BEFORE THE
SURFACE TRANSPORTATION BOARD

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November 18, 2026
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FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION
AND UNION PACIFIC RAILROAD COMPANY

- CONTROL -

NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY

COMMENTS AND REQUEST FOR CONDITIONS OF FORESIGHT ENERGY LLC

– REDACTED, PUBLIC VERSION –

FORESIGHT ENERGY LLC

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Dated: November 18, 2026

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COMMENTS AND REQUEST FOR CONDITIONS OF FORESIGHT ENERGY LLC

INTRODUCTION

Foresight Energy LLC ("Foresight") hereby submits the following comments and request for conditions in response to the Railroad Control Application filed by Union Pacific Corporation and Union Pacific Railroad Company (collectively "UP"), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS").[1] Foresight is the owner and operator of two coal mining complexes, the Hillsboro Energy mine at Hillsboro, Illinois ("Hillsboro"), and the Macoupin Energy mine at Carlinville, Illinois ("Macoupin"). Applicants have identified both Hillsboro and Macoupin as shipper facilities that are currently served by UP and NS and no other railroad that would be without two Class I railroads after the merger (*i.e.* a "2-to-1 shipper facility"). Application, Vol. I at 312, Verified Statement of Katherine N. Novak, Union Pacific Railroad's Director of Interline Operations, December 17,

[1] UP and NS are referred to herein as the "Applicants."

2025, at ¶¶ 51-53 ("Novak Dec. V.S."). If the merger is approved, these mines will lose access to competitive rail service and be limited to service by the single merged entity. In recognition of Foresight's status as a 2-to-1 shipper, and this loss of competition, the Applicants have stated:

> Foresight Energy has asked Applicants to give BNSF access to Foresight's two facilities via trackage rights. Applicants commit to try to negotiate a trackage rights agreement with BNSF, contingent on consummation of their merger.

Amended App., Vol. I at 372, Verified Statement of Katherine N. Novak, April 29, 2026, at ¶ 56 ("Novak April V.S.").

In accordance with 49 U.S.C. § 11324(c), Foresight respectfully asks the Board to impose conditions on this transaction to preserve competition and eliminate the adverse impacts the transaction will have on Hillsboro and Macoupin. Specifically, Foresight asks that the Board condition any approval of the merger on a requirement that the Applicants fulfill their commitment to enter into a trackage rights agreement with BNSF that will permit BNSF to access Hillsboro and Macoupin, thereby preventing the loss of competition at Hillsboro and Macoupin.

In support of these comments and requests for conditions, Foresight submits the attached Verified Statement of Steven Gorecki, Foresight's Director of Contract Administration and Logistics ("Gorecki V.S.") **(copy attached as Exhibit A).**

I. IDENTITY AND INTEREST

Foresight is a leading producer of thermal coal with nearly 2 billion tons of coal reserves in the Illinois Basin. Foresight's reserves are sufficient to support over 75 years of production at current production levels. Foresight currently owns four (4) mining complexes (Hillsboro,

Macoupin[2], Williamson, and Sugar Camp) that have a combined productive capacity of up to 50 million tons of high Btu coal per year. Exhibit A at ¶¶ 4-5.

Foresight's reserves and mines are strategically located near rail and river transportation access points giving Foresight transportation options at each facility, including access to multiple rail carriers as well as access to truck and barge transport options. Foresight also owns the Sitran Terminal, a barge-loading river terminal located on the Ohio River, near Mount Vernon, Indiana that has the capacity to transload approximately 25 million tons per year. *Id.* at ¶¶ 4-5. In addition, Foresight has access to export terminal facilities in the Gulf of Mexico that it can reach via various rail carriers. *Id.* at ¶ 11.

Foresight's Hillsboro mine currently receives rail service from both UP and NS at origin. NS serves Hillsboro from the south via a line that connects to NS's track at Coffeen, Illinois and extends approximately 11.1 miles to a connection with a BNSF line at Sorento, Illinois. *Id.* at ¶ 12, Attachment A (Excerpted NS System Map Showing Lines Serving Hillsboro and Macoupin). NS then proceeds via trackage rights on BNSF's tracks from Sorento for approximately 42.9 miles to Centralia, Illinois, where the trains then continue on NS trackage approximately 23.4 miles to an interchange with the Evansville and Western Railroad ("EVWR") at Mount Vernon, Illinois, where the trains then continue on the EVWR for approximately 80 miles for ultimate delivery to Sitran. *Id.* Foresight transported approximately 2.1 million tons of coal via NS using this routing in 2025. *Id.*

UP currently serves Hillsboro from the North. UP transports Hillsboro coal approximately 65 miles to the southwest from Hillsboro to St. Louis, Missouri, or can also move

[2] While Macoupin production is currently idled, it has a production capability of approximately 2.5 million tons per year. Exhibit A at ¶ 6.

the coal to points northeast of Hillsboro via UP's Tuscola line, where UP can interchange traffic with BNSF at Walsh Junction, Illinois, or with CN at Tuscola, Illinois. *Id.* at 13, and Attachment A. In 2025, Foresight transported approximately 146,000 tons via UP, most of which was transported to the St. Louis area where it was transloaded at the Cora Terminal for ultimate transportation to the end-customer. *Id.* at ¶ 14.

Foresight's Macoupin mine (a/k/a the Monterrey or Shay #1 Mine) historically was served both by UP to the North and NS to the South. NS has the ability to serve Macoupin via a line that connects with Macoupin near Staunton, Illinois and extends to the northeast for approximately 15.2 miles to a connection with the BNSF at Litchfield, Illinois. *Id.* at ¶ 15. At Litchfield, NS historically then used BNSF trackage rights to transport Macoupin coal southward approximately 58 miles from Litchfield to Centralia, Illinois, where the traffic was then interchanged with the EVWR at Mt. Vernon, Illinois for ultimate delivery to Sitran. *Id.*, at Attachment A.

UP historically served Macoupin from the North at Monterey Junction, Illinois, where it connects to the Macoupin spur track. Trains were then routed over approximately 45 miles of UP track from Monterey Junction to the St. Louis area, mostly for blending and transloading at various river transload facilities. *Id.* at ¶¶ 16-17.

As a direct consequence of the approval of the proposed transaction, Foresight would no longer have two-carrier service at either Hillsboro or Macoupin and instead would be limited to single-carrier service from the combined UP/NS entity.

II. FACTUAL BACKGROUND

The December 2025 Application

In the December 17, 2025 Application, UP submitted a Verified Statement of Ms. Katherine Novak, UP's General Director, Interline Operations, in which Ms. Novak confirmed that no shipper facility will lose access to service by two Class I railroads as a result of the UP/NS merger. Novak Dec. 2025 ¶ V.S. at 51. In support of this commitment, Ms. Novak stated:

> 52. Applicants carefully reviewed their records and other available information, and they identified just three 2-to-1 shipper facilities. AgRail LLC at Bloomington, Illinois, *Hillsboro Energy LLC, at Hillsboro, Illinois, ad Macoupin Energy LLC, at Carlinville, Illinois. Macoupin Energy and Hillsboro Energy are both operated by Foresight Energy, LLC.* Operations at Macoupin are idled.
>
> 53. Applicants contacted each affected customer and proposed a method of preserving two-carrier competition. *Applicants commit to entering into agreements that would allow another existing Class I rail carrier to serve the three shipper facilities using haulage rates under established industry terms and conditions.* AgRail submitted a letter in support of the transaction.

