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CSXT-42

November 10, 2026

By E-Filing

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ENTERED
Office of Chief Counsel
November 10, 2026
Part of
Public Record

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

Re: ***Docket No. FD 36873 – Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*— CSXT Letter Brief Opposing UP-130/NS-124**

Dear Judge Soulikias:

CSXT submits this letter in opposition to Applicants' motion to compel document searches using the custodians, date ranges, and search terms that Applicants have unilaterally demanded. *See* UP-130/NS-124 ("Motion"). The Motion is premature and unnecessary, cutting short what was, up to the filing, of the Motion an ongoing and productive process. Applicants' own account of discovery negotiations evidences the substantial progress the parties made on these issues: in the three weeks before Applicants filed, CSXT expanded its custodian list from four to seven, extended the date range for its searches by a full year, supplied two rounds of hit reports, and proposed alternative searches to reduce burden and focus on relevant materials. Motion at 1–2. Rather than continuing those negotiations, Applicants abruptly cut them off, suddenly declaring—roughly two hours after CSXT confirmed its willingness to continue negotiations and update de-duplicated hit counts—that "the parties are too far apart," and filed their Motion. Ex. 1 at 1 (Nov. 5, 2026 emails between R. Lesser and M. Maya). Applicants appear to have done the same with BNSF and CPKC in nearly identical emails sent at the same time.

Rather than attempting to bridge remaining differences, Applicants' Motion undoes progress on custodians and date ranges and introduces new search terms ***for the first time***, asking Your Honor to resolve these discovery issues in the first instance. *See* App'x A to Motion.

Moreover, Applicants' claim that CSXT made a "final proposal" is incorrect. Motion at 2. As far as CSXT knew, Applicants were still evaluating CSXT's November 2 proposal: on November 3, they said they were "considering the rest of [CSXT's] email" and requested unique hit counts and confirmation of de-duplication. Ex. 1 at 2. Applicants never responded to its substance. Instead, they declared a contrived impasse just after CSXT confirmed it was working on those requests and invited further discussion: "We will work on your request regarding unique

hit counts and de-duplication . . . in the interest of continuing to move towards a resolution, we believe there are sufficient areas for the parties to work through to continue making progress toward a resolution and are available to discuss." Ex. 1 at 1.

CSXT complied with Decision No. 41 by disclosing its proposed search parameters and hit counts on October 13 and October 16, then continued negotiating and supplied updated hit counts for Applicants' new terms. *See* Motion at 1–2; Motion Exs. B, D, E. The efficient course is to build on that work through continued engagement, not to impose Applicants' preferred parameters or to litigate issues further discussion may resolve.

The timing of this Motion, and the similar motions against BNSF and CPKC, appears designed more to divert CSXT's resources than to reach reasonable discovery parameters, particularly given CSXT's willingness to continue negotiating. Over the past several weeks, CSXT devoted substantial resources to meet-and-confer efforts while taking numerous depositions of Applicants and preparing its November 18 Comments on the merits of their proposed merger. Applicants themselves acknowledge upcoming substantive deadlines and depositions. *See* Motion at 2. Their Motion consumes time better spent resolving remaining discovery issues, advancing discovery, and preparing for those events.

CSXT therefore asks Your Honor to deny the Motion as premature and direct Applicants to resume and conclude negotiations. CSXT remains committed to timely and productive negotiations and, if allowed to continue, would be open to submitting a joint status report with Applicants by Thursday, November 19 to update Your Honor on the status of these discussions.

I. The parties had nearly reached agreement before Applicants filed their Motion, which retreats to their initial, overbroad custodian request.

Applicants and CSXT were near agreement on custodians before Applicants filed their Motion. CSXT had agreed to seven custodians (Boone, Hinrichs, Angel, Maffett, Kenney, Smith, and Albright), and the only remaining question was Applicants' request to also add former employees Cory and Pelkey. *See* Ex. 1 at 4 ("We can agree to your proposal below, with the following changes: (1) please include Cory, and (2) please add Pelkey.").[1] Rather than focus on these two custodians, in their Motion, Applicants request an order compelling sixteen custodians—all fourteen individuals from Applicants' original September 11 list, plus Maffett and Albright, whom CSXT proposed. Motion at 2–3; App'x A. Not only does this request ignore the parties' negotiations and understandings, but it sweeps in duplicative and irrelevant custodians, including proposed custodians who left long before Applicants announced their merger or have passed away.[2]

[1] A separate issue remains concerning the government affairs custodians (Livingston and Flippin). Applicants proposed a resolution under which they will not seek these custodians if CSXT also agrees to not seek the files of UP's government affairs custodian, Andrew Brady, an ordered custodian, Decision No. 25 at 3, but whose files have not been produced. Ex. 1 at 4–5. As Applicants know, other non-Applicants also seek Mr. Brady's files, so the proposal requires coordination with those parties.

