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November 10, 2026

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

BNSF-70

Re: Docket No. FD 36873 – BNSF Opp. to UP's Motion to Compel (UP-128/NS-122)

Dear Judge Soulikias:

Last summer, UP negotiated to buy NS. UP needs STB approval to complete that purchase. To get approval, UP must prove its acquisition is in the "public interest." That is UP's burden. UP must prove, for example, that any merger-specific public benefits outweigh the competitive harms the merger will cause. This review process is public and subjects the Applicants to burdens and responsibilities that are not placed on non-applicants.

BNSF is not an applicant. It has no evidentiary burden related to UP's request to acquire NS. Like many stakeholders, BNSF opposes the merger. As it is entitled to do—and consistent with the Board's desire to hear from stakeholders—BNSF has participated in the review process. But that does not subject BNSF to the same discovery obligations as Applicants, nor does it give UP a vehicle to retaliate against BNSF with irrelevant and unduly burdensome discovery.

For months, BNSF has voluntarily produced documents and data in discovery. Across eight rolling productions to date, BNSF has produced 61,304 pages of documents and 590 GB of data. BNSF is searching five executives' files and multiple, non-custodial locations. BNSF's custodians and deponents provide broad and sufficient coverage: Katie Farmer (CEO), Paul Bischler (CFO), Tom Williams (CMO), Craig Morehouse (COO), and Jon Gabriel (VP, Consumer Products). That is on top of the discovery UP is taking from CPKC and CSX.

BNSF's efforts are the result of compromise and go beyond what any non-applicant in a merger proceeding has ever done. During discussions with UP, BNSF expanded its date range, its custodian list, and the scope of what it agreed to search. After several weeks of productive discussions, BNSF made a comprehensive compromise proposal. Then, UP went quiet. UP sat on BNSF's proposal for nine days. Then, 30 minutes before motions were due—and without countering or identifying a single objection to BNSF's proposal—UP simply declared the parties "too far apart." Within one minute of emailing BNSF, UP sent verbatim emails to CSX and CPKC and filed motions. That cannot be the good-faith conferral Your Honor expects.

I. UP Has No Basis to Discover BNSF's Pricing Documents.

In an overbroad request, UP demands seven years of documents related to BNSF's pricing and growth strategies, as well as anything concerning Precision Scheduled Railroading and any offers to customers opening new facilities. UP-128/NS-122 at 4, 13. UP does not limit those requests in any way. The scope of what UP is asking Your Honor to order could not be broader: To prove up *its* merger, UP says it needs seven years of information about how BNSF has priced rail services to thousands of customers and how BNSF has tried to improve its operations across thousands of track miles across 28 states. That makes no sense.

This request is overbroad and, even if narrowed, would not seek relevant or proportional information. Relevant information is only that which could "affect the outcome of a proceeding." *Norfolk S. Corp.–Control–Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, slip op. at 3 (STB served July 25, 2025). Relevance here is tied to *UP's* application to buy NS and whether the discovery will help the Board decide whether *UP's* purchase is in the public interest. *See* Decision No. 30 at 1. UP makes no showing that these overbroad requests to BNSF would help the Board.

UP is asking Your Honor to break new ground and set new law. ***UP does not cite any Board precedent where a non-applicant was compelled to produce pricing information to the merger applicant.*** There is good reason for that. How or why BNSF has priced its own services since 2019 says nothing about whether a combined UP-NS system will deliver the benefits UP claims, or whether those benefits outweigh the harms. If accepted, this theory of relevance would make discoverable the pricing and strategy documents from every railroad, intermodal carrier, shipper, and trucker. It is simply not relevant and thus not discoverable. This is a fishing expedition that should not be permitted.

UP argues that BNSF asked UP to produce pricing documents. That is irrelevant, because the parties are differently situated. *UP* is asking for a license, and information about UP's pricing strategies informs the Board about what could happen to shippers if UP increases its market power. There is no reciprocity principle here. UP's argument boils down to the following: UP has been put to the burden of producing some pricing information, so BNSF should be too. That argument is legally incorrect and smacks of retaliation against participants opposing the merger.

UP also argues that BNSF's pricing materials "are central to evaluating any claim that the Proposed Transaction will harm competition or BNSF's ability to serve its customers." *See* UP-128/NS-122 at 4. Notably, UP failed to include any cite for that proposition or offer *any* explanation for how BNSF pricing materials bear on those claims. Thus, any relevance argument has been waived. UP's conclusory say-so cannot form the basis of ordering BNSF to produce pricing documents.