Id. (emphasis added).

As explained by Mr. Gorecki, Foresight and UP had discussions in February and March of 2026 during which Foresight discussed its concerns about the loss of rail competition at both Hillsboro and Macoupin. Exhibit A at ¶ 19-21. Specifically, Foresight informed UP of its concerns about losing the ability to have UP and NS compete for business at Hillsboro, and potentially at Macoupin if production were to resume., and Foresight requested that UP allow BNSF to have trackage rights access at each facility to preserve two-carrier service options at each mine. *Id.* As noted above, in both instances most of the coal being shipped from these mines has been transported by NS to an interchange point at Mt. Vernon, Illinois, and ultimately destined for Foresight's Sitran transloading facility. NS uses trackage rights on BNSF for most

of these moves to Sitran. Allowing BNSF trackage rights on NS over the short distances between Coffeen and Sorento (*i.e.*, to serve Hillsboro) and between Staunton and Litchfield (*i.e.*, to serve Macoupin) in each instance would involve significantly fewer miles of trackage rights than NS currently needs over BNSF to serve these mines.

UP assured Foresight during those discussions that it was agreeable to granting trackage rights to BNSF for both Hillsboro and Macoupin on the desired routes, subject to BNSF's agreement to reasonable terms and conditions relating to such trackage rights. *Id.* at ¶ 21. In each case, the distance that would be covered by the trackage rights is less than 15.2 miles, and there is minimal traffic on each of the NS lines. Given that NS currently moves traffic from Hillsboro via trackage rights over approximately 42.9 miles of BNSF track between Sorento and Centralia and historically moved the Macoupin traffic over 58 miles of BNSF track between Litchfield and Centralia, granting BNSF trackage rights would potentially *reduce* the number of NS trains that would need to use the BNSF track and eliminate operational challenges BNSF currently faces in interchanging NS trains between Sorento and Centralia.

The April 2026 Supplemental Application

Consistent with the UP/Foresight discussions summarized above, UP submitted an April 29, 2026, Verified Statement ("Novak S.V.S.") in support of its Amended Application, in which Ms. Novak represented:

> 56. Foresight Energy has asked Applicants to give BNSF access to Foresight's two facilities via trackage rights. *Applicants commit to try to negotiate a trackage rights agreement with BNSF, contingent on consummation of their merger.* Applicants further commit that if BNSF is unwilling to agree to reasonable terms and conditions, Applicants will enter into an agreement either with BNSF or with another existing Class I rail carrier that will allow a Class I rail carrier other than UP/NS to serve Foresight's facilities using haulage rights under reasonable terms and conditions.

Novak S.V.S. at ¶ 56 (emphasis added). Despite this commitment to "try to negotiate a trackage rights agreement with BNSF," UP has dragged its feet and delayed any discussion with BNSF concerning the access it had assured Foresight and the Board that it was willing to negotiate with BNSF. Foresight repeatedly asked UP for updates on such discussions to no avail. Gorecki V.S. at ¶¶ 29-32.

The July 2026 Second Response to Decision No. 21

On July 27, 2026, Applicants submitted a Second Response to Decision No. 21 **(UP-80/NS-78 at p. 65)**, in which the Applicants affirmed the commitment they had made to Foresight and the Board and stated that they "have committed to the owner of Hillsboro Energy LLC and Macoupin Energy LLC that they will attempt to negotiate a trackage rights agreement with BNSF that, contingent on consummation of their merger, will give BNSF access to Hillsboro and Macoupin." In an apparent attempt to deflect responsibility for their failure to take any steps to commence such negotiations with BNSF as of July 2026, however, UP further told the Board "BNSF has been unwilling to entertain discussions that would support the merger being approved." Essentially, UP suggested that BNSF was unwilling to discuss trackage rights to serve Foresight because of its overall opposition to the merger. In truth, no discussions relating to BNSF access to Hillsboro and Macoupin had occurred, because UP had not requested any such discussions.

UP's Responses to Foresight's Discovery Requests

In an effort to better understand the reason for the delay in negotiations with BNSF, Foresight submitted discovery requests to UP specifically asking UP to identify all conversations that it had with BNSF in furtherance of its commitment to negotiate the trackage rights, and to clarify whether UP was conditioning any discussion of BNSF's trackage rights to serve Foresight

and BNSF agreeing to waive its objections to the merger. August 12, 2026, Foresight Energy LLC's First Set of Discovery Requests, Interrogatory Nos. 1 and 2 **(copy attached as Exhibit B)**. Subject to a number of objections, UP admitted: "Union Pacific responds that it has ***not yet contacted BNSF specifically with respect to the negotiation of the trackage rights agreement referenced in Interrogatory No. 1***." August 19, 2026, Union Pacific's Responses and Objections to Interrogatories and Document Requests in Foresight Energy LLC's First Set of Discover Requests, Interrogatory Response No. 1, p. 3 (emphasis added) **(copy attached as Exhibit C)**. UP's response further confirmed that BNSF was not resisting any attempt to negotiate, because in fact *UP had not made any such attempts*. "Union Pacific responds that it is not requiring and does not intend to require BNSF to support merger approval as a pre-condition to commencing any discussions related to a trackage rights agreement giving BNSF access to Hillsboro and Macoupin." *Id.* at Interrogatory Response No. 2, p. 4.

The September 2026 Deposition of Katherine Novak

Foresight continued to press UP for information concerning the status of negotiations with BNSF after the August 2026 discovery responses, but Foresight received no information from UP about such efforts. Foresight attempted to explore the status of the negotiations with Ms. Novak at her September 24, 2026, deposition **(Novak Dep. Tr. (Sept. 24, 2026) copy of excerpts of which are attached hereto as Exhibit D).** During the deposition, Ms. Novak confirmed:

- {{[redacted]}} Exhibit D at 389:3-5**.**

- {[redacted] } *Id.* at 389:6-18; 395:6-396:12.
- {[redacted] }} *Id.* at 391:11-18.
- {[redacted] }} *Id.* at 396:21-24.
- {[redacted] } *Id.* at 397:6-10.
- {[redacted] }} *Id.* at 397:11-15.

UP's October 2026 Supplemental Discovery Response

Subsequent to Ms. Novak's deposition, on September 28, 2026, Foresight asked UP to supplement its interrogatory responses and confirm whether {{[redacted]}}. Email dated September 28, 2026 from Foresight Counsel to UP Counsel **(a copy of which is attached as Exhibit E).** On October 30, 2026, UP confirmed the Interrogatory Response that there had been no specific attempt to negotiate trackage rights for BNSF access to Hillsboro and Macoupin and stated that {{[redacted]}}." Letter dated October 30, 2026 from UP Counsel to Foresight Counsel **(Copy attached as Exhibit F at 1).** UP Counsel further stated: {{[redacted]

[redacted]}}.

UP noted, however, that {{[redacted]}}." Based on its claim that "[t]he substantive content of those discussions is privileged," UP refused to provide any information to Foresight including the date of such discussions, the individuals involved in the discussions, and/or the terms that may have been discussed. Leaving aside the question of whether the substantive content of any such discussions are privileged, the dates of and participants in such discussions are clearly not privileged and should have been disclosed.

