BEFORE THE SURFACE TRANSPORTATION BOARD

312866

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November 13, 2026
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DOCKET NO. NOR 42188

UNION PACIFIC RAILROAD COMPANY

v.

BNSF RAILWAY COMPANY

BNSF RAILWAY COMPANY'S MOTION FOR A PROTECTIVE ORDER STAYING DISCOVERY PENDING RESOLUTION OF MOTION TO DISMISS

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Dated: November 13, 2026

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Pursuant to 49 C.F.R. § 1114.21(c), BNSF Railway Company ("BNSF") moves for a protective order staying all discovery in this proceeding, including BNSF's obligation to respond to Union Pacific Railroad Company's ("UP") First Set of Interrogatories and First Set of Requests for Production served November 6, 2026 (the "November 6 Requests")[1], until the Board rules on BNSF's Motion to Dismiss filed July 6, 2026.[2] This motion also renews and supplements BNSF's July 14, 2026 Motion to Hold Proceeding in Abeyance, which remains pending.

BNSF's Motion to Dismiss seeks dismissal of all three counts of the Complaint on legal grounds that require no discovery to resolve. If the Board grants BNSF's Motion to Dismiss, the November 6 Requests, and all discovery in this proceeding, will be moot. Even if the Board grants BNSF's Motion to Dismiss in part, the scope

[1] The November 6 Requests are attached as Exhibit A.

[2] On November 10, 2026, counsel for BNSF contacted counsel for UP in an attempt to obtain UP's agreement to defer all discovery, for both parties, until the Board rules on BNSF's Motion to Dismiss, but UP refused to agree.

of relevant discovery will narrow substantially. Requiring BNSF to respond to the November 6 Requests now would impose undue burden and expense that the Board's ruling may render unnecessary in whole or in large part. Should the Board deny the Motion to Dismiss in whole or in part, the parties could then address whatever discovery remains appropriate, with both sides proceeding on a reciprocal basis and on the same timeline.

In addition, the relief BNSF requests here is exactly the relief the Board has granted to UP itself on materially indistinguishable facts in other proceedings, and UP told the Board just over three months ago that this is the proper procedure if BNSF found UP's actual discovery burdensome in this proceeding.

UP has now served that discovery. UP's discovery is sweeping and untailored: it would force BNSF to respond and object to 41 requests within 15 days. After months of inaction, UP timed it to land during the week BNSF must prepare its comments in UP's merger proceeding—one of several procedural and discovery-related motions and requests that UP launched in various proceedings timed to require a response during the next week. That timing is part of a pattern. UP's gamesmanship should not be indulged. BNSF respectfully requests that the Board stay all discovery in this proceeding pending resolution of BNSF's Motion to Dismiss.

I. BACKGROUND

UP filed its Complaint on May 15, 2026. BNSF answered on June 25, 2026, and on July 6, 2026, BNSF moved to dismiss all three counts of the Complaint. BNSF's Motion to Dismiss establishes that UP's unreasonable-practice claims

(Counts 1 and 2) fail as a matter of law because the Board's authority over reciprocal switching arises exclusively under 49 U.S.C. § 11102(c); that UP's claims regarding Grand Island, Nebraska concern transportation governed by a contract between the parties and are outside the Board's authority under 49 U.S.C. § 10709; that Count 1 is an improper rate challenge that pleads no market dominance; and that Count 3 fails to allege the compelling need, inadequate service, and competitive abuse required to prescribe a reciprocal switch. Each ground presents a question of law, and none requires discovery to resolve.

At the parties' July 7, 2026 procedural conference, BNSF proposed that the parties jointly ask the Board to defer discovery pending resolution of the Motion to Dismiss. UP declined. On July 14, 2026, BNSF moved to hold the proceeding in abeyance pending resolution of the Motion to Dismiss. UP opposed BNSF's motion on August 3, 2026. In that reply, UP assured the Board that it "expects to tailor its discovery requests to the issues in dispute," and that "[i]f BNSF believes—after seeing Union Pacific's actual discovery—that a request is unduly burdensome, it may file a motion under 49 C.F.R. § 1114.21(c) to address the objectionable discovery." UP Reply to BNSF's Mot. to Hold Proceeding in Abeyance at 3-4, NOR 42188 (filed Aug. 3, 2026).

UP then waited more than three months. On Friday, November 6, 2026, UP served 20 interrogatories and 21 requests for production, many with multiple subparts, and demanded responses within 15 days (the minimum period the Board's rules allow for interrogatories). *See* 49 C.F.R. § 1114.26(a). Further, it is not

coincidental that UP served the November 6 Requests during the very period in which BNSF's comments in *Union Pacific Corp.—Control—Norfolk Southern Corp.*, FD 36873 are due.[3]

Indeed, UP's discovery requests in this proceeding are just one of several discovery-related motions or requests of which BNSF is aware that UP served last week to non-applicant parties in the merger proceeding timed to require responses over the next week:

Table 1. Union Pacific's Discovery Motion and Request Practice Directed at Merger Opponents

