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By E-Filing

November 5, 2026

312806

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 CPKC to conduct its custodial document searches using the custodians, date ranges, and search terms that Applicants have proposed, as set forth in **Appendix A**. Despite an extensive meet-and-confer process, the searches that CPKC has agreed to conduct are deficient in three principal respects: (1) they exclude four custodians Applicants have identified, including three of the four former Kansas City Southern ("KCS") executives whose data CPKC concedes it possesses; (2) they improperly truncate the relevant time period for key searches of ordinary course documents; and (3) they rely on a single, insufficient search string to identify documents concerning the impacts of the Proposed Transaction.

I. BACKGROUND

After CPKC stated on August 24 that it would conduct custodial searches, Applicants asked CPKC for its search parameters and, on September 11, Applicants identified ten individuals likely to possess responsive documents: Messrs. Creel, Velani, Redd, Brooks, Clements, Lloyd, Ottensmeyer, Upchurch, Songer, and Naatz. When CPKC would not commit to providing its custodial search proposal, Your Honor ordered CPKC to disclose its proposed parameters by October 5 and hit counts by October 16. *See* UP-110/NS-111; Decision No. 41 at 3.

On October 5, CPKC proposed collecting documents from four custodians (Messrs. Creel, Redd, Brooks, and Clements). It confirmed that "there is data for the KCS custodians" but stated that it was "still exploring the burden" of retrieving such data from KCS's legacy systems. Ex. A at 18. During an October 14 teleconference, Applicants explained (i) why the files of additional custodians should be searched, (ii) why CPKC's proposed date ranges were too narrow, and (iii) why a single search for documents relating to potential impacts of the Proposed Transaction, without project names such as "Project Crimson," would be inadequate.

On October 16, CPKC provided hit counts and a revised proposal that added Mr. Velani as a custodian. *Id.* at 12. CPKC also agreed to move the start date for its proposed impact-related search to July 29, 2024. *Id.* The proposal still excluded Mr. Lloyd and the four former KCS

executives, declined to search for multiple categories of ordinary course documents created before July 29, 2024, and relied on a single search string to identify impact-related documents. *Id.* at 12, 17–18.

On October 19, Applicants made a counterproposal on custodians, date ranges, and search terms, and on October 21, in an effort to reach a negotiated resolution, Applicants agreed to CPKC's proposed end date of February 17, 2026. *Id.* at 7-8.

On November 2, CPKC agreed to include one former KCS custodian, Mr. Ottensmeyer, and accepted Applicants' proposed terms relating to pricing, bundling, growth strategies, and prior mergers and collaborations. *Id.* at 1–2. But CPKC refused to add any other custodians, maintained its July 29, 2024 start date for Requests 11 and 24–29, and rejected every one of Applicants' proposed terms for locating documents relating to specific potential impacts of the Proposed Transaction. *Id.* Because CPKC's final proposal remains insufficient, this Motion followed.

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 CPKC witnesses beginning in December 2026 and, on October 5, asked CPKC to provide December dates for the depositions of Messrs. Creel, Redd, and Brooks. *Seeid.* at 16. As of the filing of this Motion—a month later—CPKC still has not provided proposed deposition dates for any of its witnesses, stating only that it "anticipate[s] offering deposition dates between mid-December and January." *Id.*

II. ARGUMENT

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

A. CPKC Omits Custodians With Unique, Relevant Documents.

Former KCS executives. Messrs. Upchurch, Songer, and Naatz were, respectively, KCS's Chief Financial Officer, Chief Operating Officer and head of Strategic Merger Planning, and Chief Marketing Officer, all in the period immediately before the CP-KCS merger. *See* App'x A. CPKC has confirmed that it possesses their data. Ex. A at 18. Their files are a principal source of KCS's ordinary course documents responsive to Requests 2, 10, 11, 16, and 22–29—including KCS's pricing and growth strategies, its assessment of rail industry consolidation, and its evaluation of the competitive landscape and interline arrangements. Other than Mr. Ottensmeyer, each of the custodians whose documents CPKC has agreed to search (Messrs. Creel, Redd, Brooks, Clements, and Velani) held a position at legacy Canadian Pacific before the 2023 combination; none of the five is a legacy KCS executive. *See* App'x A.

CPKC contends that Mr. Ottensmeyer's files "would offer broad coverage of KCS," Ex. A at 2, but a chief executive's files are no substitute for those of the individuals who managed KCS's

finances, operations, merger planning, and marketing. Only by adding the three additional former KCS custodians would the searches adequately cover the KCS half of CPKC's pre-2023 history.

CPKC also has argued that KCS is no longer an independent company, but CPKC's network and commercial relationships include the former KCS system, and KCS's pre-combination documents bear on the ordinary course issues CPKC itself has called central to this proceeding. Moreover, Your Honor already has rejected CPKC's legacy-based burden argument, compelling CPKC to produce data from its legacy CP and KCS systems because CPKC had not shown that retrieval "involved technical issues that could not be resolved." Decision No. 31 at 2–3. CPKC has made no further showing this time around. Similarly, Your Honor ordered Union Pacific to search its former CEO's pre-2022 legacy system files because the relevance of his "comments or observations" outweighed the burden. *Id.* at 9. That reasoning applies with equal force to KCS's former senior leadership team, who helped lead KCS through the Board's most recent Class I merger proceeding.

Larry Lloyd. As CPKC's Assistant Vice President of U.S. Government Affairs, Mr. Lloyd has knowledge of CPKC's communications with the Board, members of Congress, and other government officials regarding the Proposed Transaction, as well as CPKC's coordination with state legislatures and other stakeholders opposing the merger. *See* App'x A. Those communications fall within several of Applicants' requests, including the additional targeted requests Applicants served on October 13, 2026, concerning CPKC's support for outside groups' comments in opposition to the Proposed Transaction. CPKC asserts that Mr. Lloyd's files are unnecessary because he reports to Mr. Clements, Ex. A at 2, but a supervisor's files will not capture the day-to-day communications that Mr. Lloyd himself had with outside stakeholders.

B. CPKC's Date Range Excludes Relevant Ordinary Course Materials.

CPKC proposes to apply a January 1, 2019 start date to Requests 2, 10, and 16, but only a July 29, 2024 start date to Requests 11 and 22–29, even though the latter requests likewise seek ordinary course documents. *Id.* at 1. Rejecting CPKC's objection to producing data from 2019 forward, Your Honor has held that information from "a few years before the proposed transaction was announced is relevant" and that "[c]orresponding information and data from non-Applicants is proportional." Decision No. 31 at 3. A January 1, 2019 start date should apply to all requests other than those seeking documents relating to the impacts of the Proposed Transaction.