To the extent that UP is suggesting that BNSF's pricing strategies impact the benefit or harm calculus of UP's merger proposal, UP would be admitting it submitted an incomplete application. UP has already presented its analysis of the transaction's effects. *See, e.g.*, UP-80/NS-78 at 141-155. Further, *BNSF's historical* pricing does not inform how a merged *UP-NS* may price *in the future* or how that merged UP-NS's pricing may affect shippers. And if the Board wants to know how BNSF will price its rail services in the *future* if the merger is approved, BNSF would stipulate that no such analysis currently exists, so there is nothing to compel.

Finally, even if UP had made any showing of relevance regarding these documents, the request is disproportionate. *See* 49 C.F.R. § 1114.21(c). First, UP makes zero showing that BNSF's pricing documents are important in resolving the issues—that is, whether UP's merger is in the public interest. The Board will ask whether a combined UP-NS would be able and incentivized to raise rates, reduce service, or foreclose competitors in particular markets. UP fails to identify any way BNSF's pricing or growth documents have any bearing on that. And if BNSF's pricing strategies were important to that analysis, then UP would need to take exhaustive discovery of every other market participant to have a complete picture. UP isn't doing that. Second, the request is particularly burdensome. BNSF prices movements in ***tens of thousands of lane and commodity combinations*** across its network, and pricing decisions are made and documented by dozens of commercial personnel. The same overbreadth (and relevance) concern applies to UP's request concerning "offers to customers opening new facilities." UP-128/NS-122 at 13. BNSF commercial personnel are in regular contact with the company's thousands of customers and potential customers about hundreds of potential customer projects each year. "Casting too wide a net . . . is fishing," Decision No. 31 at 8, and TAR does not cure it, *id.* at 5.

In sum: UP's demand for BNSF's pricing and growth strategies is unprecedented. UP gives Your Honor no proper basis to create new law by granting this overreaching request.

II. BNSF Proposed a Reasonable Set of Custodians.

UP's request that BNSF collect files from 15 custodians is overbroad, unnecessary, and unduly burdensome. BNSF is already collecting the files of five executives who direct the company's strategy, finances, commercial relationships, and operations. BNSF is also willing to consider targeted follow-up requests for non-custodial information. UP's requests for *more* must be judged against what BNSF has already done, is doing, and is willing to do.

BNSF's search proposal fits squarely with the rule that UP argued for in this proceeding: the responding party should have "authority to determine a reasonable, efficient, and defensible process for identifying and producing responsive documents." UP-96/NS-95 at 2; *see also* UP-73/NS-71 at 2; UP-77/NS-75 at 2. UP should not be allowed to change the rules now, particularly where courts agree that responding parties are best suited to select their own custodians. *See Mortgage Resol. Serv., LLC v. JPMorgan Chase Bank, N.A.*, 2017 WL 2305398, at *2 (S.D.N.Y.

May 18, 2017) (responding party "is entitled to select the custodians most likely to possess responsive information"). And as UP also argued in this case, a party seeking additional custodians must show that the proposed additions possess unique, relevant information. *Fort Worth Emps. Ret. Fund v. J.P. Morgan Chase & Co.*, 297 F.R.D. 99, 107 (S.D.N.Y. 2013) (denying additional custodians where the requesting party did not show additional custodians possessed unique relevant information); *see also* UP-66/NS-64 at 3 (UP arguing that a party making "demands for additional custodians" "bears the burden of showing why" existing custodians are inadequate).

UP does not make that showing for any of the ten proposed additions. *See* **Appendix A**.

Hower and Caddell. Both Katie Hower and Angela Caddell report directly to Williams, an agreed custodian and deponent with ultimate responsibility for BNSF's commercial strategy and customer relationships. Collecting his subordinates' files would be duplicative. *See Schulte v. LinkedIn Corp.*, 2026 WL 1905851, at *4 (N.D. Cal. July 1, 2026) (denying request for additional custodian where requesting party failed to show additional custodian possessed "uniquely relevant information that is not available from the sources already designated"); *see also Kidd v. Taos Ski Valley, Inc.*, 88 F.3d 848, 853 (10th Cir. 1996) (barring subordinate depositions "to the extent the same information may be obtained from supervisors"). UP says BNSF offered no reason to treat Hower and Caddell differently from Jon Gabriel. UP-128/NS-122 at 3. But Gabriel was offered as a compromise, not a concession that every group VP's files are necessary. Applicants cannot turn that compromise into a ratchet. Searching Williams' files—plus non-custodial sources of commercial information—is a reasonable, efficient, and defensible process. In addition, Williams and Gabriel will be deposed and can be asked questions on these topics.