Proceeding	**Served Party**	**Served Date**	**Response and/or Hearing Date**
FD 36873 (UP-128/NS-122)	BNSF	Filed Nov. 5, 2026	Opposition filed Nov. 10; set for hearing at the Nov. 13 discovery conference
FD 36873 (UP-129/NS-123)	CPKC	Filed Nov. 5, 2026	Opposition filed Nov. 10; set for hearing at the Nov. 13 discovery conference
FD 36873 (UP-130/NS-124)	CSXT	Filed Nov. 5, 2026; corrected version filed Nov. 6, 2026	Opposition filed Nov. 10; set for hearing at the Nov. 13 discovery conference
NOR 42188	BNSF	Served Nov. 6, 2026	Nov. 23, 2026

To embark on this tactic, UP cut short on-going and seemingly productive discussions on the scope of discovery with non-applicants in the merger proceeding in order to file a motion to compel discovery of 10 more BNSF custodians. Other parties affected by UP's tactics have raised the same concern. *See, e.g.*, CSXT Letter Brief Opposing UP-

[3] BNSF's comments in the UP-NS merger proceeding are due on Wednesday, November 18, 2026. Fifteen days after UP's November 6 Requests is Saturday, November 21, 2026.

130/NS-124 at 2, *Union Pacific Corp.—Control—Norfolk Southern Corp.*, FD 36873 (filed Nov. 10, 2026) ("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.").

Despite its assurance that it "expects to tailor its discovery requests to the issues in dispute," UP Reply to BNSF's Mot. to Hold Proceeding in Abeyance at 3, NOR 42188 (filed Aug. 3, 2026), UP did not do so and its requests are unduly burdensome. Among other things, UP now demands that BNSF:

- "Identify by name all other railroads for which BNSF provides reciprocal switching for unit trains, what locations the reciprocal switching is provided, and describe whether those railroads' switching arrangements were reviewed as part of the same 'ongoing, comprehensive review' of the Switching Book referenced in BNSF's Answer, and if they were not, why not." (Interrogatory No. 4);

- "Identify all unit train shipments on BNSF-routed traffic originated or terminated at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX from January 1, 2021 through the present, including for each: the date, commodity, number of cars, the specific switching operations performed, and the number of crew members and locomotive moves required; and explain whether the switching operations for BNSF-routed unit trains at those locations differed in any respect from the operations required for Union Pacific-routed unit trains, and if so, how and why." (Interrogatory No. 8);

- "Identify and describe in detail every instance in which BNSF agreed to, proposed, or implemented any delay, phase-in, or modification to the implementation timeline of the tariff changes in BNSF Switching Book at any location, including: (a) the specific location and customer involved; (b) the date and duration of any agreed delay; (c) the persons at BNSF who made or approved the delay decision; (d) the reasons given internally for the delay; and (e) whether the delay was conditioned on any action by Union Pacific or the affected customer." (Interrogatory No. 19); and

- "Identify and describe in detail the legal basis for, and evidence supporting, each of the defenses listed in BNSF's Answer, as well as any additional defense BNSF plans to assert." (Interrogatory No. 20).

II. ARGUMENT

A. The Board May Stay Discovery Where a Pending Motion to Dismiss May Affect the Scope of Discovery.

Under 49 C.F.R. § 1114.21(c), the Board may, "for good cause shown," enter "any order which justice requires . . . to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding," including an order "[t]hat the discovery not be had" or that it "be had only on specified terms and conditions, including a designation of the time." 49 C.F.R. § 1114.21(c)(1)-(2). The Board and its predecessor have applied that authority to stay discovery while a motion to dismiss is pending.

As the Board explained in granting UP's request for precisely that relief in a dispute regarding switch rates:

> Discovery has been stayed where a motion to dismiss raised issues that may affect the scope of discovery. . . . Because a decision on UP's pending motion to dismiss may affect the scope of discovery in this proceeding, UP's renewed motion for a protective order will be granted to protect the parties from the potential undue burden and expense that may arise should discovery proceed while the Board considers UP's motion to dismiss.

Omaha Pub. Power Dist. v. Union Pac. R.R., NOR 42173, slip op. at 2-3 (STB served Dec. 23, 2022) ("*OPPD*") (staying "[a]ll further discovery" and suspending the procedural schedule). *See also Dairyland Power Coop. v. Union Pac. R.R.*, NOR 42105,

slip op. at 2 (STB served Apr. 29, 2008) (granting UP's motion for a protective order because its motion to dismiss "raises issues that may affect both the procedural schedule in these matters and the scope of discovery"); *DHX, Inc. v. Matson Navigation Co.*, WCC-105, slip op. at 2 (STB served June 6, 2002) (suspending procedural schedule "[g]iven that a decision on the motion to dismiss may affect the scope of discovery"); *Phila. Belt Line R.R. v. Consol. Rail Corp.*, FD 32802, slip op. at 2 (STB served Mar. 12, 1996) (suspending "the procedural schedule and all discovery" pending ruling on motion to dismiss); *Zoneskip, Inc. v. United Parcel Serv. of Am., Inc.*, No. 40519, slip op. at 2 (ICC served May 28, 1991) (staying discovery because the ruling on the motion to dismiss "may determine the appropriate scope of discovery, if any").