[2] Wallace and Foote both passed away well before Applicants' merger announcement (in 2021 and 2024, respectively). Bezar, Boychuk, and Harris all left CSXT long before Applicants' merger

To the extent Your Honor believes it necessary to resolve the custodian issue now, rather than send the parties back to negotiations, the relevance of Cory and Pelkey is the only remaining question. As CSXT has explained to Applicants, the files of former employees Cory and Pelkey are duplicative of existing custodians. Albright, CSXT's Senior Vice President of Network Operations and Service Design, can provide the relevant operational coverage in place of Cory, who recently retired, and Boone, CSXT's current CFO and former EVP of Sales and Marketing, can cover the financial information Applicants seek from Pelkey.

II. The parties were making progress on negotiating search terms when Applicants filed their Motion, and Applicants have not addressed CSXT's concerns with unreasonably high hit counts and irrelevant search terms.

Search term negotiations were progressing as expected—with Applicants and CSXT exchanging proposals and explaining their respective positions. Before Applicants filed their Motion, CSXT had provided hit counts and responded to each of Applicants' proposed search terms with questions, agreement, or a more reasonable counterproposal. *See, e.g.*, Ex. 1 at 2–3; Motion Ex. D. Rather than respond to CSXT, Applicants filed their Motion, which includes revised search terms ***that CSXT has never seen before*** and raises issues that Applicants ***never raised with CSXT***. CSXT has had no opportunity to consider these new search terms, test the hit counts, or ask questions of Applicants. But there certainly will be problems with these search terms similar to those with Applicants' previous search terms. Applicants' initial proposed search strings returned a patently unreasonable volume of documents.[3] And Applicants still have not answered CSXT's questions, including explaining the relevance of their Precision Scheduled Railroading request. App'x A, Search 25; Ex. 1 at 5; Motion Ex. D at 6.

III. The parties were successfully negotiating date ranges when Applicants filed their Motion, and Applicants have not justified searches back to 2019.

As with custodians and search terms, the parties were also nearing agreement on date ranges before Applicants filed their Motion. As background, Applicants' discovery requests fall into two buckets: (i) requests seeking "ordinary course" documents, such as documents on competition in the rail industry and CSXT's pricing strategies; and (ii) requests seeking documents related to the impact of Applicants' proposed merger. The latter is not at issue because CSXT has already agreed to a time period of July 29, 2024—a full year before the merger was announced—to February 17, 2026 for these requests.

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announcement (in 2024, 2023, and 2020, respectively). In each instance, CSXT offered different custodians holding the same or similar positions.

[3] Before the Motion, three of Applicants' proposed strings returned 151,256, 129,907, and 203,544 hits, respectively—roughly three-quarters of the approximately 639,000 total (non-de-duplicated) hits generated by Applicants' proposed terms across seven custodians for the July 29, 2024–February 17, 2026 period alone. *See* Motion Ex. D. Applicants' eleventh-hour revisions to those strings do not cure the problem. Revised Search 14, for example, still captures any document in which "debt," "revenue*," "earning*," "EBITDA," or "efficienc*" appears within twenty-five words of "NS" or "Norfolk Southern," and Applicants have added "Project Max" and "Proj Max" to almost every string without testing the effect. *See* App'x A.

The only remaining question on date ranges is the time period for the "ordinary course" discovery requests. *See* Motion at 3. In the interest of reaching a compromise, CSXT proposed a January 1, 2023 start date for the searches on which it provided 2023 hit counts. Ex. 1 at 2–3; Motion Ex. D at 5–6; App'x A, Searches 21, 23, and 26. Applicants did not respond to that offer—on November 3 they said they were still "considering" CSXT's proposal, Ex. 1 at 2—but instead rejected it in their Motion by demanding a January 1, 2019 start date for every ordinary-course search. *See* Motion at 3.