CPKC's burden objection does not warrant a different result. CPKC has agreed to a January 1, 2019 start date for Requests 2, 10, and 16, and has never explained why ordinary course documents on pricing, growth, bundling, PSR, and new facilities are relevant only from July 29, 2024 forward. CPKC's attempt to compare its search term hit counts (before review of the hits) to the number of documents Applicants produced from comparable custodians is unpersuasive. Ex. A at 2. Not all of the hits will be responsive to Applicants' requests, and the volume of those hits therefore cannot reasonably be compared to the volume of an eventual production.

C. CPKC's Search Terms Are Insufficient.

CPKC has agreed to Applicants' proposed terms for ordinary course documents, but it has refused to conduct more than a single search to identify documents responsive to requests concerning the impacts of the Proposed Transaction (i.e., Requests 3–9, 12–15, and 17). Ex. A at 2, 17. Even worse, the single search CPKC has proposed would require either a reference to both Applicants within five words of a transaction-related term, or one of four terms ("CGP," "Committed Gateway Pricing," "transcon*," or "duopoly") within ten words of one of five analysis-related terms. Internal discussions of particular potential impacts—for example, relating to gateways, interchange volumes, traffic diversion, pricing, or service—may not name both Applicants in close proximity to a transaction-related term, and documents also may use an internal project name, such as "Project Crimson," instead of referring to specific competitor railroads.

For these reasons, Applicants proposed a series of subject-specific impact terms and the inclusion of project names. CPKC rejected those terms and did not propose any others. Nor has CPKC explained how its single impact string would adequately capture discussions of specific potential effects of the Proposed Transaction. Documents analyzing how the Proposed Transaction would affect CPKC's traffic, gateways, rates, and competitive position are at the core of the issues Non-Applicants will raise on November 18, and CPKC should be required to search for them.

CPKC's objections to Applicants' impact terms lack merit, and, in any event, could have been addressed through a counterproposal had CPKC made one. CPKC asserts that the terms would capture any document referencing "any verbal formulation of Union Pacific or Norfolk Southern," pointing to the common word "up." *Id.* at 2. To address that concern, and in a further effort to narrow the dispute, Applicants have revised the terms to remove "UP" as a stand-alone term from each proposed string and to withdraw several strings altogether. *See* Appendix A. CPKC also asserts that Applicants' proposed terms generate more than 70,000 hits "including families" across five custodians, Ex. A at 2, but CPKC has not stated whether that figure reflects unique hits—that is, documents not already captured by the search terms CPKC has agreed to run—or whether it was calculated using CPKC's date ranges or Applicants'. Without that information, CPKC's figure says nothing about the incremental burden of Applicants' terms. And because CPKC's figure predates the revisions reflected in Appendix A, it necessarily overstates the burden of the terms Applicants now propose.

* * *

For the reasons set forth above, Your Honor should order CPKC to conduct its custodial document searches using Applicants' proposed parameters. Those parameters appropriately seek both transaction-related documents and ordinary course documents that Your Honor has recognized are "highly relevant." *See* Decision No. 31 at 9. Applicants' proposed parameters also appropriately align with what Non-Applicants "sought and obtained from Applicants." *See id.* at 3. CPKC sought and obtained custodial searches of 36 Union Pacific custodians, including pre-2022 files of Union Pacific's former CEO. *See* Decision No. 25 at 2–3; UP-77/NS-75, Ex. A; Decision No. 31 at 9–10 (granting CPKC's request for Lance Fritz's documents from 2019 to

January 1, 2022). Having demanded that discovery, CPKC should not be permitted to limit its search to six custodians, a truncated period for key ordinary course materials, and an insufficient impact-related search string.

III. CONCLUSION

For the foregoing reasons, Applicants respectfully request that Your Honor grant this Motion and enter an order directing CPKC to conduct custodial document searches using the parameters set forth in Appendix A.

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
Keith Creel**	President and Chief Executive Officer, CPKC	• As President and CEO, Creel has direct oversight over CPKC's strategic direction, operations, and competitive positioning. He led CPKC through the STB proceeding that resulted in the Board's approval of the CP-KCS combination, giving him direct experience with the regulatory standards applicable to major rail mergers. • Creel has knowledge of CPKC's assessment of and response to the proposed UP-NS merger, including CPKC's internal analyses of the merger's anticipated impact on CPKC's network operations, competitive position, and ability to serve its customers. • Creel has publicly stated that the merger "is unnecessary and falls well short of meeting the high benchmark set out in the STB's updated 2001 major merger rules," that "[a] combined UP-NS could place nearly 50 percent of U.S. freight rail traffic in the hands of a single company," and that additional mergers are "inevitable" if the UP-NS transaction is approved.
Mark Redd**	Executive Vice President and Chief Operating Officer, CPKC	• As COO, Redd has direct oversight of CPKC's network operations, including transportation, engineering, mechanical, and service design functions across CPKC's approximately 20,000-mile transnational network. He has served as Executive Vice President of Operations since September 2019 and was named Chief Operating Officer in April 2023. • Redd has knowledge of CPKC's operational assessment of and response to the proposed UP-NS merger, including CPKC's internal analyses of the merger's anticipated impact on CPKC's network operations, service

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

Name	Title	Relevance
		performance, and competitive position, as well as CPKC's evaluation of the merger's effects on network fluidity, congestion, and service reliability. • Redd has publicly stated that "there is a way to do this even without a merger," pointing to the interline service provided by CPKC and CSX in Atlanta, New Jersey, and Florida, and has recent experience implementing the combination of two Class I railroads (the CP-KCS merger).
John Brooks**	Executive Vice President and Chief Marketing Officer, CPKC	• As CMO, Brooks is responsible for CPKC's commercial business units and leads the company's sales and marketing professionals across North America. He has held senior marketing responsibilities across multiple lines of business, including coal, chemicals, merchandise products, grain, and intermodal. • Brooks has knowledge of CPKC's commercial assessment of and response to the proposed UP-NS merger, including CPKC's evaluation of the merger's anticipated impact on shipper choices, rail pricing, interline service options, and competitive conditions across CPKC's network. • Brooks has publicly stated that the "UP-NS merger would extinguish the independence of two Class I rail competitors, reducing competition across the United States" and that the UP-Canadian National commercial agreements announced in connection with the merger would have "minimal impact" on CPKC.
James Clements**	Executive Vice President, Strategic Planning and Corporate Services, CPKC	• Clements leads CPKC's strategic government relations, communications, and multi-year integration and change management efforts. Clements has more than 25 years of experience at CPKC (formerly Canadian Pacific), including extensive understanding of the company's customers, processes, and systems, and leadership of CP-KCS integration planning. • As the executive responsible for government relations and strategic planning, Clements has knowledge of CPKC's regulatory engagement strategies, communications with the

