target date applies to the custodians from whom we are preparing to agree to collect.

BNSF will provide a responsiveness criteria sheet when we make our proposal.

Thanks,

McClain

McClain Thompson

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Sent: Wednesday, September 23, 2026 4:19 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
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Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for speaking earlier today. We appreciate BNSF's proposal to provide by October 9 the custodians, search terms, and date ranges, as well as the resulting hit reports, that BNSF proposes to use for its custodial document productions in response to Applicants' First and Second Discovery Requests.

We request two modest modifications to your proposal. First, we request that you provide BNSF's proposed search parameters by October 5, rather than October 9, so that the parties can begin meeting and conferring by October 8 and then have a full two weeks to negotiate before the October 22 deadline for submissions to be heard by the ALJ on October 30. Second, we request that BNSF's proposed search parameters include either proposed responsiveness criteria or, in the alternative, a list of the RFPs in response to which you do and do not propose to conduct custodial searches (as well as any buckets or categories of otherwise responsive documents for which you do not intend to perform custodial searches).

Please let us know by 10 am Eastern tomorrow if these two modifications are acceptable.

Thanks,

Mike

Michael Maya

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[EXTERNAL]
Let's start with UP's specific basis for each of the requested custodians below. I'm free Wednesday afternoon.

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McClain,

Please let us know BNSF's availability to confer as requested below.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin
Sent: Thursday, September 17, 2026 1:41 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Other than indicating that your review protocol likely will involve TAR and that you likely will not agree to produce documents from all of the custodians we identified, your email does not provide the information we sought. BNSF's refusal or inability to provide that information more than a month after your August 12 communication is not reasonable, especially in light of the schedule in this matter. Please let us know when you are available to meet and confer about this between mid-day on Tuesday and the end of the day on Wednesday.

On the same call, in addition to discussing the information we requested in our September 11 email, we also would like to discuss a schedule for (1) search term hit reports, (2) search term and custodian negotiations, (3) briefing and hearing of any disputes relating to the foregoing, (4) the commencement of custodial productions, and (5) substantial completion of custodial productions.

We look forward to receiving your availability for next Tuesday and Wednesday.

Best,

Kevin

Kevin Kelly

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Sent: Wednesday, September 16, 2026 6:16 PM
To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Kevin –

Thanks for the note. We are actively working to scope a custodial search protocol, and we will circle back with a proposal that we believe will appropriately target case-relevant information from a non-applicant in a proportional matter. Once we complete that work, we will confer with you about our search process. Our custodian proposal will include some – but not all – of the names in UP's email, which is overbroad and not tailored to target case-relevant information.

We do expect that our search process will include some technology assisted review, and we will provide a disclosure about our protocol once we finalize it.

We are working on amendments to our responses to UP's second set of discovery requests and will serve those amendments once we complete our assessments with our client.

Meanwhile, we will continue to make rolling productions.

We will be in touch.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 11, 2026 4:57 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *mmaya@cov.com <mmaya@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

On August 12, you indicated that BNSF would be agreeing to search for additional documents in response to Applicants' discovery requests. You further stated that BNSF would be amending its written responses and objections and would be conducting ESI collections and review. Since you provided that update more than for weeks ago, BNSF has neither amended its written responses nor provided any additional information regarding its search parameters.

Please provide no later than Wednesday, September 16, information regarding the search parameters that BNSF intends to use to identify documents responsive to Applicants' discovery requests. At a minimum, please:

1. Explain whether you are conducting custodial and/or non-custodial searches to identify responsive documents for each of Applicants' RFPs.
2. Explain whether you are limiting your searches to a subset of the documents requested by each RFP. If so, explain what limitations you are applying for each RFP.
3. Identify the custodians whose ESI you are collecting and processing to search.
4. Disclose the search terms you are using.
5. Disclose the date cutoffs you are using.
6. Explain whether you are employing TAR. If so, explain how you are employing TAR.

Although BNSF has an independent obligation to identify custodians to search for responsive documents, Applicants have identified the following individuals likely to possess responsive documents who should be included as custodians. For the former employees that are listed, please confirm whether BNSF still possesses custodial ESI for these employees. To the extent BNSF no longer possesses custodial ESI for the former employees, we will need to identify other individuals to cover the relevant time periods and subject matter. Please let us know promptly if you are refusing to search these custodians' files for responsive documents.

- Katie Farmer
- Paul Bischler
- Zak Anderson
- Craig Morehouse
- Tom Williams
- Jon Gabriel
- Angela Caddell

- Katie Hower
- Mike Smythers
- Carl Ice
- Julie Piggott
- Matt Igoe
- Matt Garland
- Stevan Bobb
- Colby Tanner

Best,

Kevin

Kevin Kelly

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Exhibit C

STB Docket No. FD 36873 – BNSF's Search Proposals

BNSF Custodians: Paul Bischler (Chief Financial Officer), Katie Farmer (Chief Executive Officer), Craig Morehouse (Chief Operating Officer), and Tom Williams (Chief Marketing Officer).

Date Range for BNSF Searches: July 29, 2024 to July 29, 2025 (except as noted below).

BNSF's Responsiveness Criteria: BNSF will conduct a reasonable search for the following:

- Non-privileged materials related to actual or potential joint ventures, alliances, partnerships, or other cooperative arrangements between BNSF and other Class I railroads, customers, and intermodal marketing companies.

- Non-privileged materials related to competition, consolidation, and growth in the rail industry.

- Non-privileged materials related to the impacts of the Proposed Transaction on rates, routes, services, revenues, costs, expenses, operations, investments, traffic volumes, service offerings, markets, market shares, growth, financial viability, or competitive positions.

- Non-privileged materials related to risks of the Proposed Transaction, including risks related to costs, services, interchanges, competition, or personnel.

- Non-privileged materials related to the impacts of the Proposed Transaction on KCT, PPU, TRRA, TTX, and/or other shared industry assets or joint ventures.

- Non-privileged materials related to the alleged potential or projected public benefits of the Proposed Transaction, including diversions of railroad or truck traffic, operating efficiencies, or cost savings.

- Non-privileged materials related to the efficacy and benefits of interline arrangements.

- Non-privileged materials related to the Proposed Transaction's impacts on interline arrangements or other cooperative arrangements with other rail carriers.

- Non-privileged final studies, analyses, and reports relating to the 1997 I-5 Proportional Rate Agreement.