The standard is readily met here. BNSF's Motion to Dismiss seeks dismissal of every count of the Complaint on legal grounds. If the motion is granted, the November 6 Requests will be moot. Even if it is granted only in part, the scope of relevant discovery will narrow dramatically. *See DHX*, slip op. at 1-2 (staying discovery pending a motion to dismiss only two counts).

B. The Timing and Breadth of UP's Requests Confirm That a Protective Order Is Warranted.

Good cause is especially clear here because UP's discovery appears calculated not to advance this case, but to burden BNSF with 41 requests on the shortest response period the rules permit, during the period when BNSF is finalizing its opposition in the UP-NS merger proceeding. The evident purpose of that timing is to

divert BNSF's resources from the merger proceeding.[4] The Board should not permit its discovery rules to be used as a means of attacking stakeholders' ability to participate in the most substantial rail merger in history.

When BNSF first sought abeyance, it asked the Board to be "mindful of the burdens on the parties presented by the consideration of the amended application filed by UP and Norfolk Southern Railway in FD 36873" in setting any schedule. BNSF's Procedural Report & Mot. to Hold Proceeding in Abeyance at 5 n.1, NOR 42188 (filed July 14, 2026). UP nevertheless waited more than three months and then served its discovery during the period in which BNSF's comments in the merger proceeding are due.

UP's discovery is as overbroad and unduly burdensome as it is ill-timed. Despite assuring the Board that it "expects to tailor its discovery requests to the issues in dispute," UP Reply to BNSF's Mot. to Hold Proceeding in Abeyance at 3, UP seeks discovery about every other railroad for which BNSF provides reciprocal switching for unit trains (Interrogatory No. 4); unit train switching difficulties at any BNSF facility other than the six at issue (RFP No. 13); UP's own 2013 termination of the parties' bilateral switching agreement (RFP No. 14); rate analyses dating back to January 1, 2014 (RFP No. 8); and the legal basis and evidence for every defense in BNSF's Answer "as well as any additional defense BNSF plans to assert" (Interrogatory No. 20). Responding would require unduly burdensome and expensive

[4] BNSF has raised the same concern before the ALJ, where UP's non-applicant discovery is being used as "a vehicle to retaliate against BNSF with irrelevant and unduly burdensome discovery." BNSF Letter Brief Opposing UP-128/NS-122 (BNSF-70) at 1, *Union Pacific Corp. —Control—Norfolk Southern Corp.*, Docket No. FD 36873 (filed Nov. 10, 2026).

analysis of the requests; collection and review of documents from numerous custodians; and preparation of detailed narrative responses on matters that may never be at issue. That is precisely the "undue burden or expense" § 1114.21(c) protects against, and precisely the burden the Board in *OPPD* found should not be imposed "while the Board considers [a] motion to dismiss." *OPPD*, slip op. at 3. BNSF is not asking that the Board rule on the breadth of any particular request at this time; BNSF reserves all objections. The breadth of the requests is relevant now because it confirms that UP's discovery is aimed at burdening one of the merger's most outspoken opponents rather than at resolving the issues in this case.

C. A Protective Order Will Not Prejudice Any Party.

A protective order would simply defer discovery until the Board determines whether, and to what extent, the Complaint may proceed. BNSF asks that the order apply equally to both parties, as in *OPPD*, where the Board stayed "[a]ll further discovery." *OPPD*, slip op. at 3. No shipper has lost access to UP as a result of the challenged tariff changes: BNSF continues to provide reciprocal switching at each of the six facilities identified in the Complaint. BNSF Answer at 2-4, NOR 42188 (filed June 25, 2026). In addition, any claimed urgency is difficult to square with UP's own decision to wait months before serving a single discovery request.

III. CONCLUSION

For these reasons, BNSF respectfully requests that the Board grant this motion, defer all discovery in this proceeding pending resolution of BNSF's Motion to Dismiss, and grant BNSF's pending Motion to Hold Proceeding in Abeyance.

Dated: November 13, 2026

Respectfully submitted,

/s/ Timothy J. Strafford

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EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY **v.** **BNSF RAILWAY COMPANY**	**Docket No. NOR 42188**

UNION PACIFIC RAILROAD COMPANY'S FIRST SET OF INTERROGATORIES TO BNSF RAILWAY COMPANY

Pursuant to 49 C.F.R. § 1114.26, Union Pacific Railroad Company ("Union Pacific") submits the following Interrogatories to BNSF Railway Company ("BNSF"). The subsequent definitions and instructions are not to be considered as Interrogatories nor subparts thereof, but are offered as a guide to the respondent in attempting to clarify any possible vague or ambiguous portions thereof. If any Interrogatory contains a subpart, the subpart will relate back to the topic raised by the initial Interrogatory.

DEFINITIONS

A. The term "all" or "any" means each and every, whichever has the broadest scope and encompasses more documents, information, or data.