Name	Title	Relevance
		STB and government officials regarding the proposed UP-NS merger, and CPKC's internal assessment of the merger's effects on rail industry structure and competitive dynamics.
Nadeem Velani**	Executive Vice President and Chief Financial Officer, CPKC	• As CFO, Velani oversees CPKC's financial operations, including long-term strategic planning, financial planning, investor relations, reporting and accounting systems, procurement, treasury, and tax. He has served as CFO since 2016, first of Canadian Pacific and then of the combined CPKC. • Velani has knowledge of CPKC's financial assessment of and response to the proposed UP-NS merger, including CPKC's internal financial analyses of the merger's anticipated impact on CPKC's revenues, competitive position, and ability to serve its customers, as well as CPKC's financial modeling of alleged competitive harm scenarios. • Velani has publicly stated: "[W]e don't think that putting that much power in the hands of one combined railroad is good for the economy. It's not good for the supply chain. It puts a lot of risk . . . a lot of pricing power in the hands of one railroad."
Larry Lloyd	Assistant Vice President, U.S. Government Affairs, CPKC	• As AVP of U.S. Government Affairs, Lloyd oversees CPKC's engagement with federal lawmakers, regulatory agencies, and government stakeholders in the United States. • Lloyd has knowledge of CPKC's communications with the STB, members of Congress, and other government officials regarding the proposed UP-NS merger, including CPKC's advocacy efforts, policy positions, and coordination with state legislatures and other stakeholders opposing the merger.
Patrick Ottensmeyer**	Former President and Chief	• Ottensmeyer served as President and CEO of Kansas City Southern from 2015 until April 14, 2023, upon the completion of the combination of Canadian Pacific and

Name	Title	Relevance
	Executive Officer, KCS	KCS that created CPKC. He led KCS through the CP-KCS merger process, including the STB regulatory proceedings, giving him direct experience with the regulatory standards applicable to major rail mergers. • Ottensmeyer has historical knowledge of KCS's strategic direction, competitive positioning, and assessment of rail industry consolidation. He previously served as Executive Vice President of Sales and Marketing at KCS (2008-2015) and Executive Vice President and Chief Financial Officer (2006-2008), giving him broad knowledge of KCS's commercial strategy, customer relationships, and financial operations.
Michael Upchurch	Former Executive Vice President and Chief Financial Officer, KCS	• Upchurch served as Executive Vice President and Chief Financial Officer of KCS from October 2008 until April 2023, with oversight of KCS's financial operations, pricing strategy, revenue performance, and capital allocation. • Upchurch has knowledge of KCS's financial assessment of the CP-KCS merger, including internal financial analyses, modeling, and the financial implications of rail industry consolidation. He received a retention award in connection with the CP-KCS merger, reflecting his key role in the merger process and possession of information material to major rail transactions.
Jeffrey Songer	Former Executive Vice President and Chief Operating Officer; Former Executive Vice President, Strategic Merger	• Songer served as Executive Vice President and Chief Operating Officer of KCS prior to the merger, with direct oversight of KCS's network operations, transportation, engineering, and mechanical functions. He gained more than 18 years of experience at KCS in operations, engineering, and finance. • Songer was named Executive Vice President, Strategic Merger Planning in April 2021, with primary responsibility for managing the merger application process for the CP-KCS combination, including developing the joint network-wide operating plan, safety integration plan, environmental impact statement, and labor impact plan.

Name	Title	Relevance
	Planning, KCS	• Songer participated in Surface Transportation Board approval hearings in Washington, D.C., and led merger and integration efforts for the CP-KCS merger, giving him direct knowledge of the STB's merger review standards and procedures.
Michael Naatz	Former Executive Vice President and Chief Marketing Officer, KCS	• Naatz served as Executive Vice President and Chief Marketing Officer of KCS from October 2018 until the CP-KCS merger, responsible for KCS's commercial strategy, customer relationships, sales, and marketing across all business lines. He previously served as Senior Vice President, Operations Support and Chief Information Officer. • Naatz has knowledge of KCS's commercial assessment of the CP-KCS merger and the competitive landscape in the rail industry, including KCS's evaluation of shipper options, pricing dynamics, and interline service arrangements. He received a retention award in connection with the CP-KCS merger, reflecting his key role in the merger process.

II. Date Ranges

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

III. Search Terms

1. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (merg* OR transaction OR combination OR acqui* OR control))

2. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (((yard* OR shop* OR facilit*) w/20 (closing* OR closure* OR rationalize)) AND (price* OR cost*)))

3. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (interline w/20 (pric* OR quality OR efficien*)))

4. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND ((Committed w/2 Gateway) OR CGP OR “prop rate*” OR “proportional rate*”))

5. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND ((BNSF OR CSX) w/5 rate))

6. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (debt OR revenue OR earning* OR EBITDA OR leverage OR (operating w/2 ratio) OR cost* OR synerg* OR competit* OR rate* OR (market w/2 share*) OR concession* OR consolid* OR shareholder* OR invest* OR efficienc* OR growth))

7. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND ((Board w/5 Director*) OR (Board w/10 Committee)))

8. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (share* AND (TRRA OR (Terminal w/2 Railroad) OR PPU OR TTX OR (Peoria w/2 Pekin) OR KCT OR (“Kansas City” w/2 Terminal))))

9. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND ((single w/2 (carrier OR line)) OR “parallel route*” OR defens* OR Amtrak OR “partnership agreement” OR (transition* w/2 service) OR freight OR port* OR trade OR “vertical effect*” OR (negot* w/20 contract*) OR (traffic w/2 (manifest OR level*)) OR “principal route*” OR (truck w/2 rail) OR IT OR tech* OR (service* w/2 disrupt*)))

10. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND ((transcon* OR (east* w/10 west*) OR end-to-

end OR duopoly OR coast-to-coast OR first-mover OR downstream) w/20 (merg* OR transaction OR comb* OR acqui* OR control OR consolid* OR single-line)))

11. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (fail* w/25 interline))

12. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND ((facilit* w/25 new) w/20 (offer OR bid)))

13. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (Buffer w/3 (capacity OR employee OR crew OR equipment OR locomotive)))

14. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) w/10 ((invest* OR improv*) w/10 (interline OR interchange)))

15. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (“single line” AND interline AND compet*))

16. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (interchange w/5 (alternat* OR compet*)))

17. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) w/25 “Service Assurance”)

18. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) w/25 (integrat* OR (operat* w/3 (plan* OR chang* OR impact* OR effect*)) OR divert* OR diversion* OR “rail service” OR (safety w/5 (integrat* OR merg* OR transaction)) OR ((passenger OR commuter) w/5 service) OR (yard w/2 control) OR (train w/2 build*) OR (transport* w/2 manag*)))

19. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) AND (gateway* w/10 (traffic OR I-5)))

20. ((“Union Pacific” OR UNP OR UPRR OR “Norfolk Southern” OR NS OR NSC OR norfolksouthern OR Crimson) w/25 (“trackage right*” OR haulage OR (reciprocal w/2 switch*) OR “short line*” OR shortline OR “Class II” OR “Class III”))

21. (BNSF or “Burlington Northern” or CSX* or “Norfolk Southern” or NS or “Union Pacific” or CN or “Canadian National”) w/10 (merg* OR combination OR acqui* OR “cooperative agreement” OR “joint venture” OR alliance)**

22. (pricing w/5 (formula OR model OR polic* OR strateg* OR system))**

23. (((plan OR strateg*) w/20 (grow* OR increas* OR retain)) w/5 (Volume OR Rail OR Traffic OR revenue))**

24. (negotiat* or strateg*) w/10 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*" OR multi* OR refun* OR discount* OR waiv*)**

25. ((PSR OR "Precision Scheduled Railroading") w/10 service)**

26. (facilit* w/25 new) w/20 (offer OR bid)**

Exhibit A

From: Judge, Kiera S. <judgeks@sullcrom.com>

Sent: Monday, November 2, 2026 6:21 PM

To: Maya, Michael; Stern, Noah P. M.; Magcale, Jamie Dominique U; Kelly, Kevin; Flahive Wu, Laura; Rosenthal, Michael; Damitio, Daniel; Ludwin, Derek; Korman, Marc; Warren, Matthew J.; William Mullins; ratkins; Laudone, Stephen S.; Korman, Marc; Spencer Naake; Magcale, Jamie Dominique U

Cc: David Meyer; Matelis, Joseph J.; Clyburn, Rachel P.; Sam, Phoebe E.

Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Mike,

Responses to the points you have raised are below. We are available to meet and confer about these points at your convenience.

Start Date. We are frustrated Applicants have changed their position about this. Our original proposal was very clear with respect to time frame, and no issues were raised about this during the October 14 meet-and-confer. We do not believe expanding the date range for Requests 11 and 24-29 to January 1, 2019, is reasonable or necessary. CPKC's proposed date range provides a broad sample of ordinary-course documents concerning CPKC's thinking on pricing, growth, bundling, PSR, and new facilities. As we previously stated, we are skeptical these documents are even relevant, given CPKC's non-applicant status. Although we are willing to compromise on this point, we certainly do not see why documents from the full time period are necessary. Applicants have never explained why legacy pricing materials or ordinary-course documents are necessary, as opposed to more recent materials.

The expanded date range is also not proportional to the needs of the action in light of the scope of Applicants' own document productions. The chart below contains a comparison of the hit counts for the CPKC custodians to the number of documents produced from the comparable UP and NS custodians' custodial files. As you can see, under CPKC's proposal, CPKC's hits exceed NS's custodial production several times over, and are comparable to UP's custodial production. This is true despite the fact that UP and NS were the Applicants and were responding to a significantly larger number of requests. By contrast, expanding the date range for all requests increases the total hits by over 50% and significantly exceeds the number of UP custodial documents produced from comparable individuals (even setting aside the outstanding search term proposal, discussed below). Accordingly, and especially given CPKC's status as a non-applicant and Applicants' continued refusal to explain the need for legacy documents beyond the more current materials we

have agreed to produce, CPKC maintains the start dates set out in its October 16 proposal for Requests 11 and 24-29.

End Date. CPKC and Applicants have agreed to an end date of February 17, 2026, for all of CPKC's custodial searches.

Custodians. CPKC is still discussing with BNSF and CSX with respect to Mr. Brady. However that issue is resolved, our view is that Mr. Lloyd need not be included as a custodian to respond to the outstanding requests. Mr. Lloyd reports directly to Mr. Clements, and Mr. Clements's custodial documents will adequately cover all outstanding issues.

We continue to question the need for additional KCS custodians. Nonetheless, as a compromise, we propose including Patrick Ottensmeyer as a custodian. Having served as KCS's President and CEO, Mr. Ottensmeyer's documents would offer broad coverage of KCS.

Search Terms. CPKC agrees to Applicants' proposed terms relating to pricing (Requests 11 and 24), bundling (Request 26), and prior merger/collaboration (Requests 2, 4, 10, and 16). CPKC confirms that the search term applicable to the Growth Strategies requests has been corrected to include a space between "or" and "retain."

CPKC does not agree to the sweeping additional search term Applicants propose for Requests 3, 12–14, and 17. The proposed terms are untethered from the narrow requests they are nominally intended to address. As drafted, they effectively seek any document, over the last two years, that references any verbal formulation of Union Pacific or Norfolk Southern. For example, term 16 would capture any document that contains the word "up" and any of the following words: debt, revenue, earning*, EBITDA, leverage, operating ratio, cost*, synerg*, competit*, rate*, market share, concession*, consolid*, shareholder, invest*, efficienc*, or growth. At the same time, it remains entirely unclear how CPKC's proposed terms would fail to capture documents discussing the impact of the proposed transaction.

The proposed terms impose a disproportionate and undue burden. They generate over 70,000 hits (including families) across the five custodians. When these proposed terms are combined with Applicants' date range proposal, CPKC's hit counts are double the number of documents produced from comparable UP custodians, and over eight times the number of documents NS produced from comparable custodians.

CPKC will be using its October 16 search term proposal to address Requests 3, 12–14, and 17.

