312838

ENTERED
Office of Chief Counsel
November 12, 2026
Part of
Public Record

Brian S. Smith
Party of Record, Finance Docket No. 36873
8014 Cumming Hwy, Suite 403-169
Canton, GA 30115
smithbss.sti@gmail.com

November 11, 2026

By e-filing and by email to alj.soulikias.inbox@stb.gov

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

Re: Finance Docket No. 36873, *Union Pacific Corporation, et al.*—Control—*Norfolk Southern Corporation, et al.* — Letter of the moving party for the November 13, 2026 discovery conference (Discovery Guidelines, Decision No. 24, Section F.2.a)

Dear Judge Soulikias:

I write under Section F.2.a of the Discovery Guidelines as the moving party on my November 5, 2026 letter brief concerning Norfolk Southern.

1. The conference is still needed. Norfolk Southern filed its opposition on November 10, 2026 (NS-125). It asks that all four groups of requests be denied, and it has not agreed to answer any of them as narrowed.

2. What remains in dispute. All four groups set out in Part 3 of my letter brief, each as narrowed there, and the first direction requested in Part 5:

(a) Request for Production No. 2 — structural analyses of structures built before 2000;

(b) Interrogatory No. 18 and Request for Production No. 14 — recorded replacement costs;

(c) Interrogatory Nos. 6 and 7 and Request for Production No. 4 — integration plans and cost;

(d) Interrogatory No. 17 and Request for Production No. 13 — compliance cost; and

(e) that Section F of the Discovery Guidelines governs the timing of any later conference on the reserved requests, with my time to move on them extended to the extent 49 C.F.R. § 1114.31(a) applies. I will ask the Board in my November 18 comments, rather than the ALJ, how material received after that date may be placed before it.

Norfolk Southern's burden objection to groups (a) and (b) rests in part on structures owned by third parties, whose records it says are not in its possession (NS-125 at 3). To address that part of the objection, I limit group (a) to the 227 structures that Norfolk Southern's own FCC antenna structure registrations list as owned by it with reported construction dates before 2000 (FCC weekly antenna structure registration file, November 4, 2026); I will provide the list by registration number. I limit group (b) to Communications Structures owned by Norfolk Southern or its subsidiaries.

Norfolk Southern's opposition states that the requests seek integration documents that "largely do not exist" (NS-125 at 4) and that there is "no transaction-specific compliance cost on the topics" I raised (id. at 3). Each narrowed request already accepts a statement that none was located after a reasonable search as a complete answer to that part. If signed and verified answers to Interrogatory Nos. 6, 7 and 17 as narrowed (49 C.F.R. § 1114.26(a)) state that, after a reasonable

search, no responsive analysis, plan or identified cost was located, those answers, with the public count and log under Request No. 4, would resolve groups (c) and (d). If any was located, the relief requested in Parts 3(c) and 3(d) of my letter brief stands. Interrogatory No. 17 asks whether any such cost was identified or reflected in a valuation, due-diligence, purchase-price or synergy analysis for the transaction.

3. Confidential material. I do not expect Confidential or Highly Confidential material to be discussed. I have not executed an undertaking under the Protective Order. If Norfolk Southern needs to refer to designated material, I ask that it do so in general terms on the open record or submit it to the ALJ for review in camera.

4. Attendance. I will attend and speak for myself: Brian S. Smith, party of record (smithbss.sti@gmail.com). When Board staff provide the conference details, I will forward them to counsel for Norfolk Southern (Decision No. 24, Section F.3).

Respectfully submitted,

/s/ Brian S. Smith
Brian S. Smith
Party of Record, Finance Docket No. 36873

cc: Counsel for Norfolk Southern (by email)

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2026, I served the foregoing letter by email on Administrative Law Judge Jenifer J. Soulikias and on each party of record in Finance Docket No. 36873 with an email address on the Board's service list. I will serve it by first-class mail on November 12, 2026 on each party of record without an email address on that list, including the Secretary of Transportation and the Attorney General of the United States, and on each party of record whose email address fails to deliver, and will file a supplemental certificate of service when that is done.

/s/ Brian S. Smith
Brian S. Smith