Exhibit D

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Friday, October 16, 2026 3:48 PM
To: Maya, Michael; Kelly, Kevin; Donovan, Daniel T.; Joseph, Neil; McCarrick, T.J.; Durling, Gabi; Volbrecht, Tate D.
Cc: Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Magcale, Jamie Dominique U; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; OpalDisco
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF
Attachments: BNSF TAR Protocol.pdf

[EXTERNAL]
Please see attached for our TAR protocol.

McClain Thompson

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From: Thompson, McClain
Sent: Friday, October 9, 2026 5:59 PM
To: 'Maya, Michael' <mmaya@cov.com>; 'Kelly, Kevin' <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins' <wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Covington Team –

We write further to our e-discovery disclosures. Consistent with our efforts to identify a reasonable, efficient, and defensible process for identifying and producing responsive documents, BNSF has elected to forgo the use of search term and instead use a TAR process. BNSF will provide a TAR disclosure next week.

Thanks,

McClain

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Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins' <wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Please see attached for BNSF's October 5 disclosure.

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Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins' <wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Since Kevin might have inadvertently misstated our agreement at today's hearing, we said: BNSF will provide our proposal for custodians + date range + responsiveness criteria on Oct. 5 – with search terms and hit reports to follow.

Per that agreement, on Monday, BNSF will provide our custodian, date range, and responsiveness criteria proposals.

We remain on track to provide the search terms and hit reports next week, and we will do so by no later than Oct. 9. If the search terms and hit reports are ready before Oct. 9, we will provide them before Oct. 9.

Please see the thread below.

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Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

We'll provide our proposal for custodians + date range + responsiveness criteria on Oct. 5 – with search terms and hit reports to follow.

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Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>;

Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for your response. Could you send everything in your proposal except the hit reports on October 5, and then follow up with the hit reports later that week as they are ready? That would be fine with us and would promote the objective of moving this process forward as efficiently as possible.

Thanks,

Mike

Michael Maya

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To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Mike –

We should stick with October 9 as the target, but if our proposal + hit counts are ready by October 5, we'll provide it then. We expect that some of the business days the week of October 5 will be needed to complete the processing and hit report preparation. In all events, when the proposal and hit counts are ready, we'll provide it. Our October 9 target date applies to the custodians from whom we are preparing to agree to collect.

BNSF will provide a responsiveness criteria sheet when we make our proposal.

Thanks,

McClain

McClain Thompson

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From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, September 23, 2026 4:19 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for speaking earlier today. We appreciate BNSF's proposal to provide by October 9 the custodians, search terms, and date ranges, as well as the resulting hit reports, that BNSF proposes to use for its custodial document productions in response to Applicants' First and Second Discovery Requests.

We request two modest modifications to your proposal. First, we request that you provide BNSF's proposed search parameters by October 5, rather than October 9, so that the parties can begin meeting and conferring by October 8 and then have a full two weeks to negotiate before the October 22 deadline for submissions to be heard by the ALJ on October 30. Second, we request that BNSF's proposed search parameters include either proposed responsiveness criteria or, in the alternative, a list of the RFPs in response to which you do and do not propose to conduct custodial searches (as well as any buckets or categories of otherwise responsive documents for which you do not intend to perform custodial searches).

Please let us know by 10 am Eastern tomorrow if these two modifications are acceptable.

Thanks,

Mike

Michael Maya

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Sent: Monday, September 21, 2026 7:52 AM
To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Let's start with UP's specific basis for each of the requested custodians below. I'm free Wednesday afternoon.

McClain Thompson

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Sent: Friday, September 18, 2026 4:08 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *mmaya@cov.com <mmaya@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Please let us know BNSF's availability to confer as requested below.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
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COVINGTON

From: Kelly, Kevin
Sent: Thursday, September 17, 2026 1:41 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Other than indicating that your review protocol likely will involve TAR and that you likely will not agree to produce documents from all of the custodians we identified, your email does not provide the information we sought. BNSF's refusal or inability to provide that information more than a month after your August 12 communication is not reasonable, especially in light of the schedule in this matter. Please let us know when you are available to meet and confer about this between mid-day on Tuesday and the end of the day on Wednesday.

On the same call, in addition to discussing the information we requested in our September 11 email, we also would like to discuss a schedule for (1) search term hit reports, (2) search term and custodian negotiations, (3) briefing and hearing of any disputes relating to the foregoing, (4) the commencement of custodial productions, and (5) substantial completion of custodial productions.

We look forward to receiving your availability for next Tuesday and Wednesday.

Best,

Kevin

Kevin Kelly

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Wednesday, September 16, 2026 6:16 PM
To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Kevin –

Thanks for the note. We are actively working to scope a custodial search protocol, and we will circle back with a proposal that we believe will appropriately target case-relevant information from a non-applicant in a proportional matter. Once we complete that work, we will confer with you about our search process. Our custodian proposal will include some – but not all – of the names in UP's email, which is overbroad and not tailored to target case-relevant information.

We do expect that our search process will include some technology assisted review, and we will provide a disclosure about our protocol once we finalize it.

We are working on amendments to our responses to UP's second set of discovery requests and will serve those amendments once we complete our assessments with our client.

Meanwhile, we will continue to make rolling productions.

We will be in touch.

Thanks,

McClain

McClain Thompson

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mcclain.thompson@kirkland.com

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 11, 2026 4:57 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *mmaya@cov.com <mmaya@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

On August 12, you indicated that BNSF would be agreeing to search for additional documents in response to Applicants' discovery requests. You further stated that BNSF would be amending its written responses and objections and would be conducting ESI collections and review. Since you provided that update more than for weeks ago, BNSF has neither amended its written responses nor provided any additional information regarding its search parameters.

Please provide no later than Wednesday, September 16, information regarding the search parameters that BNSF intends to use to identify documents responsive to Applicants' discovery requests. At a minimum, please:

1. Explain whether you are conducting custodial and/or non-custodial searches to identify responsive documents for each of Applicants' RFPs.
2. Explain whether you are limiting your searches to a subset of the documents requested by each RFP. If so, explain what limitations you are applying for each RFP.
3. Identify the custodians whose ESI you are collecting and processing to search.
4. Disclose the search terms you are using.
5. Disclose the date cutoffs you are using.
6. Explain whether you are employing TAR. If so, explain how you are employing TAR.