UP/NS Custodian	**UP Estimated Custodial Documents**	**NS Estimated Custodial Documents**	**CPKC Custodian**	**CPKC Hits with Families – CPKC's Nov. 2 Proposal**	**CPKC Hits with Families – Applicants' Date Range Proposal**	**CPKC Hits with Families – Applicants' Date Range & Search Term Proposal**
Vena/George	10202	6314	**Creel**	22747	37243	56525

Rocker/Elkins	30229	6594	**Brooks**	21925	35860	43503
Rynaski/McClellan	26180	13341	**Clements**	17929	29515	37808
Gehringer/Orr	26316	853	**Redd**	25144	30791	78445
Hamann/Zampi	30222	3404	**Velani**	5750	7308	14334
Fritz/N/A	4893	N/A	**Ottensmeyer**	9915	25087	25087
TOTAL	**128042**	**30506**		**103410**	**165804**	**255702**

Requests for Production. As set out in CPKC's October 5 proposal, Requests 2-4, 10-14, 16-17, and 24-29 are included in CPKC's custodial search. Requests 2-4, 6-10, 16, and 18-21 are included in CPKC's non-custodial search.

Deposition Dates. CPKC is finalizing schedules with the five agreed custodians and will propose dates to Applicants as soon as possible. We anticipate offering deposition dates between mid-December and January.

Non-Privilege Redactions. The Board permits redaction of irrelevant material from responsive documents and recognizes that disclosure of extraordinarily sensitive information requires balancing need against potential harm. *CSX Corp.—Control—Conrail Inc.*, Finance Docket No. 33388, Decision No. 34, at 2 & n.9 (STB served Sept. 18, 1997). The Board has further recognized that "[d]isclosure of extraordinarily sensitive information should not be required without a careful balancing of the seeking party's need for the information, and its ability to generate comparable information from other sources, against the likelihood of harm to the disclosing party." *Id.* at 2 n.9. CPKC's redactions reflect those principles. Applicants have invoked the same precedent to withhold sensitive customer information notwithstanding the Protective Order. *See* UP-105/NS-105 at 2–3. And during his recent deposition, Mr. Vena likewise declined to discuss UP's quarterly earnings despite the Highly Confidential designation of his deposition. Applicants' position that CPKC should disclose similarly sensitive information is difficult to reconcile with their own approach.

Best,

Kiera S. Judge
(202) 956-7611 (Office) | (732) 648-5426 (Cell)

From: Maya, Michael <mmaya@cov.com>
Sent: Monday, November 2, 2026 5:41 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; zzExt-dludwin <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>; Magcale, Jamie Dominique U <JMagcale@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah and Kiera – I am following up on the email below.

Thanks,

Mike

From: Maya, Michael
Sent: Thursday, October 29, 2026 4:24 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@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>; Magcale, Jamie Dominique U <JMagcale@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah and Kiera,

In the interest of moving this forward and in hopes of reaching a negotiated resolution, below is a revised proposal for CPKC's document searches, again reserving all rights to seek more or different relief if no agreement is reached.

Custodians. In addition to the 5 custodians whose files CPKC has proposed to search (Creel, Redd, Brooks, Clements, and Velani), please add Ottensmeyer, Upchurch, and Songer. Please also confirm that CPKC agrees that UP need not produce the custodial files of Andrew Brady.

Date ranges. We can agree to 7/29/24 to 2/17/26 for searches related to impacts of the transaction. For searches for ordinary course documents, we also can agree to an end date of 2/17/26. For the start date for ordinary course documents, CPKC previously proposed using 1/1/19 for some such searches but 7/29/24 for the searches relating to requests 11 and 24-29. Could you please confirm that CPKC is willing to go back to 1/1/19 for requests 11 and 24-29?

Search terms. Please let us know CPKC's position on the terms we conveyed on October 19.

Mike

Michael Maya

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From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Thursday, October 22, 2026 8:00 PM
To: Maya, Michael <mmaya@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Mike,

Thanks for the clarification, which we hadn't appreciated. We will discuss this with BNSF and CSX to see if we can come up with an efficient and comprehensive response. Do you know whether there are any other UP or NS custodians who are similarly situated? That would be helpful for us to know as well.

Best,

Noah

From: Maya, Michael <mmaya@cov.com>
Sent: Thursday, October 22, 2026 12:36 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel

<DDamitio@cov.com>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah,

What I meant was that in addition to raising this issue with CPKC during our conversation last Friday, we've also been talking with BNSF and CSX about the possibility of a multi-lateral stand-down on production of files from each of the railroads' government affairs personnel. This would apply to both Applicants and Non-Applicants. We would be grateful to know CPKC's position on this proposal as part of our ongoing discussions of document production parameters.

Mike

From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Thursday, October 22, 2026 3:24 PM
To: Maya, Michael <mmaya@cov.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Mike,

With respect to Mr. Brady, what discussions are you referring to? When you raised this during our meet-and-confer, I assumed this was something being discussed in parallel with others representing CPKC, but having discussed internally we are not aware of the non-production of Mr. Brady's custodial file having every been raised with us.

Best,

Noah

From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, October 21, 2026 11:19 AM
To: Judge, Kiera S. <judgeks@sullcrom.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Kiera,

We are not shifting positions. Please see our responses below, all of which are part of our efforts to reach a negotiated resolution of these issues and are without prejudice to our right to seek different relief if there is no negotiated resolution.

1. **Third Set of Requests.** We agree that there should be a discussion of our third set of discovery requests, as well as similar requests that we have received. This would be most productive as a multi-lateral discussion, and we don't think it should hold up reaching resolution of the custodial searches we've been discussing. In other words, we think this needs to be tabled for the next day or two.

2. **Government Affiairs Personnel.** We have produced documents involving Andrew Brady from the files of other custodians but have not yet produced Mr. Brady's own custodial files in light of ongoing discussions, not just with CPKC but also with others, about the possibility of a mutual stand-down on production of custodial files from government affairs personnel. As previously indicated, we are willing to forego demanding custodial files from CPKC's government affairs personnel if CPKC (and others) are willing to forego Mr. Brady's custodial files. Please let us know CPKC's position on this proposal.

3. **KCS Custodians.** Please see the Appendix to our 9/24/26 filing with the ALJ. In addition to the points made there, the KCS custodians we have identified all possess relevant "ordinary course" materials that are well within the scope of discovery in this matter.

4. **Start of Time Period.** The issue is that we believe searches in response to requests 11 and 24-29 should be considered searches for "ordinary course" documents such that they should go back to 1/1/19. Do you disagree? If so, why?