B. "Document" or "Documents" means any written, recorded, filmed or graphic matter, whether produced, reproduced, or on paper, cards, tapes, film, electronic facsimile, computer storage devices, mobile devices, or any other media,

including but not limited to, memoranda, notes, minutes, records, photographs, correspondence or communications, including emails, texts or instant messages, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, note-books, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, notes, records and recordings or oral conversations, work papers, and also including, but not limited to, originals and all copies which are different in any way from the original, whether by interlineation, receipt stamp, notation, indication of copies sent, received or otherwise, and drafts which are in the possession, custody or control of BNSF or in the possession, custody or control of the present or former agents, representatives or attorneys for BNSF, or any and all persons acting on their behalf, including documents at any time in the possession, custody, or control of such individuals or entities or known by BNSF to exist.

C. As used herein, the terms "describe in detail" and "set forth" shall mean to: (1) describe fully by reference to underlying facts rather than by ultimate facts or conclusions of facts or law; and (2) particularize as to (a) times, (b) place, and (c) manner.

D. The terms "state" and "identify" when used with reference to an individual person shall mean to state his or her: (1) full name (or, if not known, his or her job title and position and employer, or, if no other identification is possible, provide sufficient description so that he or she will be identifiable to the recipients of this answer); (2) title; (3) present position and business affiliation; (4) present (or last known, with indication of the date of that last knowledge) business address; (5) present (or last known, with indication of the date of that last knowledge) business email address; and (6) present (or last known, with indication of the date of that last knowledge) business telephone number.

E. The terms "state" and "identify" when used with reference to a document shall mean to: (1) state the type of document (e.g., memorandum, employment application, letter, etc.); (2) set forth its date; (3) identify the author, and, if different, the originator and signer; (4) set forth the title, heading or other designation, numerical or otherwise, of the document; (5) identify the person (or, if widely distributed, set forth the organization or classes of persons) to whom the document was sent; (6) set forth the present or last known location of the document and of each copy; (7) describe and set forth the substance of the document; (8) if any such document was, but no longer is, in BNSF's possession or subject to BNSF's control, state the disposition which was made of it, the reason for such disposition and the date thereof; and (9) describe in detail the substance of the document.

F. The terms "state" and "identify" when used with reference to an oral statement, conversation, discussion, or conference shall mean to: (1) identify the person making each statement, the person to whom each statement was made, and all other persons present at the time of each statement; (2) state the date of such statement, conversation or conference; (3) state the place where such statement, conversation, or conference was held; or (4) if by telephone, identify the person(s) participating in the telephone call, the person(s) making the call, and state the place(s) where the person(s) participating in the call were located; and (5) describe in detail the substance of each statement, conversation, or conference.

G. The terms "state" and "identify" when used with reference to an act shall mean to: (1) state the date and place of the act; (2) identify the person acting; (3) identify the person for whom the act was performed; (4) identify the persons against whom the act was directed; (5) identify all witnesses to the act; and (6) describe the act in detail.

H. When in these Interrogatories BNSF is asked to state the date on which some incident or event occurred, provide the month or season along with the

year. If the month and/or year is unknown, identify the date by relating it to some established event.

I. The term "Person" means any natural person, corporation, corporate division, partnership, association, cooperative, proprietorship, joint venture, or trust, and any government entity, department, administration, agency, bureau, or political subdivision thereof, and every other type of organization or entity.

J. The term "concerning" shall mean commenting upon, including, concerning, containing, regarding, discussing, reflecting, relating to, relevant to, pertaining to, used in connection with, embodying, or evidencing, and should be construed in the broadest sense possible.

K. The term "including" means "including, but not limited to."

L. The term "Communication" or "Communications" shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible.

M. The use of the masculine gender herein includes the feminine and vice versa; the singular includes the plural and vice versa.

N. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

O. "Privilege" refers to any claim of privilege cognizable under Federal Rules of Evidence 501 and 502, as well as the work product doctrine set forth in Federal Rule of Civil Procedure 26(b)(3).

P. The term "Switching Book" refers to BNSF's Switching Book 8005-E published on April 1, 2026.

Q. The term "Complaint" shall mean Union Pacific's Complaint, filed on May 15, 2026 in the above-captioned proceeding.

R. The term "Answer" shall mean BNSF's Answer, filed on June 25, 2026 in the above-captioned proceeding.

INSTRUCTIONS

1. In accordance with 49 C.F.R. § 1114.26(a), answers or responses to these Interrogatories are due within fifteen (15) days of service of these Interrogatories, unless otherwise agreed upon by the parties.

2. These Interrogatories pertain to all information in BNSF's possession, custody, or control, regardless of whether it is possessed directly by BNSF or indirectly through BNSF's officers, employees, representatives, agents, or other persons acting, purporting to act, or authorized to act on BNSF's behalf.

3. If BNSF cannot answer any part of these Interrogatories in full after exercising due diligence to secure the information requested, so state and answer the remainder as fully as possible stating whatever information or knowledge BNSF has concerning the unanswerable or partially answered portion. If BNSF interposes any objection to any discovery request, fully state the specific basis for the objection in compliance with 49 C.F.R. § 1114.26(a).