Former Employees. Six of the requested custodians no longer work at BNSF. Carl Ice (ret. 2020), Julie Piggott (2021), Stevan Bobb (2024), and Colby Tanner (2025) all left before the transaction was announced, so they could have nothing responsive to over half of Applicants' criteria. The Fritz ruling in Decision No. 31 does not help UP. There, Your Honor ordered a "targeted search" of an *Applicant's* former CEO, whose views bore directly on why UP had previously decided against the same merger it pursues now. Here, UP seeks something far different and expansive: wholesale collections from six former employees of a non-applicant, with no showing that any possess unique, relevant information, and no showing that any of their information will aid the Board. UP is straining: To justify its request for the files of one executive who left BNSF five years ago, UP cites a public statement she made in ***2015***. Regardless, to the extent that UP has actual need for documents about BNSF's operations from years ago, UP can make a targeted request for that information. Searching email from departed employees of non-applicants—with no showing for why—is not proportional or efficient.

Andersen and Smythers. UP demands the files of BNSF's VP of Communications and its VP of Federal Government Affairs. Non-applicants and the public are entitled to make comments and have discussions with the government without fear of being targeted with retaliatory

discovery. The Board just warned UP about this. Compelled disclosure of such information could risk chilling the exercise of those stakeholders' rights to speak, associate, and petition the Board. *See, e.g., Perry v. Schwarzenegger*, 591 F.3d 1147, 1160–65 (9th Cir. 2010) (directing entry of protective order against discovery into internal campaign communications on First Amendment grounds); *Legrand v. Abbott Lab'ys*, 2024 WL 4469099, at *1 (N.D. Cal. Oct. 9, 2024) (denying motion to compel communications between industry group members on First Amendment grounds). Regardless, this is a surprising request from UP, because ***in defiance of an order, UP has been withholding the files of its own government-affairs executive***, Andrew Brady (VP – External Relations). UP was ordered to search Brady's files. *See* Decision No. 25 at 3. UP recently told the Board that its custodial productions were substantially complete, *see* UP-108/NS-108 at 2, yet we later learned UP was actually holding back (and still is) Brady's files. *See* UP-128/NS-122 Ex. G at 1 ("UP would not produce documents of Andrew Brady."). UP cannot justify demanding BNSF's government-affairs files while withholding its own in the face of a direct order.

III. BNSF's Proposed Date Range Is Reasonable.

In another overbroad request, UP asks a competitor to search seven years of ordinary-course documents. UP-128/NS-122 at 3. Searching back to July 2024—one year before UP announced the merger—is sufficient for a non-applicant. BNSF has (i) offered reasonable pre-2024 non-custodial searches on interline partnerships and cooperative arrangements, (ii) already produced pre-announcement ordinary-course data, and (iii) agreed to consider additional, targeted pre-2024 searches. UP cites Decision No. 31, which does not require more. *Id.* The language UP quotes addressed car and train event *data*, which is subject to reciprocal discovery under 49 C.F.R. § 1180.4(b)(4)(iii) and which BNSF had produced. Nothing in Decision No. 31 extends a non-applicant's *custodial* searches back seven years. UP identifies nothing it actually needs from that far back, or how it could help the Board apply the Major Merger Rules to UP's case. Asking a competitor to search information back seven years underscores how little UP has listened to Your Honor's guidance about the need to craft targeted discovery.[1]

/s/ Dan Donovan
Daniel T. Donovan, P.C.

[1] Regarding UP's first set of requests—related downstream effects—BNSF has conducted a reasonable search; BNSF has not identified any responsive, non-privileged documents; and as BNSF said it would do, BNSF will meet and confer with UP regarding the logging of any responsive, privileged documents.

CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Onika Williams
Attorney for BNSF Railway Company
November 10, 2026

APPENDIX A

UP's Disputed Requests for Ten (10) More BNSF Custodians

To conduct a reasonable, efficient, and defensible search, BNSF is searching the files of five executives:

- *BNSF's Chief Executive Officer,*
- *BNSF's Chief Financial Officer,*
- *BNSF's Chief Marketing Officer,*
- *BNSF's Chief Operations Officer, and*
- *BNSF's VP of Consumer Products (Intermodal).*

BNSF responds here to the ten (10) additional custodians that UP asks that BNSF search. As shown below, UP fails to show that any has unique, relevant information that is proportional to the needs of the case, particularly when judged against the company leaders that BNSF is searching and the targeted, non-custodial searches that BNSF is willing to conduct.