5. **End of Time Period.** We began producing custodial documents months ago and had an end date of 2/17/26 set for us. CPKC has not yet begun producing custodial documents,

making 6/1/26 feasible in a way that it would not have been for us. We're nonetheless willing to compromise on this and permit CPKC to use the same end date we used.

Mike

Michael Maya

Covington & Burling LLP
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From: Judge, Kiera S. <judgeks@sullcrom.com>
Sent: Wednesday, October 21, 2026 1:36 PM
To: Magcale, Jamie Dominique U <JMagcale@cov.com>; Maya, Michael <mmaya@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Jamie,

Thank you for your email. As others on your team will recall, it took UP weeks to provide answers to similar questions that CPKC asked and that UP now demands CPKC answer in under 48 hours. At the same time, there are significant open questions about UP's shifting position we have to help us assess if we could find a reasonable accommodation. We don't think it is reasonable to demand a response from CPKC so quickly. We are working expeditiously to provide responses to your proposals. If you want to move to compel without answering our questions or allowing time to meet and confer, UP is free to file a motion. But that conflicts with the Discovery Guidelines and we don't think it's the process that Judge Soulikias would prefer.

Here are open questions and as well as outstanding items from our October 14 meet and confer that remain relevant to our response to your proposal.

1. **Search Terms for Applicants' Third Set of Requests**: During our October 14 meet and confer, Applicants represented that they would share proposed search terms for their Third Set of Discovery Requests to CPKC served on October 13, 2026. We have not yet received those proposals. When do you expect to provide them? Although we are still not certain a custodial search is appropriate for those requests, we would find it helpful to understand what Applicants are proposing in its entirety to minimize the need for unnecessarily duplicative work.

2. **Government Affairs Custodians**: Please explain what you mean by a "mutual stand-down on government affairs custodians." UP previously represented that its custodial document productions were substantially complete, so we were under the impression that Andrew Brady's custodial documents were already produced. *See* UP-77/NS-75 (listing Brady as custodian); UP-108/NS-108 (reporting that custodial productions were substantially complete on September 19, 2026). Is that wrong? Which of Mr. Brady's documents are you proposing to withhold? More generally, are there other custodial files UP has yet to produce? As you're no doubt aware, the comment deadline is rapidly approaching, so if there are any material gaps in UP's productions, we need to know as soon as possible.

3. **KCS Custodians**: We are considering your request to add four additional custodians formerly employed by Kansas City Southern. To aid in that review, please explain your reasoning for why those individuals' documents are relevant to issues in the current proceeding. We raised this at our September 22, 2026 meet and confer and still have not received a satisfactory response.

4. **Time Period Start Date**: Our understanding from the meet and confer was that Applicants objected only to our proposed start date for Requests 3, 12–14, and 17. We then sent a new proposal accepting your requested date range modification. Your email suggests Applicants are now asking that the time period for all requests except these ones should go back to January 1, 2019. Can you please explain the reason Applicants have changed their position on this issue?

5. **Time Periods End Date**: When you say that Applicants "propose an end date of June 1, 2026, for all custodial searches," are you proposing that Applicants intend to extend the time frame of their custodial search as well? If not, could you please explain why CPKC should be required to use a later cutoff date than Applicants?

Best,

Kiera S. Judge
(202) 956-7611 (Office) | (732) 648-5426 (Cell)

From: Magcale, Jamie Dominique U <JMagcale@cov.com>
Sent: Monday, October 19, 2026 9:20 PM
To: Judge, Kiera S. <judgeks@sullcrom.com>; Maya, Michael <mmaya@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Damitio, Daniel <DDamitio@cov.com>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Kiera,

Thanks for your email. Below we set out our counterproposal on custodians, date ranges, and search terms, as well as several related issues.

Custodians. CPKC has agreed to collect documents for five of the ten custodians Applicants proposed (Keith Creel, Mark Redd, John Brooks, James Clements, and Nadeem Velani). We request that CPKC augment its list as follows:

- Please provide your views on whether you would support a mutual stand-down on government affairs custodians if we agree to drop our request for Larry Lloyd.
- Please either add the four former KCS custodians (Patrick Ottensmeyer, Michael Upchurch, Jeffrey Songer, and Michael Naatz) to the custodian list, or else explain the basis for your position that collecting documents from such custodians would be unduly burdensome.

Depositions. Please provide dates on which each of the five custodians CPKC has identified is available for deposition.

Date Ranges.

- CPKC has agreed to a start date of July 29, 2024, for searches relating to the impact of the Proposed Transaction (Requests 3, 12–14, and 17).
- For all other requests, we propose a start date of January 1, 2019. CPKC has proposed that date for Requests 2, 4, 10, and 16, and the same date should apply to the searches for Requests 11 and 24–29 as well.
- We propose an end date of June 1, 2026, for all custodial searches.

Search Terms. Our positions and proposed revisions to CPKC's proposed search terms are set out in the chart below. To the extent CPKC contends any of our proposed terms are overbroad, please provide hit reports (including unique hits) for the challenged terms so that we can evaluate any proposed modifications.

CPKC's Proposed Terms	**Applicants' Counterproposal**
(((UP or "Union Pacific") AND ("Norfolk Southern" or NS)) w/5 (merger OR transaction OR aquisi* OR combination)) OR (CGP or "Committed Gateway Pricing" or transcon* OR duopoly)) w/10 (impact* OR	*Rather than trying to run a single search for documents relating to potential impacts of the transaction, CPKC should use a series of terms relating to specific potential impacts. A proposed list of such terms is attached.*

CPKC's Proposed Terms	Applicants' Counterproposal
harm* OR analys* OR evaluation* OR forecast*)	
(BNSF or "Burlington Northern" or CSX* or "Norfolk Southern" or NS or UP or Union Pacific or CN or "Canadian National") w/5 (merg* OR combination OR acqui* OR "cooperative agreement" or "joint venture" or alliance)	(BNSF or "Burlington Northern" or CSX* or "Norfolk Southern" or NS or UP or "Union Pacific" or CN or "Canadian National") **w/10** (merg* OR combination OR acqui* OR "cooperative agreement" or "joint venture" or alliance)
(pricing w/3 (formula OR model OR polic* OR strateg* OR system))	(pricing **w/5** (formula OR model OR polic* OR strateg* OR system))
(((plan OR strateg*) W/20 (grow* OR increas* ORretain)) W/5 (Volume OR Rail OR Traffic OR revenue))	*Accepted, pending confirmation that "ORretain" should be "OR retain" as reflected below:* (((plan OR strateg*) W/20 (grow* OR increas* **OR retain**)) W/5 (Volume OR Rail OR Traffic OR revenue))
(negotiat* or strateg*) w/5 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*" OR multi* OR refun* or discount* or waiv*)	(negotiat* or strateg*) **w/10** (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*" OR multi* OR refun* or discount* or waiv*)
((PSR OR "Precision Scheduled Railroading") w/10 service)	*Accepted.*
(facilit* w/25 new) w/20 (offer OR bid)	*Accepted.*

RFPs. Please identify which of our requests for production CPKC intends to address in whole or in part through custodial searches, and which, if any, it intends to address solely through other means (such as non-custodial collections).