Although BNSF has an independent obligation to identify custodians to search for responsive documents, Applicants have identified the following individuals likely to possess responsive documents who should be included as custodians. For the former employees that are listed, please confirm whether BNSF still possesses custodial ESI for these employees. To the extent BNSF no longer possesses custodial ESI for the former employees, we will need to identify other individuals to cover the relevant time periods and subject matter. Please let us know promptly if you are refusing to search these custodians' files for responsive documents.

- Katie Farmer
- Paul Bischler

- Zak Anderson
- Craig Morehouse
- Tom Williams
- Jon Gabriel
- Angela Caddell
- Katie Hower
- Mike Smythers
- Carl Ice
- Julie Piggott
- Matt Igoe
- Matt Garland
- Stevan Bobb
- Colby Tanner

Best,

Kevin

Kevin Kelly

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Exhibit E

Filed under seal pursuant to the Protective Order

Exhibit F

From: Kelly, Kevin
Sent: Tuesday, September 29, 2026 11:39 AM
To: Thompson, McClain; Cabbell, Travis; Rosenthal, Michael; ratkins; *owilliams@steptoe.com; matelisj@sullcrom.com; rrudolph1022@gmail.com; mfm@vnf.com; railcents@comcast.net; info@iowaagriculture.gov; buckmanrailroadcorrespondence@googlegroups.com; info@airalliancehouston.org; hildrethk@ugicorp.com; sletcher@ndgda.org; jordan.goerger@ardentmills.com; jen-ann.lee@calsta.ca.gov; bluc@bacpdx.org; deb.barber@ci.stpaul.mn.us; jack.arriaga@portlandoregon.gov; mkonz@mankatomn.gov; gregg.pittelkow@corteva.com; kevinarquit@quinnemanuel.com; coyfortenberry1 @gmail.com; jodonnell@elpc.org; parker@viariogrande.org; aluised@sullcrom.com; keithj@dsllog.com; cgonzalez@cityofcudahyca.gov; alejandra.salinas@houstontx.gov; cfs_contract_admin@dteenergy.com; shawn.johnson@friedfrank.com; lgorski@farmingtonmn.gov; kknichel@knichellogistics.com; jgilbert@fletcher-sippel.com; signinstaller210@yahoo.com; paulk@highlinegrain.com; anolan@anacostia.com; efoley@mtahq.org; mfreeman3@marathonpetroleum.com; mark.kittel@ohioago.gov; christian.corrigan@mt.gov; caitlin.madden@wisconsin.gov; stb.monitoring@valero.com; hmhancock@mac.com; mburton@semmes.com; barbara.thoman@allaboardmn.org; mariia.zimmerman@drpt.virginia.gov; rolltide372109@gmail.com; Donovan, Daniel T.; redelman@mooneygreen.com; cspitulnik@kaplankirsch.com; cath.santamaria@gmail.com; carolyne@ceic.cc; steven.orban@myfloridalegal.com; tom@twilcoxlaw.com; eric.eidlin@sanjoseca.gov; cwismer@ctscement.com; eenson@crowell.com; matthew.yanez@dot.gov; mcole@usdg.com; mwilloughby@whdlawyers.com; zbevins@gmail.com; jason.biggs@wsdot.wa.gov; guadamudm@ag.louisiana.gov; ltucker@ag.nv.gov; pmukerjee@earthjustice.org; abk@sloverandloftus.com; tyellen@pdnfoundation.org; clay.dippel@gmail.com; karyn.booth@thompsonhine.com; james.thomas@mail.house.gov; jason.tutrone@thompsonhine.com; njdot-stb.36873 @dot.nj.gov; mitchelwalker219@gmail.com; don.amlin@usdoj.gov; mario.castillo2 @houstontx.gov; ahirschkorn@kaplankirsch.com; superneighborhood63@gmail.com; gallegosrt@sbcglobal.net; jhthompson@law.ga.gov; saaket.pradhan@ag.ny.gov; rdr@sloverandloftus.com; brian.amis@houstontx.gov; mbarth@unitedsugarpr.com; justin.sherlock@ndsga.com; nicks@ndgga.com; tmiddleton@omnitrax.com; kpattison@pattisoncompany.com; pkrogman@njtransit.com; michelle.scelson@railnola.com; mewilson@commerce.nc.gov; ian.hlavacek@gmail.com; joseph.summersrt@gmail.com; matthew.johnston@ilsoy.org; njohnson@baileyglasser.com; loriedwards@utah.gov; uipalogistics@utah.gov; Warren, Matthew J.; alexlarams@earthlink.net; elliotlawrence@agutah.gov; tlitwiler@fletcher-sippel.com; matthew.reinhart@hfsinclair.com; vquinn@fletcher-sippel.com; khart@cmap.illinois.gov; afultz@kaplankirsch.com; spencer.hightower@crh.com; kgardiner@crowell.com; Reilly, Matt; pap@sloverandloftus.com; jeff@fraleycorporation.com; diego.porroa@mail.house.gov; matt@ironhorseresources.com; karina@friendsoffondepark.org; patton@ohiosenate.gov; stb@hubgroup.com; kjd@sloverandloftus.com; matt.dietrich@dot.ohio.gov; jpeterso@ndwheat.com; kohler@nlc.org; meter_rihn@hotmail.com; selina.figueroa@oxea.com; neil.maunu@pnwa.net; parkergward@gmail.com; jcuomo@lcbf.com; wmullins@mullinslawgroup.net; tschweiss@peabodyenergy.com; chris@eykamp.com; bjanowski@mdot.maryland.gov;

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Subject: RE: STB Docket No. FD 36873 - Deposition Notices - BNSF

McClain,

Following up on the below note, please provide dates for the requested depositions of BNSF's witnesses.

Best,

Kevin

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Cc: Flahive Wu, Laura <lflahivewu@cov.com>
Subject: RE: STB Docket No. FD 36873 - Deposition Notices

McClain,

Thank you for your response. The Discovery Guidelines (Decision No. 24) do not provide that depositions cannot be sought or scheduled until after a filing or only in connection with a filing, and indeed, the reasons we seek to take the depositions we noticed, as set forth in the notices themselves, do not depend on whether any particular witness submits a verified statement. As a result, there is no reason to delay scheduling the depositions of the noticed witnesses until after BNSF files its comments. Rather, because of the likely difficulty of finding workable

dates around the end-of-year holidays, we ask that BNSF promptly provide available dates for the deposition of each of the noticed witnesses so that we can set an appropriate schedule without unnecessary delay.