4. State which answers (or parts thereof) are based upon personal knowledge, and which answers (or parts thereof) are based upon information and belief. For each answer (or part thereof) based upon information or belief, describe in detail and with particularity the basis for the information or belief.

5. With respect to each document otherwise called for by these Interrogatories as to which BNSF asserts a claim of Privilege, state separately the following in addition to the information otherwise requested: (i) the type of document(s) and its date; (ii) the name, business address, and present position of its author(s) or the business affiliation and position of its author(s) at the time of preparation of the document; (iii) the name, business address, and position of its

addressee and all other recipients of the document; (iv) a broad description of the subject matter of the document; and (v) the basis of the claim of Privilege.

7. If BNSF produces Documents or Communications in response to any of these Interrogatories, then the additional instructions stated in Union Pacific's First Request for Documents to the BNSF Railway Company dated November 6, 2026 apply.

8. Pursuant to 49 C.F.R. § 1114.29, these Interrogatories shall be deemed continuing so as to require prompt, supplemental response(s) if BNSF obtains or creates additional responsive Documents or information subsequent to the date hereof.

9. Unless otherwise noted, the timeframe for these Interrogatories is January 1, 2021 through the present.

INTERROGATORIES

Interrogatory No. 1

Identify all Persons who assisted in the preparation of BNSF's answers to these Interrogatories or that have knowledge concerning the matters covered in these Interrogatories. For each Person identified, state the specific Interrogatory (or Interrogatories) for which that Person assisted and/or has knowledge, and that Person's role at BNSF.

Interrogatory No. 2

Identify each Person involved in proposing, reviewing, approving, implementing, or communicating the changes made to BNSF's Switching Book, including each Person's title, role, and date(s) of involvement.

Interrogatory No. 3

Describe in detail the "ongoing, comprehensive review" of BNSF's Switching Book referenced in BNSF's Answer, including: (a) when the review commenced and who initiated it; (b) the process by which changes were proposed, reviewed,

approved, and implemented, including the dates of each step and all persons involved; (c) the criteria used to identify locations for rate changes; (d) all locations reviewed; (e) all locations where changes were considered but not implemented, and the reasons why each such location was excluded; and (f) whether BNSF has conducted any such comprehensive review of its reciprocal switching rates in the prior ten years and, if so, its scope and outcome.

Interrogatory No. 4

Identify by name all other railroads for which BNSF provides reciprocal switching for unit trains, what locations the reciprocal switching is provided, and describe whether those railroads' switching arrangements were reviewed as part of the same "ongoing, comprehensive review" of the Switching Book referenced in BNSF's Answer, and if they were not, why not.

Interrogatory No. 5

Describe in detail all of the reasons BNSF changed, removed, or increased reciprocal switching rates at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX in the Switching Book.

Interrogatory No. 6

Identify and describe in detail any reports, studies, findings, analyses, white papers, investigations, reviews, experiments, surveys, calculations, assessments, and tests BNSF performed concerning the capacity, operations, or alleged limitations at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX prior to the publication of BNSF's Switching Book.

Interrogatory No. 7

Identify and describe in detail all analyses, studies, models, presentations, calculations, or projections BNSF performed concerning: (a) whether the tariff changes in BNSF Switching Book would affect Union Pacific's ability to compete for traffic at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln,

NE; or Saginaw, TX; (b) whether the tariff changes would cause affected customers to route traffic via BNSF rather than Union Pacific; and (c) any projected traffic volume or revenue shifts between BNSF and Union Pacific resulting from those changes, including the methodology used and the persons who conducted each analysis.

Interrogatory No. 8

Identify all unit train shipments on BNSF-routed traffic originated or terminated at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX from January 1, 2021 through the present, including for each: the date, commodity, number of cars, the specific switching operations performed, and the number of crew members and locomotive moves required; and explain whether the switching operations for BNSF-routed unit trains at those locations differed in any respect from the operations required for Union Pacific-routed unit trains, and if so, how and why.

Interrogatory No. 9

State whether BNSF continues to accept or provide unit train service for BNSF-routed traffic at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX, and explain any difference in treatment between BNSF-routed and Union Pacific-routed traffic, and identify all unit train shipments BNSF-routed traffic completed at those locations from January 1, 2021 through the present, including the commodity, car count, and date of service.

Interrogatory No. 10

State and identify all Persons who drafted, reviewed, edited, contributed to, or approved BNSF's April 13, 2026 communication to Union Pacific concerning whether BNSF would accept unit trains for interchange at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX.

Interrogatory No. 11

Identify all locations where BNSF canceled its reciprocal switching rate for unit trains effective May 1, 2026, and state the reason for the cancellation at each location.

Interrogatory No. 12

Identify all locations where BNSF increased reciprocal switching rates effective May 1, 2026, and state the prior rate, current rate, percentage increase, commodities affected, customers affected, and reasons for the increase for each location.

Interrogatory No. 13

Identify and describe in detail whether BNSF evaluated less restrictive alternatives to the May 1, 2026 tariff changes, including operational changes, phased increases, notice periods, negotiated rates, or customer-specific arrangements.