Non-Privilege Redactions. In reviewing CPKC's productions to date, we have identified documents that CPKC has redacted on grounds other than privilege, including for relevance (*see,*

e.g., CPKC-000002855, CPKC-000002898) and confidentiality (*see, e.g.*, CPKC-000002750). Please explain the basis and identify the authority that CPKC believes supports its redactions for reasons other than privilege.

Please provide a response by 12:00 PM ET on Wednesday, October 21.

Thank you,

Jamie

Jamie Magcale

Covington & Burling LLP
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New York, NY 10001-2170
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From: Judge, Kiera S. <judgeks@sullcrom.com>
Sent: Friday, October 16, 2026 5:50 PM
To: Maya, Michael <mmaya@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; Sam, Phoebe E. <samp@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Counsel,

Please find attached hit counts for CPKC's proposed search terms. Following our meeting on October 14, 2026, and having reviewed the hit counts, we have made certain modifications to our prior proposal, which are reflected in red. These changes include the addition of Nadeem Velani as a custodian, the alteration of the starting date for certain requests from 7/29/2025 to 7/29/2024, and the modification of a search string generating a disproportionate number of hits. We are still considering the remaining points discussed at our meeting and await the proposed search terms Applicants agreed to send.

Thanks,

Kiera

Kiera S. Judge
(202) 956-7611 (Office) | (732) 648-5426 (Cell)

From: Maya, Michael <mmaya@cov.com>
Sent: Monday, October 12, 2026 12:14 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@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>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Yes, that works for us. We will send an invite.

From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Monday, October 12, 2026 12:05 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Mike,

We are available at 11 AM (ET) / 8 AM (PT) on Wednesday. Does that time work?

Best,

Noah

From: Maya, Michael <mmaya@cov.com>
Sent: Monday, October 12, 2026 4:43 AM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@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>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah,

Are you available to discuss CPKC's proposed search parameters tomorrow afternoon or Wednesday morning?

Thanks,

Mike

From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Wednesday, October 7, 2026 12:25 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Mike,

We are still checking on their schedules and will let you know.

Thank you for the update about Applicants anticipated additional requests.

Best,

Noah

From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, October 7, 2026 5:47 AM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@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>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah,

Thanks. When do you expect to be able to provide available dates for these three witnesses?

Regarding your question, we may serve some additional targeted requests in the next several days, and we also may serve other requests after the November 18 submissions depending on our review of those submissions.

Mike

Michael Maya

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From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Tuesday, October 6, 2026 7:53 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Mike,

We are gathering dates for all three. We don't yet know their availabilities in December. On a related topic, do Applicants plan to serve additional discovery and if so when?

Best,

Noah

From: Maya, Michael <mmaya@cov.com>
Sent: Monday, October 5, 2026 6:00 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@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>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah,

Thanks. We will review and circle back on the proposed search parameters. In the meantime, please confirm tomorrow that you will provide available dates for depositions in December of Keith Creel, Mark Redd, and John Brooks.

Mike

Michael Maya

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From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Monday, October 5, 2026 6:21 PM
To: Kelly, Kevin <Kkelly@cov.com>; 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>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Kevin,

The chart below reflects CPKC's preliminary custodial search proposal.

Requests	Terms	Date Range
Impact of Proposed Transaction (Requests 3, 12-14, 17)	(((UP or "Union Pacific") AND ("Norfolk Southern" or NS)) w/5 (merger OR transaction OR aquisi* OR combination)) OR (CGP or "Committed Gateway Pricing" or transcon* OR duopoly)) w/10 (impact* OR harm* OR analys* OR evaluation* OR forecast*)	7/29/2025 to 2/17/2026
Mergers / Strategic Collaborations with Other Class I's (Requests 2, 4, 10, 16)	(BNSF or "Burlington Northern" or CSX* or "Norfolk Southern" or NS or UP or Union Pacific or CN or "Canadian National") w/10 (merg* OR combination OR acqui* OR "cooperative agreement" or "joint venture" or alliance)	1/1/2019 to 2/17/2026
Pricing Strategy (Requests 11, 24)	(pricing w/3 (formula OR model OR polic* OR strateg* OR system))	7/29/2024 to 2/17/2026

Growth Strategy (Requests 11, 25, 29)	(((plan OR strateg*) W/20 (grow* OR increas* OR retain)) W/5 (Volume OR Rail OR Traffic OR revenue))	7/29/2024 to 2/17/2026
Bundling / Tying (Request 26)	(negotiat* or strateg*) w/5 (bundl* OR tying OR tie OR link* OR leverag* OR "multiple facilit*" OR multi* OR refun* or discount* or waiv*)	7/29/2024 to 2/17/2026
PSR (Request 27)	((PSR OR "Precision Scheduled Railroading") w/10 service)	7/29/2024 to 2/17/2026
New Facilities (Request 28)	(facilit* w/25 new) w/20 (offer OR bid)	7/29/2024 to 2/17/2026

CPKC currently intends to include Keith Creel, Mark Redd, John Brooks, and James Clements as custodians. While we are still exploring the burden associated with collecting and producing data from KCS's legacy systems, we can confirm that there is data for the KCS custodians identified in your September 11, 2026, email.

CPKC currently intends to include in its non-custodial search process Requests 2-4, 6-10, 16, and 18-21 as well.

CPKC provides this information subject to, and without waiver of, any of CPKC prior objections to the Requests. CPKC reserves the right to modify the forgoing as its custodial search process develops.

Best,
Noah

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, September 24, 2026 11:39 AM
To: Judge, Kiera S. <judgeks@sullcrom.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; 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>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Kiera,

Can CPKC agree to provide items 2 and 6 by October 9? Please let us know within the next 90 minutes so that we hopefully can avoid a motion on this.