Union Pacific reserves all rights to seek appropriate relief on this issue.

Best,

Kevin

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Cc: Flahive Wu, Laura <lflahivewu@cov.com>
Subject: RE: STB Docket No. FD 36873 - Deposition Notices

[EXTERNAL]
UP / NS Counsel –

We write for BNSF in response to Applicants' seven notices of intent to depose BNSF witnesses on mutually agreeable dates in December. On or before November 18, BNSF will file comments opposing the application. BNSF will make its declarants available for deposition. BNSF's declarants may include one or more of the witnesses that Applicants identified on Friday night. At the appropriate time, BNSF may agree to make a non-declarant available for deposition; that will depend in part on the nature of BNSF's comments and other factors such as whether Applicants have had a reasonable opportunity to take discovery from other sources (such that a non-declarant's deposition would be cumulative, etc.). We will confer with you about that as this process develops further.

Thanks,

McClain

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From: Cabbell, Travis <TCabbell@cov.com>
Sent: Friday, September 11, 2026 11:53 PM
To: Rosenthal, Michael <mrosenthal@cov.com>; ratkins <ratkins@sidley.com>; *owilliams@steptoe.com <owilliams@steptoe.com>; matelisj@sullcrom.com; rrudolph1022@gmail.com; mfm@vnf.com; railcents@comcast.net; info@iowaagriculture.gov; buckmanrailroadcorrespondence@googlegroups.com; info@airalliancehouston.org; hildrethk@ugicorp.com; sletcher@ndgda.org; jordan.goerger@ardentmills.com; jen-ann.lee@calsta.ca.gov; bluc@bacpdx.org; deb.barber@ci.stpaul.mn.us; jack.arriaga@portlandoregon.gov; mkonz@mankatomn.gov; gregg.pittelkow@corteva.com; kevinarquit@quinnemanuel.com; coyfortenberry1@gmail.com; jodonnell@elpc.org; parker@viariogrande.org; aluised@sullcrom.com; keithj@dsllog.com; cgonzalez@cityofcudahyca.gov; alejandra.salinas@houstontx.gov; cfs_contract_admin@dteenergy.com; shawn.johnson@friedfrank.com; lgorski@farmingtonmn.gov; kknichel@knichellogistics.com; jgilbert@fletcher-sippel.com; signinstaller210@yahoo.com; paulk@highlinegrain.com; anolan@anacostia.com; efoley@mtahq.org; mfreeman3@marathonpetroleum.com; mark.kittel@ohioago.gov; christian.corrigan@mt.gov; caitlin.madden@wisconsin.gov; stb.monitoring@valero.com; hmhancock@mac.com; mburton@semmes.com; barbara.thoman@allaboardmn.org; mariia.zimmerman@drpt.virginia.gov; rolltide372109@gmail.com; Donovan, Daniel T. <ddonovan@kirkland.com>; redelman@mooneygreen.com; cspitulnik@kaplankirsch.com; cath.santamaria@gmail.com; carolyne@ceic.cc; steven.orban@myfloridalegal.com; tom@twilcoxlaw.com; eric.eidlin@sanjoseca.gov; cwismer@ctscement.com; eenson@crowell.com; matthew.yanez@dot.gov; mcole@usdg.com; mwilloughby@whdlawyers.com; zbevins@gmail.com; jason.biggs@wsdot.wa.gov; guadamudm@ag.louisiana.gov; ltucker@ag.nv.gov; pmukerjee@earthjustice.org; abk@sloverandloftus.com; tyellen@pdnfoundation.org; clay.dippel@gmail.com; karyn.booth@thompsonhine.com; james.thomas@mail.house.gov; jason.tutrone@thompsonhine.com; njdot-stb.36873@dot.nj.gov; mitchelwalker219@gmail.com; don.amlin@usdoj.gov; mario.castillo2@houstontx.gov; ahirschkorn@kaplankirsch.com; superneighborhood63@gmail.com; gallegosrt@sbcglobal.net; jhthompson@law.ga.gov; saaket.pradhan@ag.ny.gov; rdr@sloverandloftus.com; brian.amis@houstontx.gov; mbarth@unitedsugarpr.com; justin.sherlock@ndsga.com; nicks@ndgga.com; tmiddleton@omnitrax.com; kpattison@pattisoncompany.com; pkrogman@njtransit.com; michelle.scelson@railnola.com; mewilson@commerce.nc.gov; ian.hlavacek@gmail.com; joseph.summersrt@gmail.com; matthew.johnston@ilsoy.org; njohnson@baileyglasser.com; loriedwards@utah.gov; uipalogistics@utah.gov; Warren, Matthew J. <mjwarren@sidley.com>; alexlarams@earthlink.net; elliotlawrence@agutah.gov; tlitwiler@fletcher-sippel.com; matthew.reinhart@hfsinclair.com; vquinn@fletcher-sippel.com; khart@cmap.illinois.gov; afultz@kaplankirsch.com; spencer.hightower@crh.com; kgardiner@crowell.com; Reilly, Matt <matt.reilly@kirkland.com>; pap@sloverandloftus.com; Thompson, McClain <mcclain.thompson@kirkland.com>; jeff@fraleycorporation.com; diego.porroa@mail.house.gov; matt@ironhorseresources.com; karina@friendsoffondepark.org; patton@ohiosenate.gov; stb@hubgroup.com; kjd@sloverandloftus.com; matt.dietrich@dot.ohio.gov; jpeterso@ndwheat.com; kohler@nlc.org; meter_rihn@hotmail.com; selina.figueroa@oxea.com; neil.maunu@pnwa.net; parkergward@gmail.com; jcuomo@lcbf.com; wmullins@mullinslawgroup.net; tschweiss@peabodyenergy.com; chris@eykamp.com; bjanowski@mdot.maryland.gov; davin@mveda.com; edward.arc.stb@gmail.com; patrick.flesch@modot.mo.gov; stacy.e.flippin.civ@army.mil; cdavid@wvago.gov; anna@skippergroup.org; aaron.cooper114645@gmail.com; adanflores@yahoo.com; dj.stadtler@vpra.virginia.gov; eric.wessan@ag.iowa.gov; mwmartin@agutah.gov; zachary.pohlman@nebraska.gov; tim.smith@doj.oregon.gov; paul.hemmersbaugh@us.dlapiper.com; scott.singleton99@gmail.com; cnlambos@lambosfirm.com; amber.fly@oag.texas.gov; walker@khlaw.com; efanchiang@crowell.com; jad.itani@dot.wi.gov; gabe.freeman24@gmail.com; efleischmann11@yahoo.com; cfrometa@downeyca.org; barbomber@hotmail.com; jputnam@kaplankirsch.com; ageorge@kozloffstoudt.com; dmj@sloverandloftus.com; tcollazzi@lcbf.com; siyer@kaplankirsch.com; liz@senatorventura.com;

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Cc: *lflahivewu@cov.com <lflahivewu@cov.com>
Subject: STB Docket No. FD 36873 - Deposition Notices

Counsel,

Please find attached Notices of Deposition for Katie Farmer, Angela Caddell, Craig Morehouse, Jon Gabriel, Katie Hower, Paul Bischler, and Tom Williams.