Name	UP Position	BNSF Response
Katie Hower Group VP, 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."	• UP does not show that Hower has information that is uniquely relevant and not otherwise obtainable. Hower reports directly to Tom Williams, BNSF's CMO, who is already a custodian and deponent. Williams has ultimate responsibility for BNSF's commercial business, including its industrial segments. Documents concerning "BNSF's industrial segments" and "BNSF's commercial assessment of the merger as it relates to industrial products traffic" are retrievable from Williams or from targeted, non-custodial searches that BNSF has agreed to consider. As such, the burden of collecting Hower's files outweighs the potential value. • UP makes no argument for how Hower's position on the Railroad-Shipper Transportation

Name	UP Position	BNSF Response
		Advisory Council is a basis to order a multi-year search of her custodial email. • The "alleged risk of exacerbated captive shipper exposure to higher rates in the Gulf Coast" will be the subject of expert testimony and the testimony of UP witnesses, so that is no basis to search Hower's custodial files. To the extent UP wants to take non-privileged fact discovery from BNSF on that issue, Williams is a custodian and deponent. • The fact that Hower has made public statements related to the merger in her capacity as a BNSF employee does not make a retaliatory search of her inbox appropriate or proportional. UP is not entitled to search the emails of every industry stakeholder who has opposed the merger.
Angela Caddell Group VP, Agriculture and 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."	• UP does not show that Caddell has information that is uniquely relevant and not otherwise obtainable. Caddell reports directly to Tom Williams, BNSF's CMO, who is already a custodian and deponent. Williams has ultimate responsibility for BNSF's commercial business, including its agricultural and energy business. Documents concerning "BNSF's assessment of, response to, and alleged competitive concerns regarding the proposed UP-NS merger as it relates to the agricultural community" or "BNSF's commercial relationships with U.S. agricultural producers and shippers" are

Name	UP Position	BNSF Response
		retrievable from Williams or from targeted, non-custodial searches that BNSF has agreed to consider. As such, the burden of collecting Caddell's files outweighs the potential value. • UP's justification for Caddell's files overlaps with UP's arguments concerning Williams' knowledge of and involvement in BNSF's customer relationships.
Zak Andersen Chief of Staff and VP, 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)."	• BNSF's communications with regulators, lawmakers, and stakeholders are not relevant to assessing whether a UP-NS merger is in the public interest. • UP does not show that Andersen has information that is uniquely relevant and not otherwise obtainable. Andersen reports to Katie Farmer, BNSF's CEO, who is already a custodian and deponent. Any relevant, non-privileged documents concerning "BNSF's response to the merger, including public communications strategy and engagement with regulators, lawmakers, and stakeholders" are obtainable from Farmer, from targeted, non-custodial searches that BNSF has agreed to consider, and from BNSF's website. As such, the burden of collecting Andersen's files outweighs the potential value. • The fact that Andersen has made public statements related to the merger in his capacity as a BNSF employee does not make a retaliatory

Name	UP Position	BNSF Response
		search of his inbox appropriate or proportional. UP is not entitled to search the emails of every industry stakeholder who has opposed the merger. • Regardless, UP has not produced the files of Andrew Brady, its government affairs leader. • UP previously agreed to forgo Andersen as a custodian.
Mike Smythers VP, Federal Gov't 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."	• UP does not show that Smythers has information that is uniquely relevant and not otherwise obtainable. Smythers reports to Farmer, BNSF's CEO, who is already a custodian and deponent. • UP's justification for Smythers' files is virtually identical to its justification for Andersen's files: knowledge of BNSF communications with regulators, lawmakers, and stakeholders. Any relevant, non-privileged documents concerning those subjects are obtainable from Farmer or from targeted, non-custodial searches that BNSF has agreed to consider. As such, the burden of collecting Smythers' files outweighs the potential value. • Regardless, UP has not produced the files of Andrew Brady, its government affairs leader. • UP previously agreed to forgo Smythers as a custodian.