Best,

Kevin

Kevin Kelly

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From: Judge, Kiera S. <judgeks@sullcrom.com>
Sent: Thursday, September 24, 2026 2:28 PM
To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; 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>
Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Kevin,

CPKC expects to provide a proposal regarding items 1, 3, and 5, by October 5.

While CPKC can't commit that it will be in a position to fully respond to items 2 and 6 by October 5, we will endeavor to provide you this information as soon as it is available. As we have told you previously, CPKC is working diligently to process the custodial data necessary to provide a meaningful search term proposal with hit counts. We anticipate utilizing search terms and a review process similar to Applicants' process.

CPKC's custodial search will include Keith Creel, Mark Redd, John Brooks, and James Clements. We will provide you our view about other potential custodians as our assessment of your requests continues.

Please let us know when you have an update on the questions we raised, including about additional discovery.

Best,

Kiera S. Judge
(202) 956-7611 (Office) | (732) 648-5426 (Cell)

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Wednesday, September 23, 2026 4:27 PM
To: Matelis, Joseph J. <Matelisj@sullcrom.com>; 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>; zzExt-dludwin <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>
Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

Thank you for speaking yesterday. We write to follow up on our request that CPKC commit to providing its proposal for custodial document searches in response to Applicants' First and Second Discovery Requests by a date certain. To move this process along, we request that CPKC confirm that it will provide its proposal by October 5, 2026, and that the proposal will do the following:

1. Identify 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);
2. Identify the search terms that you propose to use to search for responsive custodial documents;
3. Identify the date ranges that you propose to apply to your proposed searches;

4. Identify the custodians whose documents you propose to search;
5. Identify any custodians that we identified in our September 11, 2026 email for whom you do not possess ESI; and
6. Provide hit reports for the proposed search terms, dates, and custodians that you propose to use for your custodial searches.

We ask that you please provide the requested confirmation by 10 am Eastern tomorrow in light of the 6 pm Eastern filing deadline for the next round of discovery motions.

Best,

Kevin

Kevin Kelly

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Monday, September 21, 2026 6:15 PM
To: Matelis, Joseph J. <Matelisj@sullcrom.com>; 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>
Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

We will send an invite to meet and confer tomorrow morning at 10 ET. Please provide the information we have requested ahead of that call. It will help to narrow the scope of any disputes, including with respect to the specific custodians that we have requested.

We can also discuss the Orr documents at that time.

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
www.cov.com [cov.com]

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From: Matelis, Joseph J. <Matelisj@sullcrom.com>
Sent: Monday, September 21, 2026 11:47 AM
To: Kelly, Kevin <Kkelly@cov.com>; 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>
Cc: David Meyer <david@meyerlawdc.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>
Subject: RE: FD 36873 - Applicants' Discovery Requests to CPKC

[EXTERNAL]
Kevin,

We are mindful of the discovery guidelines and what they say about attempting to meet within four days of requests for meet-and-confer sessions. Despite them, CPKC has sought to accommodate Applicants' scheduling requests when we raised questions about Applicants' progress on responses CPKC's discovery requests, which are of course more time sensitive given the upcoming November deadline. For instance, just last month, CPKC requested Applicants to provide availability for a meet and confer about CPKC's discovery requests. We asked for your availability on August 12. Applicants waited 7 days to even offer dates, and then the only date that was offered was August 24. And I am sure you recall that Applicants often took markedly longer to respond to our requests to meet and confer over the course of the previous ten months during which CPKC's requests for discovery have been outstanding.

With regard to the questions raised in your email, we have already told you that CPKC intends to conduct a custodial search and will provide Applicants additional details about that process. And we will of course be providing a report in response to the Judge's order. As a preview, we intend to complete our responses on a quicker schedule than Applicants,

whose productions are still not done ten months after CPKC's December 2025 requests and four+ months after Applicants' filing of the amended application.

Nonetheless, if Applicants are now choosing to insist on meeting and conferring before Friday, we are available for a discussion on Tuesday morning between 9:30 and 11. Your offered window does not work because I am travelling starting Tuesday afternoon and don't get back to DC until late Thursday.

Finally, please let us know what limits you had in mind when you asked the Judge for a meet and confer respecting our request relating to Mr. Orr. In our view, that request is the more time sensitive one given the upcoming deadline to file comments.

Joe

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 18, 2026 4:52 PM
To: Stern, Noah P. M. <sternn@sullcrom.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.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>; zzExt-dludwin <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: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Noah,

The Discovery Guidelines call for meet and confers to take place within 4 days. Because you are not agreeing to meet with us within that timeframe, we reserve the right to seek appropriate relief from the ALJ. We would prefer, however, not to have to take that step without speaking; we therefore reiterate our request that you provide times when someone on your team can be available on Tuesday or Wednesday. If there is truly no one who can speak with us either day, please let us know if you can speak on 9/24.

Best,

Kevin

Kevin Kelly

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From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Thursday, September 17, 2026 7:53 PM
To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.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 CPKC

[EXTERNAL]
Kevin,

We are not available on the dates you proposed. We are available to meet and confer on September 25 at any time after 2:30 PM (ET). Please let us know if a time in that window works for you.

Best,

Noah

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, September 17, 2026 10:42 AM
To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.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>; zzExt-dludwin <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: [EXTERNAL] RE: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

We have not received a response to the email below. 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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www.cov.com [cov.com]

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Friday, September 11, 2026 5:02 PM
To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Judge, Kiera S. <judgeks@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Clyburn, Rachel P. <clyburnr@sullcrom.com>; David Meyer <david@meyerlawdc.com>
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Subject: FD 36873 - Applicants' Discovery Requests to CPKC

Joe,

On August 24, you indicated that CPKC would be conducting searches for additional documents in response to Applicants' discovery requests by collecting and searching custodial ESI. You further stated that CPKC would provide a proposal regarding the custodians and search parameters that

CPKC intended to use. Since you provided that update, CPKC has provided no additional information regarding its search parameters.

Please provide no later than Wednesday, September 16, information regarding the search parameters that CPKC 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 CPKC 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 CPKC still possesses custodial ESI for these employees. To the extent CPKC 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.

- Keith Creel
- Nadeem Velani
- Mark Redd
- John Brooks
- James Clements
- Larry Lloyd
- Patrick Ottensmeyer
- Michael Upchurch
- Jeffrey Songer
- Michael Naatz

Best,

Kevin

Kevin Kelly

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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