Best,
Travis

Travis Cabbell

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Exhibit G

From:	Maya, Michael
Sent:	Tuesday, October 20, 2026 8:27 PM
To:	Thompson, McClain; Kelly, Kevin; Donovan, Daniel T.; Joseph, Neil; McCarrick, T.J.; Durling, Gabi; Volbrecht, Tate D.
Cc:	Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Magcale, Jamie Dominique U; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; OpalDisco
Subject:	RE: FD 36873 - Applicants' Discovery Requests to BNSF
Attachments:	Applicants' Proposed Edits to BNSF's Responsiveness Criteria.docx

McClain,

Thanks for the call this morning. We cannot accept what you proposed but could accept the following, reserving all rights to seek more or different relief if there is no negotiated resolution.

- The custodians would be the five you identified (Farmer, Bischler, Morehouse, Williams, Gabriel) plus Caddell, Hower, Igoe, and Garland. Caddell and Hower also would be deponents. In addition, and as you proposed, anyone else who submits a verified statement also would be a deponent. Bischler would be deposed in December, as you further proposed.
- UP would agree not to seek depositions from any of the former employees (or documents from former employees other than Igoe and Garland) for now, but would reserve the right to renew either or both types of requests if we believe warranted by materials in Non-Applicants' November 18 submissions.
- As to the proposed date range of 1/1/24 to 2/17/26 with the exception of what I believe you called "historical" requests – this would be subject to UP's hearing which requests you consider "historical" and how far back you propose to go on them, and UP's agreement that the parties are close enough on this to work it out.
- The parties would agree to work out the proposed responsiveness criteria. Toward that end, our initial proposed edits are attached.
- BNSF would disclose the criteria or guidance that it and/or its custodians are using to select email folders for collection; this also would be subject to UP's agreement that the parties are close enough to work out any issues on those criteria.
- UP would reserve rights on BNSF's search for non-privileged non-custodial documents in response to UP's first set of requests, which we consider inadequate for reasons previoulsy articulated.
- UP would not produce documents of Andrew Brady.

I'm available to discuss tomorrow.

Mike

Michael Maya

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Friday, October 16, 2026 3:48 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Please see attached for our TAR protocol.

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From: Thompson, McClain
Sent: Friday, October 9, 2026 5:59 PM
To: 'Maya, Michael' <mmaya@cov.com>; 'Kelly, Kevin' <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins' <wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Covington Team –

We write further to our e-discovery disclosures. Consistent with our efforts to identify a reasonable, efficient, and defensible process for identifying and producing responsive documents, BNSF has elected to forgo the use of search term and instead use a TAR process. BNSF will provide a TAR disclosure next week.

Thanks,

McClain

McClain Thompson

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From: Thompson, McClain
Sent: Monday, October 5, 2026 7:47 PM
To: 'Maya, Michael' <mmaya@cov.com>; 'Kelly, Kevin' <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins' <wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Please see attached for BNSF's October 5 disclosure.

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mcclain.thompson@kirkland.com

From: Thompson, McClain
Sent: Friday, October 2, 2026 12:49 PM
To: 'Maya, Michael' <mmaya@cov.com>; 'Kelly, Kevin' <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; 'Rosenthal, Michael' <mrosenthal@cov.com>; 'Damitio, Daniel' <DDamitio@cov.com>; 'Magcale, Jamie Dominique U' <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Warren, Matthew J.' <mjwarren@sidley.com>; 'William Mullins'

<wmullins@mullinslawgroup.net>; 'ratkins' <ratkins@sidley.com>; 'Laudone, Stephen S.' <slaudone@sidley.com>; 'Korman, Marc' <mkorman@sidley.com>; 'Spencer Naake' <snaake@mullinslawgroup.net>; 'OpalDisco' <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

Since Kevin might have inadvertently misstated our agreement at today's hearing, we said: BNSF will provide our proposal for custodians + date range + responsiveness criteria on Oct. 5 – with search terms and hit reports to follow.

Per that agreement, on Monday, BNSF will provide our custodian, date range, and responsiveness criteria proposals.

We remain on track to provide the search terms and hit reports next week, and we will do so by no later than Oct. 9. If the search terms and hit reports are ready before Oct. 9, we will provide them before Oct. 9.

Please see the thread below.

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From: Thompson, McClain
Sent: Thursday, September 24, 2026 2:35 PM
To: 'Maya, Michael' <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

We'll provide our proposal for custodians + date range + responsiveness criteria on Oct. 5 – with search terms and hit reports to follow.

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From: Maya, Michael <mmaya@cov.com>
Sent: Thursday, September 24, 2026 1:58 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for your response. Could you send everything in your proposal except the hit reports on October 5, and then follow up with the hit reports later that week as they are ready? That would be fine with us and would promote the objective of moving this process forward as efficiently as possible.

Thanks,

Mike

Michael Maya

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Sent: Thursday, September 24, 2026 12:42 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Durling, Gabi <gabi.durling@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>
Cc: Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Mike –

We should stick with October 9 as the target, but if our proposal + hit counts are ready by October 5, we'll provide it then. We expect that some of the business days the week of October 5 will be needed to complete the processing and hit report preparation. In all events, when the proposal and hit counts are ready, we'll provide it. Our October 9 target date applies to the custodians from whom we are preparing to agree to collect.

BNSF will provide a responsiveness criteria sheet when we make our proposal.