Interrogatory No. 14

Separately for each of the following claimed justifications referenced in BNSF's Answer, identify all facts, data, and Documents supporting BNSF's contention that the justification caused or contributed to the tariff changes in BNSF's Switching Book: (a) increased costs of providing switching services; (b) changed operating conditions at the named locations; (c) changed market conditions; (d) capacity limitations at the named locations or interchange points; and (e) changed demand for switching services. For each justification, identify the specific location(s) to which it applies, the time period during which the relevant change occurred, and the persons at BNSF with knowledge of the relevant facts.

Interrogatory No. 15

Identify all damages, losses, revenue impacts, customer impacts, or traffic shifts BNSF anticipated or projected would result from the tariff changes

announced in BNSF's Switching Book, including any projections of traffic that would shift from Union Pacific to BNSF as a result of the tariff changes, and any revenue projections associated with such shift.

Interrogatory No. 16

Identify and describe in detail whether BNSF considered increasing or canceling its reciprocal switching rate for unit trains for any railroad besides Union Pacific in BNSF's Switching Book. If BNSF did not consider such action, describe in detail the reason(s) why not, and if it did consider such action but ultimately chose not to take that action, describe in detail the reason(s) why BNSF did not take such action.

Interrogatory No. 17

For each of the six facilities identified in the Complaint, describe in detail: (a) the physical configuration of the facility and interchange/handoff point; (b) the specific operational steps required to complete a unit train switch, including the number of crew members, locomotive moves, track switch throws, and estimated time required; (c) how those operations differ, if at all, from standard manifest switching at those locations; (d) how those operations compare to unit train switching at other BNSF locations not named in the Complaint; and (e) whether, how, and when the operational complexity at each of the six locations changed between 2013 and May 1, 2026 that BNSF contends justify treating operations at those locations as inconsistent with unit train service.

Interrogatory No. 18

Identify and describe in detail the meeting or conversation that occurred on or about May 2, 2026, among BNSF's then-COO Matthew Garland, Union Pacific's COO Eric Gehringer, and any customer representative, including: (a) the identity of all participants; (b) the location or format of the meeting; (c) the substance of all discussions; (d) any agreement reached regarding delay of implementation; (e) the

specific location and customer for which implementation was delayed; and (f) all Documents concerning or memorializing that meeting.

Interrogatory No. 19

Identify and describe in detail every instance in which BNSF agreed to, proposed, or implemented any delay, phase-in, or modification to the implementation timeline of the tariff changes in BNSF Switching Book at any location, including: (a) the specific location and customer involved; (b) the date and duration of any agreed delay; (c) the persons at BNSF who made or approved the delay decision; (d) the reasons given internally for the delay; and (e) whether the delay was conditioned on any action by Union Pacific or the affected customer.

Interrogatory No. 20

Identify and describe in detail the legal basis for, and evidence supporting, each of the defenses listed in BNSF's Answer, as well as any additional defense BNSF plans to assert.

Respectfully submitted,

/s/ Matthew J. Warren
Matthew J. Warren
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Counsel for Union Pacific Railroad Company

Dated: November 6, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2026, a copy of the foregoing First Set of Interrogatories was served by email on the service list in STB Docket No. 42188.

/s/ Matthew J. Warren
Matthew J. Warren
SIDLEY AUSTIN LLP

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY **v.** **BNSF RAILWAY COMPANY**	**Docket No. NOR 42188**

UNION PACIFIC RAILROAD COMPANY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO BNSF RAILWAY COMPANY

Pursuant to 49 C.F.R. § 1114.30, Union Pacific Railroad Company ("Union Pacific") requests BNSF Railway Company ("BNSF") produce all Documents that are responsive to the Requests for Production set forth below. The subsequent definitions and instructions are not to be considered as Requests for Production nor subparts thereof, but are offered as a guide to the respondent in attempting to clarify any possible vague or ambiguous portions thereof. If any Request for Production contains a subpart, the subpart will relate back to the topic raised by the initial Request for Production.

DEFINITIONS

A. The term "all" or "any" means each and every, whichever has the broadest scope and encompasses more documents, information, or data.

B. "Document" or "Documents" means any written, recorded, filmed or graphic matter, whether produced, reproduced, or on paper, cards, tapes, film,

electronic facsimile, computer storage devices, mobile devices, or any other media, including but not limited to, memoranda, notes, minutes, records, photographs, correspondence or communications, including emails, texts or instant messages, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, note-books, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, notes, records and recordings or oral conversations, work papers, and also including, but not limited to, originals and all copies which are different in any way from the original, whether by interlineation, receipt stamp, notation, indication of copies sent, received or otherwise, and drafts which are in the possession, custody or control of BNSF or in the possession, custody or control of the present or former agents, representatives or attorneys for BNSF, or any and all persons acting on their behalf, including documents at any time in the possession, custody, or control of such individuals or entities or known by BNSF to exist.

C. The term "Communication" shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible.

D. The term "Person" means any natural person, corporation, corporate division, partnership, association, cooperative, proprietorship, joint venture, or trust, and any government entity, department, administration, agency, bureau, or political subdivision thereof, and every other type of organization or entity.