There are two serious issues with that demand. First, hit counts for searches reaching back to just 2023 already show massive returns for many searches that would be plainly unduly burdensome.[4] Second, Applicants have not justified going back to 2019 for many of these requests, resting only on the claim that they went back to 2019 in their own document searches. *See* Motion at 5. Applicants' reciprocity argument—that CSXT's discovery obligations are coextensive with their own—ignores the parties' very different postures in this proceeding. Applicants seek the Board's approval of the Proposed Transaction and bear the burden of justifying it; CSXT does not. While the same discovery rules may apply, what discovery is relevant and proportional from a non-Applicant is very different. As an example, the Board's rationale for requiring Applicants to produce "ordinary course" documents in Decision No. 13 was specific to Applicants: those documents would help the Board determine "whether the proposed transaction is likely to have the effects attributed to it by Applicants." Decision No. 13 at 5–6. None of that applies to CSXT. And even for Applicants, the Board limited its directive to documents evaluating the transaction created between July 30, 2024, and February 17, 2026. *Id.* at 6–7. Applicants now seek far broader "ordinary course" discovery from a non-Applicant, reaching back to 2019 and covering general pricing, growth, and negotiating strategies untethered to the Proposed Transaction. Nothing in the Board's prior decisions supports that demand. CSXT has nonetheless agreed, in the interest of compromise, to run targeted ordinary-course searches for July 29, 2024 through February 17, 2026, and has offered to consider extending certain searches to January 2023. Ex. 1 at 3–5. That agreement reflects CSXT's good-faith attempt to resolve this dispute, not an obligation coextensive with Applicants'.

Resting solely on this reciprocity argument, Applicants have failed to explain the relevance of a non-Applicant searching for documents from more than five years before their own merger announcement. For example, it is hard to see how any possible relevance of searches covering topics such as CSXT's pricing strategies in January 2019 outweighs the burden of searching that far back. *See* App'x A, Search 22. The next step should be for the parties to discuss the proposed compromise and assess what relevant information Applicants believe particular searches may capture from earlier years.

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[4] For example, just two of these searches returned nearly 65,000 hits when run back to 2023: the rail-merger search, App'x A, Search 21, returned 54,182 hits, and the growth-strategy search, App'x A, Search 23, returned 10,209 hits. *See* Motion Ex. D at 5–6.

The fact of the matter is that Applicants and CSXT were close to agreement, or at least had narrowed many issues, on search terms before discussions were cut off by Applicants and their Motion. Your Honor should order the parties to return to those discussions so that an agreement can be reached or an actual dispute can be defined. Otherwise, if Your Honor wishes to address the search terms issue, Your Honor should reject wholesale adoption of Applicants' new terms and order search terms that actually reflect the parties' negotiations—namely, CSXT's positions set forth in Motion Ex. D.

Sincerely,

Eric P. Enson
Attorney for CSX Transportation, Inc.

cc: Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2026, I have caused the foregoing document to be served electronically or by first-class mail, postage prepaid, 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.

Eric P. Enson
Attorney for CSX Transportation, Inc.

Exhibit 1

Lesser, Rachel

From: Maya, Michael <mmaya@cov.com>
Sent: Thursday, November 5, 2026 5:26 PM
To: Lesser, Rachel; Kelly, Kevin; Brown, Molly; Flahive Wu, Laura; Ludwin, Derek; Rosenthal, Michael; Magcale, Jamie Dominique U; Gerson, Jessica M; William Mullins; Spencer Naake
Cc: Fanchiang, Eric; Enson, Eric; van Houwelingen, Luke
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel,

Thank you for the email below. We have determined that the parties are too far apart and will be filing a motion shortly.

Mike

From: Lesser, Rachel <RLesser@crowell.com>
Sent: Thursday, November 5, 2026 3:25 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Hi Mike,

We will work on your request regarding unique hit counts and de-duplication and share an update when we have those numbers ready. In the interest of continuing to move towards a resolution, we believe there are sufficient areas for the parties to work through to continue making progress toward a resolution and are available to discuss.