Regardless, UP's October 30 "Supplement" and Ms. Novak's deposition testimony confirm that there was no effort by UP to engage BNSF in any specific discussions about access to Hillsboro and Macoupin prior to August 19, 2026, and there is no indication from UP that it has made a specific proposal to BNSF that would remedy Foresight's 2-to-1 status at Hillsboro and Macoupin as of the filing of these Comments.

CN Anticipated Responsive Application

Foresight also notes that on September 9, 2026, Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively "CN"), submitted a Description of Anticipated Responsive Application **("CN-30")**, in which CN advised that it was aware that Foresight had requested Applicants to grant BNSF access to serve the Hillsboro and Macoupin via trackage rights post-merger. CN-30 at 6 n.13. CN further noted:

> CN, however, is willing to serve the Foresight Energy facilities via trackage rights, and would be able to serve the Hillsboro, Illinois facility vial the Tuscola Line (if approved by the STB) post-merger, in the event that: (1) no agreement between Union Pacific

> and BNSF is reached for such rights; (2) BNSF does not submit a responsive application for trackage rights; (iii) the customer requests CN be granted access; or (iv) the Board determines that CN is the superior remedy carrier to resolve the loss of Class I access.

Id. CN also noted that "[g]ranting CN haulage rights, or in the alternative, trackage rights to the Foresight Energy facilities as a condition to the Proposed Transaction will ensure that competition for Foresight Energy is preserved following the Proposed Transaction." *Id.* at 6.

CN further explained, that consistent with the conditions detailed in the July 22, 2026 Memorandum of Understanding with Union Pacific related to the Applicants' Proposed Transaction ("CN MOU")[3] (UP/80) that CP entered with UP, CN will seek: "overhead trackage rights on Union Pacific's line between East St. Louis, Illinois and Hillsboro, Illinois, to serve the affected 2-to-1 customer in Hillsboro" (**CN-30 at 11)**; and "overhead rights on Union Pacific's on Union Pacific's line between Springfield, Illinois and Monterey Mine 1/Carlinville, Illinois [a/k/a Macoupin], to serve the affected 2-to-1 customer in Monterey Mine 1/Carlinville" **(***id.* at 12). CN noted that Macoupin is currently idled and that it "plans to seek a petition for waiver or clarification in connection with this location." *Id.* at n.18.

As Mr. Gorecki explains, CN trackage rights at Hillsboro and Macoupin are not the preferred access that Foresight requested from UP and/or that UP committed to providing to Foresight to remedy its 2-to-1 status at Hillsboro and Macoupin. Exhibit A at ¶¶ 22-28. As noted above, the majority of coal moving from Hillsboro currently, as well as Macoupin historically, has moved via the NS (using BNSF trackage rights) southbound for ultimate interchange with the EVWR at Mount Vernon, Illinois for delivery to Sitran. The CN/UP MOU

[3] *See* Second Supplemental Submission, UP-80/NS-78, FD 36873 at 203-211 (filed July 27, 2026).

does not provide trackage rights that would preserve or enhance competition for this route. Although not preferred, UP has represented to Foresight that the CN trackage rights described in CN-30 for Hillsboro and Macoupin, if approved by the Board, would be ***in addition to the BNSF trackage rights that Ms. Novak described in her Supplemental Verified Statement.*** *Id.* at ¶ 28. Accordingly, Foresight does not oppose CN's request for trackage rights to serve Hillsboro and Macoupin, provided that any access granted to CN at Hillsboro and Macoupin is cumulative to the BNSF access rights at Hillsboro and Macoupin that UP has repeatedly affirmed would be granted to BNSF.

III. REQUEST FOR CONDITIONS

Under 49 U.S.C. § 11324(c), the Board has specific authority to impose conditions on the approval of the Application, including "requiring the granting of trackage rights and access to other facilities." Section 11324(c) further instructs that "[a]ny trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated."

As shown above, UP readily admits that the Application will cause Foresight competitive harm and will reduce the number of rail competitors at Hillsboro and Macoupin from 2-to-1. This reduction in competition requires the imposition of meaningful conditions to preserve rail-to-rail competition at these locations. UP clearly recognizes this need and has repeatedly represented to Foresight and the Board that it intends to address this need by negotiating a trackage rights agreement with BNSF. UP has even assured Foresight that its commitment to negotiate a trackage rights agreement with BNSF to allow access to Hillsboro and Macoupin is

in addition to any trackage rights it may have agreed to with CN in the CN/UP MOU that is the subject of CN's Responsive Application.

Foresight had hoped UP would fulfill these commitments without the need for Board action. Instead, in the seven (7) months[4] since UP first stated to the Board that it was "committed" to try enter into a trackage rights agreement with BNSF that would preserve competitive rail access at Hillsboro and Macoupin, UP has failed to negotiate what should be a simple trackage rights agreement with BNSF that relates to two short stretches of NS track that have virtually no other traffic to consider.

Instead, at best, UP made one generic "reach out" to BNSF at some unidentified date to some unidentified person at BNSF in which UP generically indicated it wanted to engage in discussions about some unidentified matters. This alleged reach out, even if it occurred, does not demonstrate a good faith effort to negotiate a deal with BNSF relating to access to Hillsboro and Macoupin. Further, despite several inquiries from Foresight at her September 24, 2026 deposition, UP's Ms. Novak, who sponsored the Verified Statement in which UP identified Hillsboro and Macoupin as two of the three 2-to-1 shipper facilities that would be impacted adversely by the merger, *could not identify a single communication in which Foresight's 2-to-1 status was discussed with BNSF.* Instead, it was only after Foresight asked UP on September 30, 2026 to supplement its August 19, 2026 discovery responses that UP finally raised the Foresight access issues with BNSF – but not until weeks later. Even then, however, UP has refused to identify any details relating to the communications and it is unclear to Foresight whether UP has

[4] As described *supra* at 6, UP had first committed to Foresight that it would negotiate a trackage rights agreement with BNSF nine (9) months ago. Novak S.V.S. at ¶ 56

made any proposal for trackage rights, including whether it has discussed any of the terms and conditions that would apply to such rights, including compensation.

UP's behavior in this regard is inconsistent with its representations to the Board and Foresight. While Foresight understands the importance of this merger proceeding to both UP and BNSF, the subject trackage rights request is a non-controversial matter that should have been easily resolved. Foresight's undisputed status as ***two*** of only three 2-to-1 shipper locations identified by the Applicants in the initial Application should have been the proverbial low-hanging fruit that the Applicants could have easily addressed. Instead, they have strung Foresight and the Board along for over nine months and have failed to act to cure one of the few clearcut examples of direct shipper harm being caused by the Proposed Transaction.

UP's failure to take any meaningful steps to fulfill its commitment is also in stark contrast to the process that UP and BNSF usually employ to collaboratively negotiate trackage rights agreements. This process was recently explained by BNSF in connection with its Opening Statement and Evidence in STB Docket No. FD 22218, *Atchison, Topeka & Santa Fe Railway Co. – Operating Rights – Southern Pacific Co.*:

> While it may seem like BNSF and UP are often before the Board requesting assistance in resolving disputes, much of the business between the BNS and UP is done collaboratively, without Board intervention, and often only needs statutory approval from the Board. An example of this cooperative working relationship includes the process used by the Parties recently to negotiate (and renegotiate) a bundle of various trackage rights agreements.
>
> Trackage rights negotiations between BNSF and UP typically begin with the landlord/host making a proposal to the tenant/user, thereby starting the negotiation process. That makes sense, because the owner has all of the information necessary to start a commercial negotiation. BNSF and UP typically use recently-negotiated trackage rights agreements as a model for the new one, ensuring consistency and completeness in the documents. Then

> the railroads negotiate compensation to be paid by the tenant to the landlord for the use of the line.