Name	UP Position	BNSF Response
Carl Ice Former CEO Left BNSF: December 2020	• "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."	• "Historical knowledge of BNSF's strategic planning, competitive positioning, and prior assessments of consolidation" is not relevant to this proceeding. This proceeding concerns whether Applicants' proposed merger, as outlined in their Application, is in the public interest. BNSF's historical views have no bearing on whether Applicants' proposal meets the Board's standards. • Any relevant, non-privileged documents 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" can be obtained from Farmer, the current CEO, or from targeted, non-custodial searches that BNSF has agreed to consider. • The burden of collecting Ice's files outweighs any potential value. Ice retired from BNSF in 2020.
Julie Piggott Former CFO Left BNSF: October 2021	• "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	• "BNSF's historical perspective on rail industry consolidation and the regulatory landscape governing major railroad mergers" is not relevant to this proceeding. This proceeding concerns whether Applicants' proposed merger, as outlined in their Application, is in the public interest. BNSF's historical views have no bearing on whether Applicants' proposal meets the Board's standards.

Name	UP Position	BNSF Response
	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)."	• Citing a statement from 11 years ago, UP does not show that Piggott has information that is uniquely relevant and not otherwise obtainable. Any relevant, non-privileged documents concerning BNSF's perspective on consolidation can be obtained from Farmer, among others, or from targeted, non-custodial searches that BNSF has agreed to consider. • The burden of collecting Piggott's files outweighs the potential value. Piggott retired in 2021. • UP previously agreed to forgo Piggott as a custodian.
Stevan Bobb Former CMO Left BNSF: August 2024	• "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."	• UP says that "Bobb likely possessed information concerning BNSF's customer communications regarding the proposed merger," yet Bobb retired in 2024, a year before Applicants announced their merger. As such, the burden of collecting Bobb's files outweighs the potential value. UP does not show that Bobb has information that is uniquely relevant and not otherwise obtainable. • "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," is not relevant to this proceeding. This proceeding concerns whether Applicants'

Name	UP Position	BNSF Response
		proposed merger, as outlined in their Application, is in the public interest. BNSF's historical views have no bearing on whether Applicants' proposal meets the Board's standards. • UP previously agreed to forgo Bobb as a custodian.
Matt Igoe Former EVP Operations Left BNSF: December 2025	• "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."	• "Historical knowledge of BNSF's operational capabilities, network capacity, service design, and competitive positioning" is not relevant or proportional to this proceeding. This proceeding concerns whether Applicants' proposed merger, as outlined in their Application, is in the public interest. UP makes no showing how any of that historical information about BNSF's operational capabilities will aid the Board. • Any relevant information concerning BNSF's historical service performance, efficiency, interline operations, and interchange arrangements can be derived from the 590 GB of operational data that BNSF has already produced in this proceeding; is otherwise publicly available; retrievable from Morehouse or questioning of Morehouse; or from targeted, non-custodial searches that BNSF has agreed to consider. As such, the burden of collecting Igoe's files outweighs the potential value.
Matt Garland	• "Garland previously served as BNSF's COO with responsibility for day-to-day operations,	• "Historical knowledge of BNSF's operational strategy, capacity planning, and service

Name	UP Position	BNSF Response
Former COO Left BNSF: May 2026	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."	performance" is not relevant or proportional to this proceeding. This proceeding concerns whether Applicants' proposed merger, as outlined in their Application, is in the public interest. UP makes no showing how any of that historical information about BNSF's operational capabilities will aid the Board. • Any relevant information concerning BNSF's historical service performance and efficiency can be derived from the 590 GB of operational data that BNSF has already produced in this proceeding; is otherwise publicly available; retrievable from Morehouse or questioning of Morehouse; or from targeted, non-custodial searches that BNSF has agreed to consider. As such, the burden of collecting Garland's files outweighs the potential value.
Colby Tanner Former VP of Industrial Products Left BNSF: April 2025	• "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	• UP does not show that Tanner has information that is uniquely relevant and not otherwise obtainable. Tanner reported directly to Williams, BNSF's CMO, who is already a custodian and deponent. Relevant, non-privileged information concerning "BNSF's commercial relationships with industrial shippers and BNSF's competitive positioning in industrial freight markets that may be affected by the proposed merger" are retrievable from Williams or from targeted, non-custodial searches that BNSF has agreed to consider. As

Name	UP Position	BNSF Response
	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."	such, the burden of collecting Tanner's files outweighs the potential value. • The competitive dynamics in the Gulf Coast will be the subject of expert testimony and the testimony of UP witnesses, so that is no basis to search Tanner's custodial files. To the extent that UP wants to take non-privileged fact discovery from BNSF on that issue, Williams is a custodian and deponent. Historical knowledge of the competitive dynamics of the freight market can be obtained from Applicants' own files. Tanner's historical knowledge is otherwise not relevant to this proceeding. • UP previously agreed to forgo Tanner as a custodian.