Thanks,

McClain

McClain Thompson

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From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, September 23, 2026 4:19 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Thanks for speaking earlier today. We appreciate BNSF's proposal to provide by October 9 the custodians, search terms, and date ranges, as well as the resulting hit reports, that BNSF proposes to use for its custodial document productions in response to Applicants' First and Second Discovery Requests.

We request two modest modifications to your proposal. First, we request that you provide BNSF's proposed search parameters by October 5, rather than October 9, so that the parties can begin meeting and conferring by October 8 and then have a full two weeks to negotiate before the October 22 deadline for submissions to be heard by the ALJ on October 30. Second, we request that BNSF's proposed search parameters include either

proposed responsiveness criteria or, in the alternative, a list of the RFPs in response to which you do and do not propose to conduct custodial searches (as well as any buckets or categories of otherwise responsive documents for which you do not intend to perform custodial searches).

Please let us know by 10 am Eastern tomorrow if these two modifications are acceptable.

Thanks,

Mike

Michael Maya

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Monday, September 21, 2026 7:52 AM
To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
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[EXTERNAL]
Let's start with UP's specific basis for each of the requested custodians below. I'm free Wednesday afternoon.

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 18, 2026 4:08 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph,

Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *mmaya@cov.com <mmaya@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Please let us know BNSF's availability to confer as requested below.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin
Sent: Thursday, September 17, 2026 1:41 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

Other than indicating that your review protocol likely will involve TAR and that you likely will not agree to produce documents from all of the custodians we identified, your email does not provide the information we sought. BNSF's refusal or inability to provide that information more than a month after your August 12

communication is not reasonable, especially in light of the schedule in this matter. Please let us know when you are available to meet and confer about this between mid-day on Tuesday and the end of the day on Wednesday.

On the same call, in addition to discussing the information we requested in our September 11 email, we also would like to discuss a schedule for (1) search term hit reports, (2) search term and custodian negotiations, (3) briefing and hearing of any disputes relating to the foregoing, (4) the commencement of custodial productions, and (5) substantial completion of custodial productions.

We look forward to receiving your availability for next Tuesday and Wednesday.

Best,

Kevin

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From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Wednesday, September 16, 2026 6:16 PM
To: Kelly, Kevin <Kkelly@cov.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: Maya, Michael <mmaya@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Ludwin, Derek <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to BNSF

[EXTERNAL]
Kevin –

Thanks for the note. We are actively working to scope a custodial search protocol, and we will circle back with a proposal that we believe will appropriately target case-relevant information from a non-applicant in a proportional matter. Once we complete that work, we will confer with you about our search process. Our custodian proposal will include some – but not all – of the names in UP's email, which is overbroad and not tailored to target case-relevant information.

We do expect that our search process will include some technology assisted review, and we will provide a disclosure about our protocol once we finalize it.

We are working on amendments to our responses to UP's second set of discovery requests and will serve those amendments once we complete our assessments with our client.

Meanwhile, we will continue to make rolling productions.

We will be in touch.

Thanks,

McClain

McClain Thompson

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 11, 2026 4:57 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Brier, Grace C. <grace.brier@kirkland.com>
Cc: *mmaya@cov.com <mmaya@cov.com>; *lflahivewu@cov.com <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Korman, Marc <mkorman@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; ratkins <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>
Subject: FD 36873 - Applicants' Discovery Requests to BNSF

McClain,

On August 12, you indicated that BNSF would be agreeing to search for additional documents in response to Applicants' discovery requests. You further stated that BNSF would be amending its written responses and objections and would be conducting ESI collections and review. Since you provided that update more than for weeks ago, BNSF has neither amended its written responses nor provided any additional information regarding its search parameters.

Please provide no later than Wednesday, September 16, information regarding the search parameters that BNSF intends to use to identify documents responsive to Applicants' discovery requests. At a minimum, please:

1. Explain whether you are conducting custodial and/or non-custodial searches to identify responsive documents for each of Applicants' RFPs.
2. Explain whether you are limiting your searches to a subset of the documents requested by each RFP. If so, explain what limitations you are applying for each RFP.
3. Identify the custodians whose ESI you are collecting and processing to search.
4. Disclose the search terms you are using.
5. Disclose the date cutoffs you are using.

6. Explain whether you are employing TAR. If so, explain how you are employing TAR.

Although BNSF has an independent obligation to identify custodians to search for responsive documents, Applicants have identified the following individuals likely to possess responsive documents who should be included as custodians. For the former employees that are listed, please confirm whether BNSF still possesses custodial ESI for these employees. To the extent BNSF no longer possesses custodial ESI for the former employees, we will need to identify other individuals to cover the relevant time periods and subject matter. Please let us know promptly if you are refusing to search these custodians' files for responsive documents.

- Katie Farmer
- Paul Bischler
- Zak Anderson
- Craig Morehouse
- Tom Williams
- Jon Gabriel
- Angela Caddell
- Katie Hower
- Mike Smythers
- Carl Ice
- Julie Piggott
- Matt Igoe
- Matt Garland
- Stevan Bobb
- Colby Tanner

Best,

Kevin

Kevin Kelly

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Exhibit H

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION, ET AL.
—CONTROL—
NORFOLK SOUTHERN CORPORATION, ET AL.

BNSF RAILWAY COMPANY'S FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS TO APPLICANTS' FIRST SET OF DISCOVERY REQUESTS

Pursuant to 49 C.F.R. § 1114 and other applicable rules and authority, BNSF Railway Company ("BNSF") hereby provides these first supplemental responses and objections to Applicants' First Set of Discovery Requests to BNSF ("Requests") served by Union Pacific and Norfolk Southern (together, "Applicants") on May 29, 2026.

All responses set forth herein are subject to and without waiver of (i) BNSF's General Objections and Specific Responses, (ii) any objections to the relevance, materiality, or admissibility for any purpose of the information sought, (iii) the right to object on any ground at any time to a demand for further responses to the Requests; or (iv) the right to revise, correct, add to, supplement, or clarify any of its responses.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST 1:

Describe all railroad mergers, acquisitions, or other control transactions involving You and any other Class I railroad that You are considering or have

considered within the last 12 months, whether in response to the Proposed Transaction or otherwise.

