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Office of Chief Counsel
November 12, 2026
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Public Record

November 11, 2026

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

BNSF-71/CPKC-70/CSXT-43

Re: STB Docket No. FD 36873 – Issues for Resolution at November 13 Conference

Dear Judge Soulikias:

Ahead of Friday's hearing, UP filed motions to compel against BNSF, CPKC, and CSXT. UP failed to complete its meet-and-confer obligations before filing those three motions and is now asking Your Honor to consider—on a witness-by-witness basis—whether 23 *additional* non-applicant custodians should be searched. UP is also asking Your Honor to consider many other premature, line-level disputes for expanded date ranges, specific search strings, and responsiveness criteria.

As explained in our opposition briefs, the additional demands that UP is making of non-applicants are not targeted, nor does UP show how this discovery would aid the Board in deciding whether *UP's* application to acquire NS serves the public interest. Regardless, UP's requests for *increased* discovery efforts must be evaluated in light of all that BNSF, CPKC, and CSXT are voluntarily doing. Combined, BNSF, CPKC, and CSXT have:

- Agreed to search 18 custodians and dozens of non-custodial locations. In addition, each has agreed to consider targeted non-custodial searches if UP has specific needs for relevant, non-privileged information.

- Made 18 rolling productions and produced more than 78,000 pages of discovery and 1,364 GB of data. All have committed to continue to make rolling productions.

- All have agreed to present certain senior executives for depositions (including, for example, five BNSF executives).

I. UP's Motion to Compel BNSF Custodial and Non-Custodial Searches (UP-128/NS-122)

UP is asking Your Honor to order—across a seven-year search period—ten more BNSF custodians (beyond the five executives BNSF is already searching); UP also asks BNSF to search seven years of pricing information. UP-128/NS-122 at 1. BNSF opposes the motion because BNSF's search protocol is reasonable, efficient, and defensible. UP makes no showing that the ten additional custodians have unique, relevant information that will aid the Board in deciding if UP's application is in the public interest. BNSF's letter brief includes an Appendix A, which provides custodian-by-custodian responses to UP's purported justifications for each. And as a non-applicant, BNSF's pricing documents are not relevant or proportional. UP does not cite any Board precedent where a non-applicant was compelled to produce pricing information to the merger applicant. BNSF-70 at 1-5.

II. UP's Motion to Compel CPKC Custodial Searches (UP-129/NS-123)

UP moved to compel CPKC to search four additional custodians (beyond the six current and former executives CPKC is already searching) across a seven-year period using broad search terms. UP-129/NS-123 at 1. CPKC opposes because UP truncated the meet-and-confer process and demanded twenty additional search terms it never shared with CPKC before filing. CPKC further replies that extending additional ordinary-course searches back to 2019 would increase total hits by about 60%, imposing a disproportionate burden compared to Applicants' searches; additional custodians would duplicate agreed custodians; and that UP's proposed terms are overbroad—only about 4% of a sample of 324 documents hitting on one proposed term were responsive and not privileged. CPKC-68 at 1-5. CPKC also noted that it has agreed to a targeted collection of documents concerning the impact of the proposed transaction. *Id*. at 2-4.

III. UP's Motion to Compel CSXT Custodial Searches (UP-130/NS-124)

UP moved to compel CSXT to conduct document searches using the custodians, date ranges, and search terms that UP have unilaterally demanded in Appendix A of their motion. UP-130/NS-124.12. Specifically, UP seeks searches of 16 custodians using brand new search terms and a January 1, 2019 start date for all ordinary-course searches. CSXT opposes the motion as premature and unnecessary, arguing that UP abruptly cut off productive negotiations with CSXT and should be directed to resume them. CSXT also argues that UP's custodian demands disregard the parties' previous agreements and seek duplicative or irrelevant custodians; the new search terms are overbroad and not previously negotiated; and the demand for searches back to 2019 is unjustified and disproportionate given CSXT's status as a non-applicant.

IV. Brian S. Smith's Letter Brief on Discovery Disputes with Norfolk Southern

Brian S. Smith requested that NS be directed to answer interrogatories he served (Interrogatory Nos. 6, 7, 17, and 18) and to produce documents in response to his requests for production (Request for Production Nos. 2, 4, 13, and 14), as narrowed after conferral with NS. Nov. 5, 2026 Smith Ltr. at 1. NS responded that the information sought by Mr. Smith is irrelevant to this proceeding, would be extremely burdensome to collect, and cannot be provided to him because he is not permitted to receive Highly Confidential information. NS-125 at 2.

LIST OF ATTENDEES

A. BNSF

1. Daniel Donovan
2. McClain Thompson
3. Tim Strafford

B. CSXT

1. Eric Enson
2. John Scheib
3. Luke van Houwelingen
4. Eric Fanchiang

C. CPKC

1. Joseph J. Matelis
2. David L. Meyer
3. Noah P. M. Stern

D. Brian S. Smith

Based on recent hearings:

A. Union Pacific

1. Michael Rosenthal
2. Laura Flahive Wu
3. Kevin Kelly

B. Norfolk Southern

1. Matthew Warren
2. Carrie Mahan
3. Stephen Laudone
4. William Mullins
5. Spencer Naake

Respectfully,

/s/ Dan Donovan
Daniel T. Donovan, P.C.
KIRKLAND & ELLIS LLP
Counsel for BNSF Railway Company

/s/ Joseph J. Matelis
Joseph J. Matelis
SULLIVAN & CROMWELL LLP
Counsel for CPKC

/s/ Eric Enson
Eric Enson
CROWELL & MORING LLP
Counsel for CSXT

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 11, 2026