Verified Statement of Olivia E. Power at 8 **(copy attached as Exhibit G).**

Contrary to these well-established practices, and in total disregard for its "commitments" to the Board and Foresight, prior to at least October 2026 UP did not: (1) initiate the negotiation process (as the owner) by making a proposal at any time prior to October; (2) did not propose terms and conditions to cover the requested access; and (3) did not attempt to negotiate compensation terms. Moreover, compensation for such an isolated access agreement should not be a novel or difficult term for UP to negotiate, let alone propose, had it truly intended to fulfill its commitments to take care of Foresight and two of the three 2-to-1 shipper locations that UP initially identified as the only 2-to-1 shippers impacted by the proposed merger.[5] As BNSF explained in FD 2218, BNSF and UP have established a range of "market" based compensation levels that it utilizes in negotiating trackage rights agreements:

> BNSF and UP have worked together collaboratively during recent trackage rights negotiations to modernize our trackage rights agreements and make them more efficient to administer. The modern agreements have significantly shifted away from antiquated 'actual-cost' agreements used by the railroads in centuries past and towards the use of 'all-in' rates determined solely by the tenant's use of the lines. In fact, the Parties have not negotiated an 'actual-cost' agreement since before 1995. Following the 1995 merger of the Burlington Northern and Santa Fe and the 1996 UP/SP merger, all trackage rights agreements implemented between BNSF and UP have been based on an 'all-in' compensation arrangement. Additionally, through recent negotiations, BNSF and UP and other Class I railroads have established what [BNSF] consider[s] to be a 'market' range of compensation levels for trackage rights agreements.

[5] Foresight further notes that it would not be appropriate for UP to expect any unrelated merger concessions from BNSF in exchange for entering a trackage rights agreement that, by UP's own admission, is necessary to remedy Foresight's status as an undisputed 2-to-1 shipper at Hillsboro and Macoupin that will suffer competitive harm as a consequence of the Proposed Transaction.

Exhibit G at 10.

Accordingly, Foresight submits that the establishment of compensation for the trackage rights that UP has committed to negotiate with BNSF for access to Hillsboro and Macoupin should be a straightforward and simple exercise. Of course, it is difficult to negotiate such compensation absent actual communication with BNSF and a genuine effort by UP to follow through on its commitment to Foresight.

IV. CONCLUSION

For all the foregoing reasons, Foresight respectfully asks that the Board condition any approval of the Proposed Transaction by requiring the Applicants to enter an agreement providing BNSF:

a. Trackage rights to serve the Hillsboro Mine over NS's line between Hillsboro and Sorento, Illinois; and

b. Conditional trackage rights (*i.e.,* in the event Macoupin begins production) to serve the Macoupin over NS's line between Staunton and Litchfield, Illinois.

Foresight further asks that the Board maintain jurisdiction to enforce the agreement.

Alternatively, in the event the Applicants fail to enter the requested BNSF Trackage Rights Agreement to preserve competition at Hillsboro and Macoupin, Foresight respectfully requests that the Board require the Applicants to provide BNSF access to the NS trackage at Hillsboro and Macoupin, establish the terms and conditions applicable to such access, including compensation terms; and maintain jurisdiction to enforce BNSF's trackage rights as ordered.

Absent the approval of the requested conditions, Foresight asks that the Board deny the approval of the Application based on the competitive harm the Proposed Transaction will cause to Foresight.

Respectfully submitted,

FORESIGHT ENERGY LLC

By: */s/ Frank J. Pergolizzi*

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Dated: November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2026, I caused copies of the foregoing to be served: (i) by email or by first-class mail, postage prepaid upon all parties of record in this proceeding; and (ii) upon the other individuals that the Board identified for service in its Decision No. 5 served on September 26, 2025.

/s/ Andrew B. Kolesar III
Andrew B. Kolesar III

Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

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UNION PACIFIC CORPORATION
AND UNION PACIFIC RAILROAD COMPANY

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NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF STEVEN GORECKI

1. My name is Steven Gorecki. I am Director of Contract Administration & Logistics at Foresight Energy, LLC ("Foresight"). My business address is 211 North Broadway, St. Louis, Missouri 63102.

2. This Verified Statement is being submitted to support Foresight's Request that any approval of the merger be conditioned on a grant of trackage rights to BNSF Railway ("BNSF") to preserve pre-merger competition at two Foresight mines.

3. In my capacity as Director of Contract Administration & Logistics, I oversee contract administration, logistics, and supply chain or operational flow operations for the company's coal and energy operations.

4. These duties include responsibilities for Foresight's relationships with rail transportation providers, including the Union Pacific Railway Company ("UP"), Norfolk

Southern Company ("NS"), and other Class I railroads and regional railroads that Foresight utilizes to transport coal from our four (4) coal mining properties in the Illinois Basin, which include (1) the Hillsboro Energy mine at Hillsboro, Illinois ("Hillsboro"); (2) the Macoupin Energy mine at Carlinville, Illinois ("Macoupin"); (3) Williamson; and (4) Sugar Camp.

5. We currently have three active mining complexes, Hillsboro, Williamson, and Sugar Camp, that have a combined productive capacity of up to 50 million tons of high Btu coal per year.

6. While the Macoupin mine is currently inactive, it has a production capacity of approximately 2.5 million tons per year.

7. Foresight's Illinois Basin reserves and mines each have access to multiple rail options and are strategically located near river transportation access points that provide Foresight with competitive access to both the Domestic and Export market. Though limited, Foresight also has access to truck transport options.

8. Foresight also owns and operates a barge-loading river terminal located on the Ohio River, near Mount Vernon, Indiana, known as the Sitran Terminal.

9. Foresight has the capacity to transload approximately 25 million tons per year at Sitran for delivery to both domestic and export customers.

10. A large portion of coal shipped from our various mine complexes is FOB transload point, which typically is to Sitran or another transload facility. In other words, Foresight typically arranges and pays for rail transportation to move our coal from origin to the applicable transload facility. We also have customers, including a number of coal-burning electric utility companies, that purchase coal from Foresight FOB Mine and are responsible for arranging their own transportation services.

11. In addition, Foresight sells coal on the Export market that is delivered to export terminal facilities in the Gulf of Mexico reached via various rail carriers.

The Hillsboro Mine

12. Foresight's Hillsboro mine currently receives rail service from both NS and UP at origin. An excerpt from NS's system map showing our rail service options for Hillsboro and Macoupin is attached to my statement as Attachment A. As shown in Attachment A, NS serves Hillsboro from the south via a line that extends approximately 11.1 miles from a point on NS's line at Coffeen, Illinois and connects with a BNSF line at Sorento, Illinois. NS then proceeds via trackage rights on BNSF's tracks from Sorento for approximately 42.9 miles to Centralia, Illinois, where the trains then continue on NS trackage approximately 23.4 miles to an interchange with the Evansville and Western Railroad ("EVWR") at Mount Vernon, Illinois, where the trains then continue on the EVWR for approximately 80 miles for ultimate delivery to Sitran. Foresight transported approximately 2,143,000 million tons of coal via NS using this routing in 2025.