RESPONSE TO REQUEST 1:

Subject to and without waiving its objections, BNSF states the following:

Counsel for BNSF has conducted a reasonable search for the requested materials and consulted with the principal individuals at BNSF who would have responsibility for evaluating potential mergers, acquisitions, or control transactions, including Chief Legal Officer Jill Mulligan and Chief Executive Officer Katie Farmer. Between May 29, 2025 and May 29, 2026 (the time period sought in Request No. 1), BNSF did not take steps to acquire another Class I railroad, whether in response to the Proposed Transaction or otherwise.

Beginning in spring 2025, there were market rumors that Union Pacific was looking to merge with another Class I railroad. In response to market rumors, the BNSF leadership team analyzed the potential transaction involving Union Pacific (recognizing that Union Pacific's merger partner had not been identified, although it would not have been BNSF), potential impacts on the industry of a merger between Class I railroads, and how other market participants might respond. BNSF was not interested in acquiring or merging with another railroad. BNSF focused on opposing the merger.

Given the various regulatory and antitrust issues that a merger creates, the extensive regulatory review required, and the likelihood of substantial litigation about them, the in-house Law Department was involved and leading any such analysis from the beginning. In March 2025, the Law Department at BNSF began

sending written reminders to members of management that any work done in regards to that effort was being done at the direction of counsel for the purposes of seeking legal advice. Subsequent reminders were provided by the Law Department during summer 2025.

In the ordinary course of its business, BNSF analyzes the characteristics of other Class I railroads as well as potential partnerships in the industry (including with customers). *See, e.g.*, BNSF's Response to Request No. 4. Between May 29, 2025 and May 29, 2026, these ordinary-course analyses were not conducted for the purpose of analyzing a potential merger, acquisition, or other control transaction involving BNSF and any other Class I railroad.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, as it seeks information about transactions that BNSF or any of its employees "are considering or have considered within the last 12 months." BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, including information subject to existing or continuing confidentiality agreements or obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

REQUEST 2:

Produce all Documents and Communications relating to all railroad mergers, acquisitions, or other control transactions involving You and any other Class I

railroad that You are considering or have considered within the last 12 months, whether in response to the Proposed Transaction or otherwise.

RESPONSE TO REQUEST 2:

Subject to and without waiving its objections, BNSF states the following:

Counsel for BNSF has conducted a reasonable search for the requested materials and consulted with the principal individuals at BNSF who would have responsibility for evaluating potential mergers, acquisitions, or control transactions, including Chief Legal Officer Jill Mulligan and Chief Executive Officer Katie Farmer. Between May 29, 2025 and May 29, 2026 (the time period sought in Request No. 1), BNSF did not take steps to acquire another Class I railroad, whether in response to the Proposed Transaction or otherwise.

Beginning in spring 2025, there were market rumors that Union Pacific was looking to merge with another Class I railroad. In response to market rumors, the BNSF leadership team analyzed the potential transaction involving Union Pacific (recognizing that Union Pacific's merger partner had not been identified, although it would not have been BNSF), potential impacts on the industry of a merger between Class I railroads, and how other market participants might respond. BNSF was not interested in acquiring or merging with another railroad. BNSF focused on opposing the merger.

Given the various regulatory and antitrust issues that a merger creates, the extensive regulatory review required, and the likelihood of substantial litigation about them, the in-house Law Department was involved and leading any such analysis from the beginning. In March 2025, the Law Department at BNSF began

sending written reminders to members of management that any work done in regards to that effort was being done at the direction of counsel for the purposes of seeking legal advice. Subsequent reminders were provided by the Law Department during summer 2025.

Accordingly, BNSF has not identified any responsive, non-privileged documents to produce in response to Request No. 2. BNSF will meet and confer with Applicants regarding the logging of any responsive, privileged documents.

In the ordinary course of its business, BNSF analyzes the characteristics of other Class I railroads as well as potential partnerships in the industry (including with customers). *See, e.g.*, BNSF's Response to Request No. 4. Between May 29, 2025 and May 29, 2026, these ordinary-course analyses were not conducted for the purpose of analyzing a potential merger, acquisition, or other control transaction involving BNSF and any other Class I railroad.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, as it seeks information about transactions that BNSF or any of its employees "are considering or have considered within the last 12 months." BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or

immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

REQUEST 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 with any other Class I railroads.

RESPONSE TO REQUEST 3:

BNSF conducted a reasonable search for documents and has not identified any non-privileged documents responsive to this request after that reasonable search. This reasonable search included consulting with Chief Legal Counsel Jill Mulligan, who has primary responsibility for BNSF's response to the Proposed Transaction. BNSF's analyses of the impacts or potential impacts of the Proposed Transaction (including, potentially, as it relates to potential future mergers involving Class I railroads) have been conducted solely—and are being conducted solely—at the direction of legal counsel. BNSF will submit fact and expert evidence related to the impacts or potential impacts of the Proposed Transaction on or before BNSF's opposition comments are due on November 18, 2026; all such work is being done at the direction of counsel.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, including to the extent it seeks "all Documents and Communications" related to any "impact" the Proposed Transaction may have on any future merger involving Class I railroads, without limitation. BNSF further objects to the term "impacts" as vague in this context and

not subject to a common understanding; BNSF understands "impact" in this context to mean the effect or consequence of the Proposed Transaction on industry stakeholders. BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

REQUEST 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, or are considering or are implementing, as a result of the Proposed Transaction.

RESPONSE TO REQUEST 4:

BNSF regularly evaluates on-going commercial relationships with other railroads and other entities in the industry, such as customers and intermodal marketing companies. BNSF has engaged in such commercial relationships recently and over time. By way of example, on August 22, 2025, BNSF and CSX announced new intermodal services, including the introduction of new coast-to-coast lanes between Southern California and various destinations in the Southeast. The

development of that service began before the announcement of any Proposed Transaction.

Request No. 4 seeks information regarding transactions that BNSF considered implementing or did implement "as a result of the Proposed Transaction." BNSF's "strategic response" to the Proposed Transaction has been and remains to oppose it. BNSF will conduct a reasonable search for responsive, non-privileged documents regarding transactions, joint ventures, alliances, partnerships or other cooperative arrangements that BNSF evaluated as a result of the Proposed Transaction.