E. The term "concerning" shall mean commenting upon, including, concerning, containing, regarding, discussing, reflecting, relating to, relevant to, pertaining to, used in connection with, embodying, or evidencing, and should be construed in the broadest sense possible.

F. The term "including" means "including, but not limited to."

G. The use of the masculine gender herein includes the feminine and vice versa; the singular includes the plural and vice versa.

H. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

I. "Privilege" refers to any claim of privilege cognizable under Federal Rules of Evidence 501 and 502, as well as the work product doctrine set forth in Federal Rule of Civil Procedure 26(b)(3).

K. The term "Switching Book" refers to BNSF's Switching Book 8005-E published on April 1, 2026.

L. The term "Complaint" shall mean Union Pacific's Complaint, filed on May 15, 2026 in the above-captioned proceeding.

M. The term "Answer" shall mean BNSF's Answer, filed on June 25, 2026 in the above-captioned proceeding.

INSTRUCTIONS

1. In accordance with 49 C.F.R. § 1114.30(a), production and answers to these Requests are due within fifteen (15) days of service of these Requests, unless otherwise agreed upon by the parties.

2. Production must be made to Attorney Matthew J. Warren, 1501 K Street, Washington, DC 20005 (email: mjwarren@sidley.com).

3. Responsive Documents and Communications should be produced as they are kept in the usual course of business and be organized and labeled to correspond to the appropriate Request(s).

4. Electronically stored information shall be produced in a method and manner as agreed upon between the parties.

5. These Requests pertain to all responsive Documents and Communications in BNSF's possession, custody or control, regardless of whether

they are possessed directly by BNSF or indirectly through BNSF's representatives, agents, or other persons acting, purporting to act, or authorized to act on BNSF's behalf.

6. If any responsive Document or Communication has been destroyed, lost, discarded, or transferred beyond BNSF's possession, custody, or control, BNSF must provide a log identifying each such Document or Communication as completely as possible. Any log must state, at a minimum, (a) the date the Document or Communication was destroyed, lost, discarded, or transferred; (b) the manner of destruction, loss, discarding, or transfer; (c) the reason for the destruction, loss, discarding, or transfer; (d) the person or entity that authorized the destruction, loss, discarding, or transfer; and (e) the person or entity that destroyed, lost, discarded, or transferred the Document or Communication.

7. Any objection to these Requests must specifically state whether any responsive Documents or Communications are being withheld or redacted on the basis of that objection in compliance with 49 C.F.R. § 1114.30(a).

8. If any responsive Document or Communication is withheld or redacted by reason of Privilege, BNSF must provide a log identifying each such Document or Communication as completely as possible, state separately the following in addition to the information otherwise requested: (i) the type of document(s) and its date; (ii) the name, business address, and present position of its author(s) or the business affiliation and position of its author(s) at the time of preparation of the document; (iii) the name, business address, and position of its addressee and all other recipients of the document; (iv) a broad description of the subject matter of the document; and (v) the basis of the claim of Privilege. Notwithstanding the assertion of Privilege, BNSF must produce any portion of a Document or Communication that contains non-Privileged matter that is responsive to these Requests.

9. For each Document or Communication responsive to a Request that is withheld on grounds other than Privilege, state in detail the basis for the failure to produce the Document or Communication.

10. Pursuant to 49 C.F.R. § 1114.29, these Requests are continuing in nature, and BNSF must supplement the production if BNSF subsequently acquires or creates responsive Documents or Communications.

11. Unless otherwise noted, the timeframe for these Requests is January 1, 2021 through the present.

REQUESTS FOR PRODUCTION

Request No. 1

All Documents and Communications concerning BNSF's "comprehensive review" of its Switching Book referenced in BNSF's Answer, including the scope of the review, the timeline, the personnel involved, any written criteria or standards applied, all locations considered for rate changes, and the reasons any locations were considered for but ultimately excluded from rate changes.

Request No. 2

All Documents and Communications, including drafts, redlines, internal memoranda, approval materials, presentations, meeting minutes, and any internal committee materials, concerning the proposal, review, approval, and implementation of changes to BNSF's Switching Book.

Request No. 3

All Documents and Communications concerning the reason(s) for changing, removing, or increasing reciprocal switching rates at Hastings, NE; Grand Island,

NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX as detailed in BNSF's Switching Book.

Request No. 4

All reports, studies, findings, analyses, whitepapers, investigations, reviews, experiments, surveys, assessments, track capacity studies, crew availability analyses, and switching time or efficiency analyses and tests concerning the capacity, operations, or any other challenges at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX.

Request No. 5

All Documents and Communications concerning Cooperative Producers Inc., JBS U.S.A. LLC, Bunge North America Inc., Farmers Cooperative, Archer Daniel Midland Co. d/b/a ADM Processing, or Bunge USA Grain LLC and (a) any decision or consideration by the customer to route traffic via BNSF rather than Union Pacific; (b) any decision or consideration by the customer to route traffic via Union Pacific rather than BNSF; or (c) any concerns about capacity, operations, or any other alleged limitations at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX.