13. UP currently serves Hillsboro from the North via UP. UP can move the Hillsboro tonnage approximately 65 miles to the southwest from Hillsboro to St. Louis, Missouri, or to points northeast of Hillsboro via UP's Tuscola line which has connections with BNSF at Walsh Junction, Illinois, and with CN at Tuscola, Illinois.

14. Foresight transported approximately 146,000 tons via UP in 2025, most of which was transported to Cora Terminal where it was transloaded for ultimate shipment to the end-customer.

The Macoupin Mine

15. Foresight's Macoupin mine (a/k/a the Monterrey or Shay Mine) historically was served both by UP to the North, and NS to the South. As shown in Exhibit A, NS can serve Macoupin via a line that connects with Macoupin near Staunton, Illinois and extends to the northeast for approximately 15.2 miles to a connection with the BNSF at Litchfield, Illinois. At Litchfield, NS historically then used BNSF trackage rights to transport Macoupin coal southward approximately 58 miles from Litchfield to Centralia, Illinois, where the traffic was then interchanged with the EVWR at Mt. Vernon, Illinois for ultimate delivery to Sitran. *Id.*

16. UP historically served Hillsboro from the North via UP. Trains were then routed over approximately 45 miles of UP track from Monterey Junction to the St. Louis area.

17. Macoupin tonnages transported on UP historically have been mostly transported to the St. Louis area for blending and transloading at various river transload facilities.

Foresight's Concerns about the Proposed Transaction

18. Foresight currently has the ability to obtain rail service from both Applicants at Hillsboro and Macoupin (when active). However, if the proposed transaction is approved, Foresight would lose the existing competitive rail options and would be limited to single carrier service from the combined UP/NS entity at both locations.

19. Based on this concern, UP contacted Foresight shortly after the submission of the initial Application to discuss the loss of competition at Hillsboro and Macoupin.

20. During calls Foresight had with UP in February and March, 2026, UP was cooperative and unequivocally acknowledged and confirmed that the Proposed Transaction would reduce competition at Hillsboro and Macoupin absent granting access to a non-Applicant Class I rail carrier to serve Foresight at those locations.

21. To address this loss of competitive rail service, UP agreed that it would pursue a trackage rights agreement with BNSF that would allow BNSF access to both Hillsboro and Macoupin via lines owned by NS that connected to each of these mines from the south.

The CN Request for Access

22. Foresight is aware that CN is also seeking trackage rights to serve Hillsboro and Macoupin, as reflected in the Description of Anticipated Responsive Application ("CN-30") that CN filed with the Board on September 9, 2026.

23. Foresight understands that CN and UP entered into a Memorandum of Understanding ("MOU") relating to the Proposed Transaction that includes certain conditions that CN states "will remediate several potential competitive harms from the Proposed transaction," including granting CN access to customer facilities in Illinois where Class I railroad options would be reduced from 2-to-1. CN-30 at 1-2.

24. These conditions include CN's intent to seek (1) "overhead trackage rights on Union Pacific's line between East St. Louis, Illinois and Hillsboro, Illinois" to serve Hillsboro; and (2) "overhead trackage rights on Union Pacific's line between Springfield, Illinois and Monterey Mine 1/Carlinville, Illinois" to serve Macoupin in the event operations are reactivated. CN-30 at 11-12.

25. While Foresight does not oppose the access CN intends to pursue, Foresight does not believe that such access will be an adequate remedy to address the competitive harm that the Proposed Transaction would cause, because the CN access requested does not provide a competitive option for most of the traffic that currently moves from Hillsboro, and that historically has moved from Macoupin.

26. Instead, the CN access would provide a competitive rail option for movements north of the Hillsboro and Macoupin mines over UP trackage that has been utilized by Foresight to transport coal to river transloading docks near St. Louis for barge delivery. These movements represent only a small percentage of the tonnage that Foresight presently ships, and has historically shipped, from Hillsboro and Macoupin.

27. Foresight is concerned that absent BNSF access at Hillsboro and Macoupin, the new merged entry will favor movements to the North and will not provide competitive rates or service for the Foresight tonnages moving south to Sitran and beyond.

28. Foresight expressed these concerns to UP and was assured in our discussions that the CN access would not be a substitute for the BNSF access that UP had previously committed to provide, as communicated to Foresight and the Board. Instead, UP has continued to assure Foresight that it would fulfill the commitment to enter a trackage rights agreement with BNSF that would provide BNSF access to both mines via the existing NS trackage that connects to those mines from the south.

Lack of Action by UP

29. Despite the many confirmations Foresight has received from UP concerning its intent to engage BNSF in negotiations towards a trackage rights agreement to serve Hillsboro and Macoupin, Foresight has been advised by BNSF, and even UP, that prior to August 19, 2026, UP had not attempted to engage BNSF in negotiations specific to Foresight.

30. UP has been unwilling to share any details about whether, or the extent to which, there have been any specific communications with BNSF after August 19, 2026 regarding the terms for an access agreement that would allow BNSF to serve Hillsboro and Macoupin.

31. BNSF has informed Foresight that BNSF advised UP it is willing to enter into an agreement to provide Foresight with access to both facilities.

32. It is my understanding that UP has not reached an agreement with BNSF that would allow BNSF access to Hillsboro and Macoupin. I do not know the details of any specific UP efforts in attempting to complete such an agreement.

Request for Conditions

33. Foresight asks that the Board require UP to follow through on the commitment it made to negotiate a trackage rights agreement with BNSF in the Spring of 2026, as confirmed in its April 2026 Amended Application, Answers to Interrogatories, and our separate discussions with UP.

34. Specifically, Foresight asks that as a condition on approval of the Proposed Transaction, the Board require the Applicants to enter an agreement providing BNSF the following trackage rights:

a. To allow BNSF trackage rights to serve the Hillsboro Mine over NS's line between Hillsboro and Sorento, Illinois; and

b. To allow BNSF conditional trackage rights (i.e., in the event Macoupin begins production) to serve the Macoupin over NS's line between Staunton and Litchfield, Illinois.

35. Foresight asks that any such trackage rights agreement be required as a condition on the approval of the Proposed Transaction and that the Board maintain jurisdiction to enforce the agreement.

36. Alternatively, in the event the Applicants fail to enter the requested BNSF Trackage Rights Agreement to preserve competition at Hillsboro and Macoupin, Foresight respectfully requests that the Board:

a. Require the Applicants to provide BNSF access to the NS trackage at Hillsboro and Macoupin;

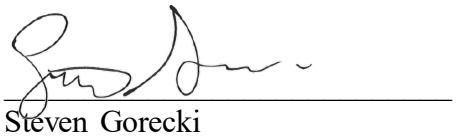
b. Establish the terms and conditions applicable to such access, including compensation terms; and

c. Maintain jurisdiction to enforce BNSF's trackage rights as ordered.

37. Finally, in the event the Board does not impose the requested conditions, Foresight asks that the Board deny the approval of the Application based on the competitive harm the Proposed Transaction will cause to Foresight.

VERIFICATION

I, Steven Gorecki, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.