Thank you,

Rachel

Rachel S. Lesser
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+1.202.624.2572 direct

From: Maya, Michael <mmaya@cov.com>
Sent: Tuesday, November 3, 2026 2:47 PM
To: Lesser, Rachel <RLesser@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins

<wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel,

We are considering the rest of your email, but insofar as the hit counts you provided are not unique hits, could you please provide a version of your attachment with a unique hit count for each term? And could you also please confirm that the documents were de-duplicated before the terms were run?

Mike

Michael Maya

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From: Lesser, Rachel <RLesser@crowell.com>
Sent: Monday, November 2, 2026 6:33 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Hi Mike,

We are following up on your questions and on other items in the parties' discussion regarding search terms and custodians.

First, we can confirm that CSXT's internal name for its merger analysis was "Project Max."

Second, attached to this email are the hit counts for Applicants' proposed search terms. That CSXT is providing these hit counts is not an agreement to conduct searches on any specific request. As you can see from the hit counts, many of these search terms are plainly overbroad and are returning an unreasonable and burdensome number of results. Moreover, though we understand your position to be that Applicants' added search terms generally relate to the impacts of the Proposed Transaction, many of these search terms are geared at uncovering documents or information that have no relevance to a specific request that has been served on CSXT. Nevertheless, in the interest of continuing to work toward a resolution, we have indicated in the attached document search terms that CSXT may agree to conduct and have proposed more appropriately tailored search strings for others. This is subject to an overall hit count that is reasonable, and CSXT reserves the right to further revise search terms.

Third, on custodians, CSXT continues to believe that the list of custodians previously provided is reasonable given the roles those individuals held during the relevant time period and the scope of Applicants' requests. We do not yet have a response on your proposal regarding Andrew Brady, but regardless believe the quantity and scope of custodians already agreed to is sufficient.

Fourth, on date ranges, we are willing to consider going back through 2023 on specific requests. In the interest of reaching a compromise, we have provided hit counts back through 2023 on the search terms where we are willing to consider this date range. As you can see, this has increased the hit counts significantly for some search terms.

Thank you,

Rachel

Rachel S. Lesser
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From: Maya, Michael <mmaya@cov.com>
Sent: Monday, November 2, 2026 5:41 PM
To: Lesser, Rachel <RLesser@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel – I am following up on the email below.

Thanks,
Mike

From: Maya, Michael
Sent: Thursday, October 29, 2026 4:23 PM
To: Lesser, Rachel <RLesser@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel,

Thank you for your email below. Again reserving all rights to seek more or different relief if there is no negotiated resolution, we have the following comments.

Custodians. We can agree to your proposal below, with the following changes: (1) please include Cory, and (2) please add Pelkey. We also need confirmation that CSX agrees that UP need not produce the custodial files of Andrew Brady.

Date ranges. As previously indicated, we can agree to 7/29/24 to 2/17/26 for impact-related searches, but the date range needs to go back further in time for ordinary course documents. We understand that CSX does not wish to go back to 2019 as we had requested. Do you have a compromise to propose?

Search terms. Please let us know CSX's position on the terms we provided on October 21.

Mike

Michael Maya

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From: Lesser, Rachel <RLesser@crowell.com>
Sent: Thursday, October 22, 2026 11:10 AM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; OpalDisco <OpalDisco@cov.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Hi Mike,

Thanks for your email. Below we provide some initial reactions to your counter-proposal. As we stated on the call yesterday, we believe the parties can continue to reach a resolution without the need for intervention from the ALJ, which we believe would be premature at this time, particularly given our productive ongoing discussions and the limited time we have been engaging on these issues. CSXT continues to reserve the right to supplement or revise the below as its custodial search efforts and these negotiations progress.

On custodians: In the interest of reaching a resolution, we can agree to expand our list so that Angel, Boone, Smith, Kenney, Hinrichs, and Maffett will be custodians. As we explained on the call, Michael Cory has announced his resignation from CSX; given that, we would propose that Casey Albright serve as a custodian in lieu of Michael Cory. We are evaluating your proposal as to Livingston and Flippin. Please note that any agreement on custodians is limited to an agreement for that individual to serve as a custodian, and not an agreement to produce that individual for a deposition.