Request No. 6

All Documents and Communications concerning Union Pacific's traffic, traffic growth, bids, customer contracts, awards, market share, or competitive position in or around Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX.

Request No. 7

All Documents and Communications concerning whether or how the tariff changes announced in BNSF's Switching Book would, or could, cause affected customers to route traffic over BNSF rather than Union Pacific.

Request No. 8

All Documents and Communications, including any financial analyses, rate models, cost studies, benchmarking analyses, and revenue projections, since January 1, 2014, that contemplate BNSF's reciprocal switching rates at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX, or model any alterations to those rates, regardless of whether such analyses were completed, formally adopted, or conducted by BNSF or any third party on its behalf, and including any analyses comparing BNSF's switching rates to those of Union Pacific or other carriers.

Request No. 9

All Documents, including any operating plans, service plans, yard capacity analyses, crew analyses, interchange analyses, network analyses, congestion analyses, safety analyses, conductor and engineer crew logs, and switching completion time records, that BNSF contends support the tariff changes or unit train refusals at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX.

Request No. 10

All Documents and Communications between BNSF and Cooperative Producers Inc., JBS U.S.A. LLC, Bunge North America Inc., Farmers Cooperative, Archer Daniel Midland Co. d/b/a ADM Processing, or Bunge USA Grain LLC concerning reciprocal switching, unit trains, Union Pacific service, BNSF service, tariff changes, rates, or routing decisions, specifically as it relates to business at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX, including any internal BNSF documents summarizing, analyzing, or responding to such communications.

Request No. 11

All Documents and Communications concerning BNSF's internal decision making regarding whether to reject, refuse, reroute, delay, block, or condition any Union Pacific unit train since March 1, 2026, including the May 10 Island Park movement and the May 13 Saginaw movement.

Request No. 12

All Documents and Communications concerning any alternatives BNSF considered to the changes announced in BNSF's Switching Book, as it relates to Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; or Saginaw, TX, including operational changes, different rates, phased changes, advance notice, customer-specific arrangements, or negotiated agreements.

Request No. 13

All Documents and Communications concerning alleged operational difficulties related to unit train switching at any facilities other than Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX, including proposed solutions for such difficulties.

Request No. 14

All Documents and Communications concerning Union Pacific's October 1, 2013 termination of the Parties' bilateral reciprocal switching agreement, including any BNSF analyses of, reactions to, or strategic planning documents related to that termination, and any subsequent agreements, understandings, or arrangements between Union Pacific and BNSF regarding reciprocal switching rates from October 1, 2013 to April 1, 2026.

Request No. 15

All Documents and Communications concerning BNSF's costs to provide reciprocal switching at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX, including any cost-of-service analyses, cost

allocation methodologies, labor cost calculations, equipment and locomotive cost analyses, and any analyses comparing the cost of providing unit train switching versus manifest switching at those locations.

Request No. 16

All Documents and Communications concerning BNSF's revenues from, and any revenue projections or forecasts related to, reciprocal switching at Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX, including any analyses of revenue impacts associated with the tariff changes in BNSF Switching Book, and any projections of traffic or revenue that would shift from Union Pacific to BNSF as a result of those changes.

Request No. 17

All Documents and Communications concerning the May 2, 2026 meeting or conversation among BNSF's Matthew Garland, Union Pacific's Eric Gehringer, and any customer or customer representative concerning the implementation of the changes in BNSF Switching Book, including any follow-up communications, agreements reached, and the identity of the customer involved.

Request No. 18

All Documents and Communications concerning BNSF-originated or BNSF-terminated unit train shipments at or through Hastings, NE; Grand Island, NE; Havelock, NE; Island Park, IA; Lincoln, NE; and Saginaw, TX from January 1, 2021 through the present, including operating records, switching logs, crew records, and any documents reflecting the operational steps required for such BNSF unit train movements, and any comparison of those operations to the operations required for Union Pacific unit trains at the same locations.

Request No. 19

All Documents and Communications concerning any decision by BNSF to delay, phase, or modify the implementation of the tariff changes in BNSF Switching

Book at any location, including the reasons for such delay, the identity of persons involved in the decision, any communications with Union Pacific or customers regarding the delay, and any conditions or commitments made in connection with such delay.

Request No. 20

All Documents BNSF may rely on to support all defenses identified in its Answer to the Complaint.

Request No. 21

All Documents and Communications used in the preparation of BNSF's answers to Union Pacific's First Set of Interrogatories that are not otherwise responsive to these Requests.

Respectfully submitted,

/s/ Matthew J. Warren
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Allison C. Davis
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Omaha, NE 68179

Counsel for Union Pacific Railroad Company

Dated: November 6, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2026, a copy of the foregoing First Request for Production of Documents was served by email on the service list to STB Docket No. NOR 42188.

/s/ Matthew J. Warren
Matthew J. Warren
SIDLEY AUSTIN LLP

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Tara A. Woods

Tara A. Woods
Counsel for BNSF Railway Company

November 13, 2026