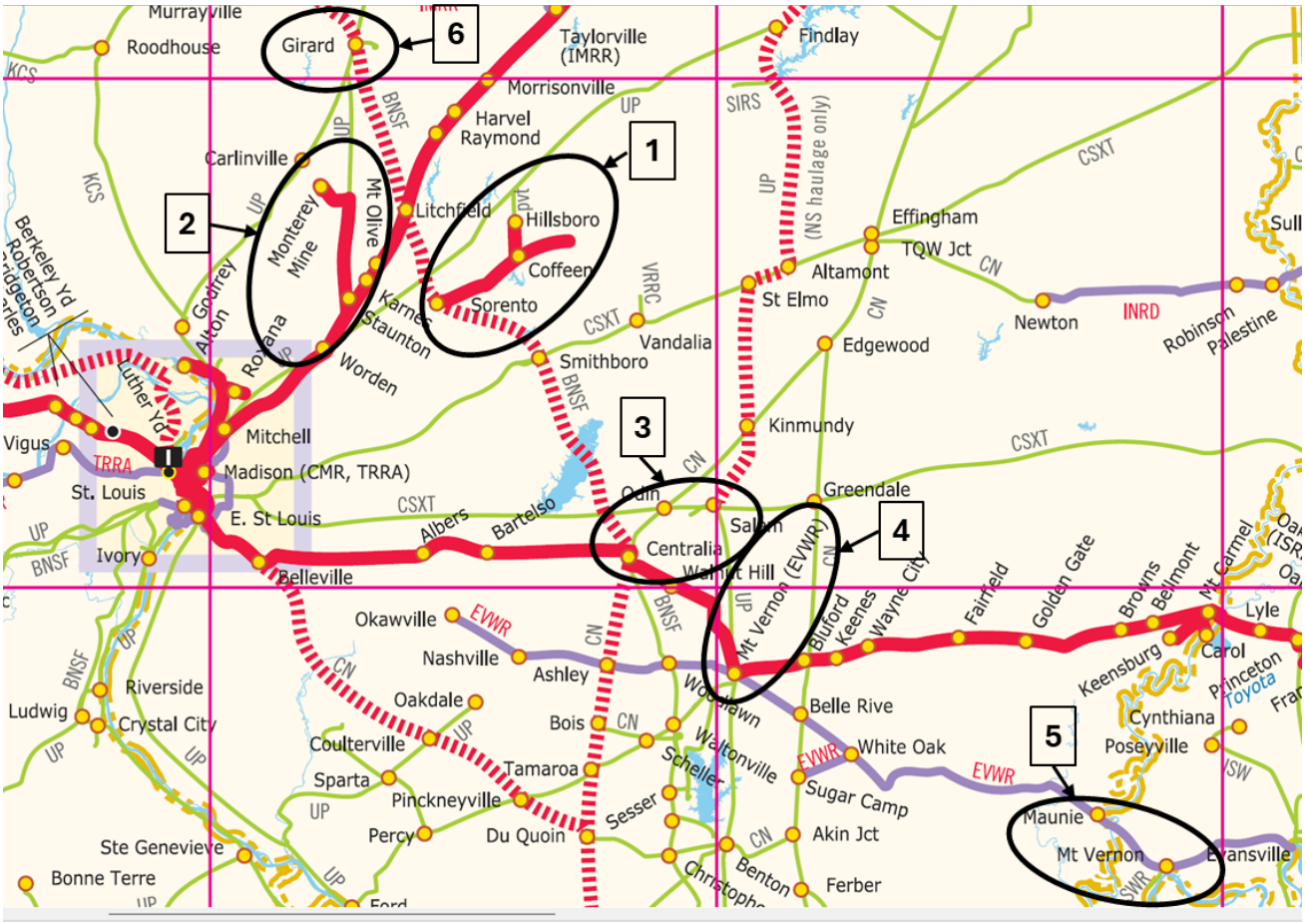
Steven Gorecki

Executed on this 17 day of November, 2026.

Attachment A

Location of Hillsboro and Macoupin Mines
and Associated Rail Lines and River Terminals

Excerpt from NS System Map



1.	Hillsboro Mine
2.	Macoupin Mine (a/k/a Monterey or Shay #1)
3.	Centralia, IL
4.	Mt. Vernon, IL (NS Interchange with EVWR)
5.	Mt. Vernon, IN (Sitran Terminal)
6.	Girard, IL

Exhibit B

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
- CONTROL –
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

FORESIGHT ENERGY, LLC'S FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS

Pursuant to 49 C.F.R. Part 1114, Foresight Energy, LLC ("Foresight") requests that Union Pacific Corporation and Union Pacific Railroad Company (collectively "UP") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") respond to the following discovery requests in accordance with the Surface Transportation Board's ("STB") rules and the Definitions and Instructions set forth below.

Please provide Answers to Interrogatories and Responses to Requests for Production as soon as possible and in any event within the schedule and in the manner set forth in the Discovery Guidelines in this proceeding. Foresight is prepared to cooperate with Applicants to facilitate the expeditious production of documents with the minimum practical burden, and Applicants are requested to contact the undersigned promptly to discuss any objections or questions regarding these Requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS

As used in these Requests, the following terms shall have the meaning set forth below:

1. “Applicants” means UP and NS.

2. “Application” means the Amended Railroad Control Application filed by Applicants on April 30, 2026 in STB Docket No. FD 36873.

3. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained.

4. “Identify” or “state” or “describe” or “describe in detail” means: (a) describe fully by underlying facts rather than by reference to ultimate facts or conclusions of fact or law; (b) set forth all relevant facts necessary to the complete understanding of the act, process, event, or thing in question; (c) as to a person (as defined): name, business address, last known telephone number and job title, and if not an individual, the type of entity, principal business address and the names of officers and directors; (d) as to a document (as defined): the type of document, the identity of the author or originator, and a brief description of the subject matter.

5. “Person” means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

6. “Produce” means to make legible, complete and exact copies of responsive documents and send them by expedited delivery to the undersigned counsel.

7. “Proposed Transaction” means the series of agreements and transactions described in the Application, Volume 1 at pages 29-33.

INSTRUCTIONS

1. References to railroads, shippers, consultants, or companies (including Applicants) include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents and representatives thereof.

2. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

3. To the extent that materials requested herein are confidential, Foresight will treat them in accordance with the Protective Order entered in this docket in the STB Decision served August 5, 2025.

4. If and to the extent that Applicants' response to a Request states that the information or document(s) requested previously were produced to another party to this proceeding, then (a) identify such party and provide the date and acronym document number of the request; (b) state the date on which Applicants produced the information and/or document(s) in question; (c) provide the Bates number(s) or other identifying designations assigned to the information and/or document(s); and (d) provide any passwords, codes, website name(s) or address(s), and any other information that Foresight would need in order to access the information and/or documents.

5. Responses to these Requests should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

INTERROGATORIES

1. In Applicants' July 27, 2026 Second Response to Decision No. 21 (at p. 65), Applicants state that they "have committed to the owner of Hillsboro Energy LLC and

Macoupin Energy LLC that they will attempt to negotiate a trackage rights agreement with BNSF that, contingent on consummation of their merger, will give BNSF access to Hillsboro and Macoupin." Please state whether Applicants have contacted BNSF with respect to the negotiation of such a trackage rights agreement, and if so, please identify:

(a) the date of each such communication;

(b) the individual initiating such communication;

(c) the form of such communication (*e.g.*, email, telephone call);

(d) whether the communication included a proposed draft of a trackage rights agreement or included any details on the proposed terms of the subject trackage rights;

(e) the identified or intended BNSF recipient of such communication;

(f) the date of any BNSF response to such communication; and

(g) the identity of the BNSF individual sending any such responsive communication.