BNSF objects to this Request, as stated, as overbroad, unduly burdensome, not relevant, and not proportional to the needs of this proceeding, including to the extent it seeks "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" BNSF or any of its employees have ever considered or implemented, or are considering or implementing. BNSF further objects to this Request to the extent that it is vague and ambiguous, including as to the terms "considered" and "considering", as well as "combination," "alliance," "initiative" and "other form of cooperative arrangement or other strategic response," which are all undefined and may not be subject to a common understanding. BNSF further objects to this Request to the extent it seeks proprietary or confidential business information, trade secrets, or other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or

obligations with third parties. BNSF also objects to this Request to the extent it seeks documents protected by any applicable privilege, exemption, or immunity, including attorney-client privilege, common interest privilege, and the work product doctrine.

GENERAL OBJECTIONS AND SPECIFIC RESPONSES

BNSF makes the following additional responses to Applicants' First Set of Discovery Requests to BNSF.

1. BNSF objects to the Requests, including the instructions and definitions, to the extent they seek to impose upon BNSF duties and/or responsibilities greater than those imposed by 49 C.F.R. § 1114.21, 49 C.F.R. § 1114.26, 49 C.F.R. § 1114.30, any applicable orders of this proceeding, or any stipulation or agreement between BNSF and the Applicants.

2. BNSF objects to these Requests to the extent they seek the disclosure of information, documents, or communications protected by the attorney-client privilege, the work product exemption from discovery, and/or any other applicable constitutional, statutory, or common law privilege. No privileged information, Document, or Communication will intentionally be provided in response to these Requests. By responding to any particular Request, BNSF does not intend to nor does it waive any applicable privilege that it may have, and BNSF specifically intends to assert the same. Inadvertent production of any document that is privileged or was prepared in anticipation of litigation shall not constitute waiver of any privilege or of any other ground for objection of discovery of such document, the information

contained therein, the subject matter thereof, or of BNSF's right to object to the use of that Document or the information contained therein.

3. BNSF objects to each Request to the extent it seeks proprietary or confidential business information, trade secrets, other sensitive information, or documents containing information non-responsive to the Request, including information subject to existing or continuing confidentiality agreements or obligations with third parties.

4. BNSF objects to the Requests to the extent they request documents or seek information already known to the Applicants, in the Applicants' possession, or that is published, publicly available, or otherwise generally accessible to all parties.

5. BNSF objects to the Requests to the extent they presume facts. BNSF does not agree to the Applicants' characterizations of any documents, facts, theories, or conclusions, and its responses shall not be construed as an admission that any definition or characterization provided by the Applicants is either factually accurate or legally binding. BNSF responds to the Requests without waiving any right to object to any requested discovery, and without affirming any conclusory or argumentative statements made by the Applicants in the Requests.

6. BNSF objects to these Requests to the extent they request BNSF to provide information not in its possession, custody, or control, including any documents from any third parties. Any such Request is overbroad, unduly burdensome, and inconsistent with (and imposes obligations beyond) the obligations required under 49 C.F.R. § 1114.21, 49 C.F.R. § 1114.26, or 49 C.F.R. § 1114.30.

7. BNSF objects to these Requests to the extent they require BNSF to create, compile, or develop new documents or data compilations not maintained in the ordinary course of business.

8. BNSF's responses are based upon the knowledge, information, and belief that it has acquired to present. BNSF reserves its right to amend these responses, assert additional objections, and supplement any information.

9. BNSF objects to the definitions of "You" and "Your" as overly broad and unduly burdensome, irrelevant, and not proportional to the needs of this proceeding, because the definitions encompass "present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, [and] affiliates," including those that are not involved in the proceeding. BNSF further objects to the definitions of "You" and "Your" to the extent they purport to require BNSF to provide information from persons or entities outside of its possession, custody, or control. BNSF will construe "You" and "Your" to mean BNSF Railway Company and responds to the Requests on behalf of BNSF Railway Company only.

10. BNSF objects to the definition of "Communication" as overbroad and unduly burdensome insofar as it encompasses any "transmission or receipt of information" and communications that are outside of BNSF's possession, custody or control, or that cannot be located with a reasonably diligent search, or that exceed the scope of permissible discovery pursuant to 49 C.F.R. § 1114.21 and 49 C.F.R. § 1114.30.

11. BNSF objects to the definition of "Document" as overbroad and unduly burdensome insofar as it encompasses documents that are outside of BNSF's possession, custody or control, or that cannot be located with a reasonably diligent search, or that exceed the scope of permissible discovery under 49 C.F.R. § 1114.21 and 49 C.F.R. § 1114.30. In responding to Requests that incorporate this term, unless otherwise specified, BNSF will construe the term "Documents" to be synonymous in meaning and equal in scope to the term as defined under 49 C.F.R. § 1114.30.

12. BNSF objects to Instruction 1 because extending references to "railroads, shippers, consultants, or companies (including Applicants)" to "include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof" makes the requests overly broad and unduly burdensome; they encompass persons and entities not relevant or proportional to this proceeding; and they refer to unknown persons and entities. BNSF further objects to the extent that Instruction 1 purports to require BNSF to provide information from persons or entities outside of its possession, custody, or control.

13. BNSF objects to the definition of "Produce" as well as Instruction 3 to the extent that Applicants seek to impose on BNSF any discovery obligation greater than or different from those imposed by 49 C.F.R. § 1114.21, 49 C.F.R. § 1114.26, 49 C.F.R. § 1114.30, or any other governing law or rule, or the Protective Order entered August 5, 2025.

14. Regarding Instruction 5, BNSF responds to Request No. 1 from May 29, 2025 to May 29, 2026; responds to Request No. 2 from May 29, 2025 to May 29, 2026;

responds to Request No. 3 from July 29, 2025 to May 29, 2026; and responds to Request No. 4 from July 29, 2025 to May 29, 2026.

Respectfully submitted,

/s/ *Daniel Donovan*

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September 11, 2026

CERTIFICATE OF SERVICE

I certify that on this 11th day of September 2026, I caused the foregoing *BNSF Railway Company's First Supplemental Responses and Objections to Applicants' First Set of Discovery Requests to BNSF* to be served electronically to counsel for Applicants.

/s/ McClain Thompson
McClain Thompson
Attorney for BNSF Railway Company

Exhibit I

Filed under seal pursuant to the Protective Order

Exhibit J

Filed under seal pursuant to the Protective Order

Exhibit K

Filed under seal pursuant to the Protective Order

Exhibit L

Filed under seal pursuant to the Protective Order

Exhibit M

Filed under seal pursuant to the Protective Order

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of November, 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/ Jamie Dominique U. Magcale
Jamie Dominique U. Magcale