Date ranges: Likewise, in the interest of reaching a resolution, CSXT will agree to the proposed date range of 7/29/24 to 2/17/26 for all agreed-upon search terms.

Search terms: To aid in the parties' negotiation, CSXT will provide hit counts for Applicants' proposed search terms for the above-listed custodians. As Applicants know, CSXT objected to Applicants' discovery request on PSR on relevance grounds. CSXT requests that Applicants explain why they believe this Request and the accompanying search term are relevant. Please note that CSXT's agreement to provide hit counts is not an agreement to those specific search terms. CSXT believes that both parties will be in a better place to evaluate Applicants' proposed search terms with hit counts.

Thank you,

Rachel

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From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, October 21, 2026 3:41 PM
To: Lesser, Rachel <RLesser@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; OpalDisco <OpalDisco@cov.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel,

Thanks for the call earlier today. Below is our counter-proposal for purposes of trying to reach a negotiated resolution, reserving all rights to seek more or different relief if there is no negotiated resolution.

Custodians. Angel, Boone, Cory, Smith, Kenney, Bezar, Hinrichs, Pelkey, Boychuk, Maffett. This assumes that CSX agrees that UP need not produce custodial files of Andrew Brady.

Date Ranges. 7/29/24 to 2/17/26 for searches relating to potential impacts of the proposed transaction (attached). 1/1/19 to 2/17/26 for searches relating to ordinary course documents, which are laid out in numbered points 2-7 below. Documents of former employees who left before 7/29/24 need not be searched using the impact-related terms.

Search Terms.

1. Rather than trying to run a single search for documents relating to potential impacts of the transaction, we propose that CSX use a series of terms relating to specific potential impacts. A proposed list of such terms is attached.
2. (BNSF or "Burlington Northern" or CPKC* 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)
3. (pricing w/5 (formula OR model OR polic* OR strateg* OR system))
4. (((plan OR strateg*) w/20 (grow* OR increas* OR retain)) w/5 (Volume OR Rail OR Traffic OR revenue))

5. (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*)
6. ((PSR OR "Precision Scheduled Railroading") w/10 service)
7. ((facilit* w/5 new) w/5 (offer OR bid))

Mike

Michael Maya

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From: Lesser, Rachel <RLesser@crowell.com>
Sent: Tuesday, October 20, 2026 6:35 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Thanks, Mike. We will take a look. As for CSX's requests, we weren't anticipating any discussion would be necessary. We're just looking for a simple update on when we can expect Applicants' productions responsive to those requests.

Best,

Rachel

Rachel S. Lesser
Pronouns: she/her/hers
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From: Maya, Michael <mmaya@cov.com>
Sent: Tuesday, October 20, 2026 12:09 PM
To: Lesser, Rachel <RLesser@crowell.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke

<LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel, on the relevance of the custodians, we can discuss this more tomorrow, but in the meantime please take a look at the Appendix to our filing of September 24, 2026 (UP-110 / NS-111).

We will check to see if the right people to discuss responses to requests 4-13 in CSX's third set of requests can be available at the time we've set for tomorrow to talk about CSX's documents. If they can't be, it will be necessary to set another time for that subject.

Mike

From: Lesser, Rachel <RLesser@crowell.com>
Sent: Tuesday, October 20, 2026 12:01 PM
To: Maya, Michael <mmaya@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Cc: Fanchiang, Eric <EFanchiang@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]

Counsel,

We write in advance of Wednesday's meet and confer to ensure that the session is as productive as possible.

To the extent that Applicants seek additional custodians beyond the list provided by CSXT on October 13, 2026, CSXT will need to understand Applicants' view of the relevance of any such individuals. We note that to date Applicants have not articulated the basis for their belief that any such individual, including former employees who left CSXT long before UP and NS's merger announcement, are likely to possess documents that will be relevant to this proceeding, and in particular to Applicants' rebuttal. We ask that Applicants come prepared to explain that basis so we can take it back and discuss with our client.

Please also be prepared to provide an update on the status of Applicants' production of documents responsive to Request Nos. 4 to 13 of CSXT's Third Set of Discovery Requests.

We look forward to a productive discussion on Wednesday.