2. In Applicants' July 27, 2026 Second Response to Decision No. 21 (at p. 65), Applicants further state that "BNSF has been unwilling to entertain discussions that would support the merger being approved." With regard to this statement, please state whether the Applicants either are requiring or intend to require BNSF to support merger approval as a pre-condition to commencing any discussions relating to a trackage rights agreement giving BNSF access to Hillsboro and Macoupin.

DOCUMENT REQUESTS

1. Please produce all documents identified in Applicants' Answers to the foregoing Interrogatories.

Respectfully submitted,

By: /s/ Frank J. Pergolizzi
Frank J. Pergolizzi
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Attorneys for Foresight Energy, LLC

August 12, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2026, I have caused a true and correct copy of the foregoing to be served electronically or by first-class mail, postage pre-paid, on all parties of record for this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew B. Kolesar III
Andrew B. Kolesar III

Exhibit C

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

UNION PACIFIC'S RESPONSES AND OBJECTIONS TO INTERROGATORIES AND DOCUMENT REQUESTS IN FORESIGHT ENERGY, LLC'S FIRST SET OF DISCOVERY REQUESTS

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Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

August 19, 2026

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Union Pacific Railroad Company and Union Pacific Corporation (collectively, "Union Pacific"), through undersigned counsel, respond as follows to the Interrogatories and Document Requests in Foresight Energy, LLC's ("Foresight") First Set of Discovery Requests to Applicants ("Requests"), served on August 12, 2026. Union Pacific's responses and objections to the Requests are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to supplement or amend these Responses and Objections at any time as circumstances may require.

GENERAL RESPONSES

The following General Responses apply to each of Foresight's Requests:

1. Union Pacific is conducting a reasonable search for information and documents responsive to Foresight's Requests. Where Union Pacific states that it will produce documents, Union Pacific will conduct a reasonable search for responsive, non-privileged documents, subject to the specific and general objections stated below.

2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

3. Union Pacific's responses and objections to these Requests are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

INTERROGATORIES

INTERROGATORY NO. 1

In Applicants' July 27, 2026 Second Response to Decision No. 21 (at p. 65), Applicants state that they "have committed to the owner of Hillsboro Energy LLC and Macoupin Energy LLC that they will attempt to negotiate a trackage rights agreement with BNSF that, contingent on consummation of their merger, will give BNSF access to Hillsboro and Macoupin."

Please state whether Applicants have contacted BNSF with respect to the negotiation of such a trackage rights agreement, and if so, please identify:

a) The date of each such communication;
b) The individual initiating such communication;
c) The form of such communication (e.g., email, telephone call);
d) Whether the communication included a proposed draft of a trackage rights agreement or included any details on the proposed terms of the subject trackage rights;
e) The identified or intended BNSF recipient of such communication;
f) The date of any BNSF response to such communication; and
g) The identity of the BNSF individual sending any such responsive communication.

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that it has not yet contacted BNSF specifically with respect to the negotiation of the trackage rights agreement referenced in Interrogatory No. 1.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a

special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 2

In Applicants' July 27, 2026 Second Response to Decision No. 21 (at p. 65), Applicants further state that "BNSF has been unwilling to entertain discussions that would support the merger being approved." With regard to this statement, please state whether the Applicants either are requiring or intend to require BNSF to support merger approval as a pre-condition to commencing any discussions relating to a trackage rights agreement giving BNSF access to Hillsboro and Macoupin.

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that it is not requiring and does not intend to require BNSF to support merger approval as a pre-condition to commencing any discussions related to a trackage rights agreement giving BNSF access to Hillsboro and Macoupin.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege.

DOCUMENT REQUESTS

REQUEST NO. 1

Please produce all documents identified in Applicants' Answers to the foregoing Interrogatories.

Union Pacific Response:

Subject to and without waiving the below objections and its General

Objections, Union Pacific responds that it has not identified any documents in its answers to the foregoing Interrogatories.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege.

GENERAL OBJECTIONS

Union Pacific's General Objections, as set forth herein, are to be considered objections to each of the specific Discovery Requests (including subparts) that follow. These general objections are not exhaustive and, where appropriate, Union Pacific will also state specific objections. Union Pacific's objections shall not waive, limit, or prejudice any objections that it may later assert.

1. In providing these responses, Union Pacific reserves all objections as to competency, relevancy, materiality, authenticity, and admissibility of the use of any information requested in Foresight's Requests and in any responses or productions Union Pacific may provide thereto, in any subsequent proceeding, or further proceedings in this matter. To the extent that Union Pacific provides responsive information or documents, Union Pacific does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of Union Pacific's objections to any of Foresight's Requests.

2. Union Pacific objects to each and every Discovery Request as unduly burdensome, to the extent it seeks discovery of information, documents, or

communications that are available or accessible to Foresight as an interested party through the application and accompanying workpapers submitted in this proceeding.

3. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to impose upon Union Pacific burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board rules or precedents or are not proportional to the needs of the above-captioned proceeding and impose an undue burden on Union Pacific.

4. Union Pacific objects to each and every Discovery Request requesting that Union Pacific produce "all" responsive documents, communications, or information as unduly burdensome to the extent it requests that Union Pacific engage in an unreasonably broad collection and review in order to identify each and every document that may possibly be responsive. For those Requests to which it is obliged to respond, Union Pacific will produce such responsive documents or information as it is able to locate or identify in a reasonable search and which are not otherwise subject to an applicable privilege or other protection.

5. Union Pacific objects to the Discovery Requests and to each Definition, Instruction, and Request contained therein to the extent they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding, in whole or in part.

6. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein that request information, documents, or communications that are: (a) already in the possession of Foresight; (b) publicly available or otherwise readily available or accessible to Foresight from other sources; (c) unreasonably cumulative or duplicative of documents already in Foresight's possession, custody, or control; or (d) otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific.

7. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they seek production from the files of all current and former Union Pacific employees, including those who are not reasonably likely to possess non-duplicative relevant documents. Unless specifically stated otherwise, by stating that it will produce documents responsive to these Requests, Union Pacific represents that it will produce documents from files most likely to contain materials responsive to the Request without undue burden.

8. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they purport to require Union Pacific to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to Foresight's Requests, Union Pacific will conduct a reasonable search of those accessible

files in its possession in which information responsive to Foresight's Requests, as limited by Union Pacific's Objections, is likely to be located.

9. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to prohibit Union Pacific from redacting information that might reveal Union Pacific's commercially sensitive or long-term corporate strategies and is not relevant to this proceeding. Union Pacific will redact any such information, and reserves the right to redact any non-responsive information, from otherwise responsive documents produced to Foresight.

10. Union Pacific objects to the production of, and is not producing, documents or information subject to any attorney-client privilege, work-product doctrine, or other applicable privilege or protection. Union Pacific reserves the right to redact privileged information from materials that it produces in response to the Requests. Any production of privileged documents or information is inadvertent and should not be deemed as a waiver of any privilege. Union Pacific reserves all rights under applicable law, including the Protective Order entered in this case, to demand or require the return of all copies thereof and non-use by Foresight or by any other person or entity in this or any other proceeding.

11. Union Pacific objects to the production of documents that constitute or disclose confidential, proprietary, or commercially or competitively sensitive information. Union Pacific will produce such information, if not otherwise objectionable, designated "Confidential" or "Highly Confidential," subject to the terms

of the Protective Order entered in this case on August 5, 2025 (Decision No. 1). Union Pacific reserves the right to seek additional protections as needed.

12. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they seek or may result in the use, disclosure, or dissemination of any confidential, proprietary, or commercially or competitively sensitive information produced in response to the Discovery Requests for the purpose of training, fine-tuning, evaluating, or otherwise interacting with artificial intelligence (AI) models or systems in a manner that violates the terms of the Protective Order entered in this case. This objection includes, but is not limited to, any use of such materials in connection with large language models (LLMs), machine learning algorithms, or generative AI tools, regardless of whether such use is direct or indirect, manual or automated, or anonymized or de-identified. Union Pacific does not consent to the use of any of its discovery materials for purposes unrelated to this proceeding, including but not limited to AI training.

13. Union Pacific objects to Foresight's Definition 3 defining "Document" to the extent it is overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific specifically objects to Definition 3 as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it would require production of draft electronic communications, electronic meeting invites, meeting change or cancellation notices,

text messages, communications by or with internet-connected applications (other than emails), electronic messages (other than emails), and communications. Union Pacific is not searching for and will not produce these categories of "Documents."

14. Union Pacific objects to Foresight's Definition 1 defining "Applicants" to mean UP and NS to the extent it is vague, overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific specifically objects to Definition 1 as overly broad and unduly burdensome to the extent it asks Union Pacific to respond to a request on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control.

15. Union Pacific objects to Foresight's Instruction 1, which provides that references to railroads, shippers, consultants, or companies (including Applicants) include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof, to the extent it purports to require Union Pacific to identify, investigate, or respond on behalf of the affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, or representatives of third parties, including BNSF, that are not within Union Pacific's possession, custody, or control.

16. Union Pacific objects to Foresight's Instruction 4 to the extent it purports to require Union Pacific to provide the passwords, websites, production dates, document bates numbers, or other information already shared in previously produced information or documents, as such request is unduly burdensome to compile and track.

17. Union Pacific's Responses and Objections are based upon information presently known to it. Union Pacific reserves the right to rely upon facts, documents, or other evidence that may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

Respectfully submitted,

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Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

August 19, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Charlotte R. Krovoza

Exhibit D

REDACTED

Exhibit E

REDACTED

Exhibit F

REDACTED

Exhibit G

308287

ENTERED
Office of Proceedings
May 3, 2024
Part of
Public Record

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STEPTOE & JOHNSON LLP

PUBLIC VERSION

May 3, 2024

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Co.—Operating Rights—Southern Pacific Transportation Co.

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is a public version of BNSF Railway Company's Opening Statement and Evidence, with appropriate redactions that the Board can place in its docket. We are concurrently filing a highly confidential version of the Opening Statement and Evidence to be filed under seal.

Please contact me with any questions.

Respectfully submitted,

/s/ *Peter W. Denton*

Peter W. Denton
Onika K. Williams
Attorneys for BNSF Railway Company

cc: Adrian L. Steel, Jr.
All parties of record

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION CO.

BNSF RAILWAY COMPANY'S OPENING STATEMENT AND EVIDENCE

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Counsel for BNSF Railway Company

Dated: May 3, 2024

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION CO.

BNSF RAILWAY COMPANY'S OPENING STATEMENT AND EVIDENCE

Verified Statement of Olivia E. Power

track and infrastructure and the lines of BNSF and UP are operated in a directional flow.

B. BNSF and UP usually negotiate trackage rights agreements collaboratively.

While it may seem like BNSF and UP are often before the Board requesting assistance in resolving disputes, much of the business between BNSF and UP is done collaboratively, without Board intervention, and often only needs statutory approval from the Board. An example of this cooperative working relationship includes the process used by the Parties recently to negotiate (and renegotiate) a bundle of various trackage rights agreements.

Trackage rights negotiations between BNSF and UP typically begin with the landlord/host making a proposal to the tenant/user, thereby starting the negotiation process. This makes sense, because the owner has all of the information necessary to start a commercial negotiation. BNSF and UP typically use recently-negotiated trackage rights agreements as a model for the new one, ensuring consistency and completeness in the documents. Then the railroads negotiate compensation to be paid by the tenant to the landlord for use of the line.

The railroads may also take into consideration operational and other rights and limitations when negotiating trackage rights agreements. These may include: (1) whether the agreement will include access to serve customers and, if so, what arrangements need to be made to access such customers; (2) whether the agreement will permit the tenant to access another railroad, and what arrangements need to be made to permit that access; (3) whether significant investments are needed to

permit the tenant to use, or continue to use, the line; (4) whether third parties are permitted to use the trackage rights line on behalf of the tenant; (5) whether the tenant may build facilities or establish new yards on the line; and (6) what types of traffic, such as loaded containers or empty containers, are permitted to move pursuant to the trackage rights agreement.

The Riverside-Daggett Line that I mentioned above provides a good example. In 2016, BNSF and UP renegotiated the terms of a trackage rights agreement for UP's continued use of a BNSF line between Kansas City, Mo. to Paola, Kan. *Union Pac. R.R.—Trackage Rts. Exemption—BNSF Ry.*, FD 36035 (STB served June 10, 2016). Following this success, BNSF and UP commenced a renegotiation of a bundle of 11 trackage rights agreements with similar expiration dates, including the Riverside-Daggett Line, using the Kansas City-Paola agreement as a model. The railroads concluded negotiations over that package of agreements in 2021. *See Union Pac. R.R. —Trackage Rts. Exemption—BNSF Ry.*, FD 36555 (STB served Nov. 12, 2021).[2] While each of the agreements within the bundle had a unique set of circumstances and factors that were considered during negotiations, the majority of the agreements are similar to the Kern-Mojave Line, where the Parties originally entered the agreement to bridge a trackage gap in either BNSF or UP's network.

Contrary to past practices between the parties, UP, as the owner of the Line, never made an offer to BNSF as to its proposed compensation for the Kern-Mojave

[2] In addition to that bundle of contracts, BNSF and UP also have recently negotiated one other trackage rights agreement. *See BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36547 (STB served Oct. 22, 2021) (agreement that granted BNSF overhead trackage rights over UP's Jefferson City Subdivision between Pacific, MO and Labadie, MO).

Line. Instead, UP served notice on BNSF that the 1993 agreement between the parties regarding compensation for the Line would be terminated as of December 31, 2022. Six days after the agreement's termination, UP asked the STB to reset the compensation terms. BNSF would prefer to negotiate with UP to update and modernize the compensation and other terms of BNSF's use of the Kern-Mojave Line, much as the railroads have done in many other circumstances. But UP has made it clear through this proceeding that it would rather have the STB set the terms.

C. BNSF and UP have established a range of "market" compensation levels for their trackage rights arrangements in recent years.

BNSF and UP have worked together collaboratively during recent trackage rights negotiations to modernize our trackage rights agreements and make them more efficient to administer. The modern agreements have significantly shifted away from antiquated "actual-cost" agreements used by the railroads in centuries past and towards the use of "all-in" rates determined solely by the tenant's use of the lines. In fact, the Parties have not negotiated an "actual-cost" agreement since before 1995. Following the 1995 merger of the Burlington Northern and Santa Fe and the 1996 UP/SP merger, all trackage rights agreements implemented between BNSF and UP have been based on an "all-in" compensation arrangement. Additionally, through recent negotiations, BNSF and UP and other Class I railroads have established what I consider to be a "market" range of compensation levels for trackage rights agreements.