Thank you,

Rachel

Rachel S. Lesser
Pronouns: she/her/hers
Crowell & Moring LLP
rlesser@crowell.com
+1.202.624.2572 direct

From: Maya, Michael <mmaya@cov.com>
Sent: Friday, October 16, 2026 2:39 PM
To: Fanchiang, Eric <EFanchiang@crowell.com>; Lesser, Rachel <RLesser@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Eric,

We do not agree with the assertions in your email below, but in the interest of moving this forward and because much more time and effort than should have been necessary already has been spent on scheduling this conversation, we will make ourselves available on Wednesday afternoon at 3 pm Eastern. Please send an invite if that time works for you.

Mike

From: Fanchiang, Eric <EFanchiang@crowell.com>
Sent: Friday, October 16, 2026 9:51 AM
To: Maya, Michael <mmaya@cov.com>; Lesser, Rachel <RLesser@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Mike,

Your position is unreasonable. We have provided you three alternatives to Monday. Our correspondence on this is fairly implicit that Monday does not work for the members of our team who will be important to making this a productive meet and confer. While we do not owe you a specific accounting why that is, as noted in Rachel's last e-mail, there are two depositions of Applicants' witnesses on Tuesday. That means our team is traveling for and attending those depositions. Accordingly, Monday and Tuesday during the day are not workable for our team. We offered Wednesday. You likewise did not provide an accounting of why Wednesday does not work on your side, and we did not demand one. Your two-hour window today also does not work, and in any event it does not make sense for us to meet and confer without the hit reports, which we will be providing by close of business today. (For that reason, we also do not agree your purported invocation of the timeline in the Discovery Guidelines requires a meet and confer on these issues by Monday.) We have further offered to make ourselves available Tuesday after the two depositions end. While that will come after a long day of depositions, in the interests of moving forward, we are willing to make that work.

Scheduling time for a meet-and-confer is not a unilateral exercise, and Applicants do not get to dictate when the meet-and-confer must take place. And given the ongoing depositions, Applicants likewise need to show some flexibility. Please tell us why our proposal of Tuesday after the depositions end does not work. If you would prefer, we can schedule it specifically for 7 pm Eastern. We remain available Wednesday.

Best,

Eric Fanchiang
Crowell & Moring LLP
efanchiang@crowell.com
+1.949.798.1338 direct

From: Maya, Michael <mmaya@cov.com>
Sent: Thursday, October 15, 2026 6:00 PM
To: Lesser, Rachel <RLesser@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel,

What about Monday? This is my fourth time asking about that day, and I still have not heard a response. You also did not respond as to tomorrow afternoon; will that work?

As you know, we requested this meet and confer on Wednesday. Monday is the first business day following 4 calendar days from our request, and we therefore would be permitted under the Discovery Guidelines to move to compel if you do not make yourselves available by then. We have sought to be cooperative about this by offering to meet on Tuesday as well, but your proposal of a meeting at an unknown time late in the evening is not workable.

Please let us know about tomorrow afternoon between 2:00 and 4:00 Eastern or any time on Monday.

Mike

From: Lesser, Rachel <RLesser@crowell.com>
Sent: Thursday, October 15, 2026 8:44 PM
To: Maya, Michael <mmaya@cov.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Hi Mike,

As you know, there are two depositions scheduled for Tuesday, October 20 in different time zones. While we do not know exactly what time those depositions will end, we can offer to meet 30 minutes after both depositions have ended.

Let us know if this will work.

Best,

Rachel

Rachel S. Lesser
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rlesser@crowell.com
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From: Maya, Michael <mmaya@cov.com>
Sent: Thursday, October 15, 2026 9:24 AM
To: Lesser, Rachel <RLesser@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

Rachel,

Next Friday is much too late to talk about this. I also still do not understand whether Monday or Tuesday would work – you have not answered my questions about those two days. I can make myself available any time either of those days. I can also be available tomorrow (i.e., this Friday) between 2:00 and 4:00. That is a great deal of availability, and I trust that your team can find a time to talk at some point in one of those windows. Please let me know.

Mike

From: Lesser, Rachel <RLesser@crowell.com>
Sent: Wednesday, October 14, 2026 8:47 PM
To: Maya, Michael <mmaya@cov.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Hi Mike,

We are also available next Friday if Wednesday afternoon does not work.

Thanks,

Rachel

Rachel S. Lesser
Pronouns: she/her/hers
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From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, October 14, 2026 3:12 PM
To: Lesser, Rachel <RLesser@crowell.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

That would be difficult. Are you not available on Monday? And if not Monday, how about Tuesday?

Michael Maya

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From: Lesser, Rachel <RLesser@crowell.com>
Sent: Wednesday, October 14, 2026 2:22 PM
To: Maya, Michael <mmaya@cov.com>; Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Thanks, Mike. Would you be available on Wednesday afternoon (10/21)?

Best,

Rachel

Rachel S. Lesser

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From: Maya, Michael <mmaya@cov.com>
Sent: Wednesday, October 14, 2026 8:29 AM
To: Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Lesser, Rachel <RLesser@crowell.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Gerson, Jessica M <JGerson@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>
Subject: RE: STB FC 36873 - CSXT Response on Search Terms and Custodians

CSX team: Are you available to discuss the proposal below on Monday?

Thanks,
Mike

Michael Maya

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From: Lesser, Rachel <RLesser@crowell.com>
Sent: Tuesday, October 13, 2026 7:41 PM
To: Kelly, Kevin <Kkelly@cov.com>; William Mullins <wmullins@mullinslawgroup.net>; Brown, Molly <MBrown@cov.com>; Spencer Naake <snaake@mullinslawgroup.net>; Flahive Wu, Laura <lflahivewu@cov.com>; Ludwin, Derek <dludwin@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Damitio, Daniel <DDamitio@cov.com>
Cc: Enson, Eric <EEnson@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Subject: STB FC 36873 - CSXT Response on Search Terms and Custodians

[EXTERNAL]
Counsel,

Please find below CSXT's initial proposal on search terms and custodians. We will provide hit counts by October 16, 2026. This information is provided without prejudice to, and expressly reserves, all of CSXT's previously stated objections to the Requests. CSXT further reserves the right to supplement or revise the below as its custodial search efforts progress.

Additionally, Christopher Maffett is available for his deposition on January 12, and Maryclare Kenney is available on January 21.

(A) The requests for production in connection with each railroad proposed to conduct and not conduct custodial searches.

The chart below identifies the Requests for Production for which CSXT will conduct custodian searches. CSXT also proposes to search for documents responsive to Request Nos. 2-4, 6-10, and 18-21 in its non-custodial search process. CSXT will also produce documents responsive to Request No. 5.

(B) The search terms.

The chart below identifies CSXT's proposed search terms.

(C) The date cutoffs.

The chart below identifies CSXT's proposed date ranges.

(D) For proposed custodians, confirm that it possesses ESI for each of the former employees on the list.

While we are still exploring the burden associated with collecting and producing data from former employees, CSXT can confirm there is data for the CSXT custodians identified in your September 11, 2026 email, including for former employees.

(E) Identify any proposed custodians whose documents it refuses to search.

CSXT proposes that Stephen Angel, Christopher Maffett, Maryclare Kenney, and Eric Smith are the responsive custodians.

Requests	**Terms**	**Date Range**
Nos. 3, 12-14, 17	(((UP or "Union Pacific") AND ("Norfolk Southern" or NS)) w/3 (merger OR transaction OR aquisi* OR combination)) OR (CGP or "Committed Gateway Pricing" or transcon* OR duopoly) w/5 (impact* OR harm* OR analys* OR evaluation* OR forecast*)	7/29/2025 to 2/17/2026
Nos. 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)	7/29/2024 to 2/17/2026
Nos. 11, 24	(pricing w/3 (formula OR model OR polic* OR strateg* OR system))	7/29/2024 to 2/17/2026
No. 11, 25, 29	(((plan OR strateg*) W/10 (grow* OR increas* OR retain)) W/3 (Volume OR Rail OR Traffic OR revenue))	7/29/2024 to 2/17/2026

No. 26	(negotiat* or strateg*) w/5 (bundl* OR tying OR tie OR link* OR leverag* OR (multiple w/1 facilit*) OR refun* or discount* or waiv*)	7/29/2024 to 2/17/2026
No. 28	(facilit* w/5 new) w/5 (offer OR bid)	7/29/2024 to 2/17/2026

Thank you,

Rachel

Rachel S. Lesser
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