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November 23, 2026

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

Re: Docket No. FD 36873, *Union Pacific Corp., et al. – Control – Norfolk Southern Corp., et al.*

Dear Judge Soulikias:

NS opposes Brian S. Smith's second letter motion to compel, filed on November 19, 2026. As NS explained to Your Honor in response to Mr. Smith's first motion to compel, the motion should be rejected because the information requested is generally not relevant to the proceeding, the requests are unduly burdensome, and, in any event, Mr. Smith has still not signed the undertakings to the Protective Order entered in this case and would be unable to access any potentially responsive material.

Mr. Smith seeks to compel production or other responses to eight interrogatories, four requests for production, and 13 requests for admission across a range of communications-related topics.[1] The topics includes Communications Structures, Host Buildings, or Communications Shelters, as defined by Mr. Smith; Contractor Personnel, as defined by Mr. Smith, that work on communications-related issues; and specified movable bridges operated remotely.

These topics are not relevant to the subject matter. *Del Grosso v. STB*, 804 F.3d 110, 121 (1st Cir. 2015) (citing 49 C.F.R. § 1114.21(a)(1)). In fact, it is telling that of the hundreds of comments filed in this proceeding on November 18, only the comments of Mr. Smith reference these topics.[2] That is not to say that it is

[1] For Your Honor's convenience, Exhibit 1 is a table with each of the requests for which Mr. Smith states he is seeking relief. Motion at 5.

[2] Indeed, USTelecom – The Broadband Association, filed comments. That trade association characterizes itself as "the premier trade association representing service providers and suppliers for the communications industry." *Comments of*

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unimportant for Norfolk Southern and Union Pacific to act carefully and diligently in integrating their communications networks at the appropriate time. Of course they should and will. But as Norfolk Southern has explained, that integration work will occur through the deliberative Safety Integration Plan ("SIP") process overseen by the Federal Railroad Administration ("FRA"). Unlike the traditional adversarial litigation process Your Honor has been overseeing in the context of discovery pertaining to the merits of the proposed transaction, the SIP process is an iterative regulatory process in which the Applicants submit a draft SIP to the FRA, incorporate FRA feedback, submit a formal filing, and then continue to take FRA feedback and alter the SIP as necessary.[3] Following approval of the transaction, the Applicants then coordinate closely with the FRA on integration.[4]

Mr. Smith tries to make hay out of the omission of certain words from the SIP (*e.g.*, tower, microwave, asbestos). But the fact that those specific words were not mentioned, and that the FRA has not raised an issue on these topics despite multiple rounds of review of the SIP, is quite telling. Although the general topics Mr. Smith raises are incorporated into the SIP, the specific issues, level of detail, and volume of information he would like to see are plainly not relevant and not what the regulator of the integration process expects to see at this stage.

Mr. Smith ropes in a few buzzy topics in an attempt to make a case for relevance. First, he cites the speculative presence of asbestos in some hypothetical Communications Shelters. NS will always put the safety of its workers first, but whether or not certain old buildings contain asbestos is not relevant to the proceeding. Motion at 3. Second, Mr. Smith invokes the Federal Aviation Administration's ("FAA") recent nationwide ground stop and claims to merely raise that alarming situation to make the point that "a problem at one remote site can spread across a network." *Id.* Mr. Smith is correct that, under the watchful eye of the FRA, NS and UP will need to be careful in their integration. But that does not make his discovery requests relevant. Obviously references to asbestos and FAA

USTelecom – The Broadband Association, Docket No. FD 36873, at 1, n.1 (STB filed Nov. 18, 2026). It raised none of the issues Mr. Smith did.

[3] The process is formally explained in Board regulations, 49 C.F.R. Part 1106 and Department of Transportation regulations, 49 C.F.R. Part 244.

[4] NS attached an excerpt from the SIP as Exhibit 2 to its reply to Mr. Smith's first motion to compel. The SIP explains "During the transition period, UP/NS will meet with the FRA to help demonstrate that its plan complies with regulatory requirements." SIP at 106.

ground stops can draw lots of concerned attention, but what they do not do is demonstrate relevance to the actual transaction under the Board's review.

Mr. Smith also asserts a nexus to the transaction for his discovery requests related to prior facility and equipment replacements, arguing that what NS has previously paid "is the best evidence there is of what integration work at its old sites will cost." *Id.* NS disagrees. If that were accurate, then why would 13 years of replacement costs be necessary, as Mr. Smith's discovery request seeks? A much narrower and recent period of time would be more useful. Moreover, prior experience may not entirely dictate what would occur post-transaction even if structures need to be replaced. For example, the combined railroad may shift more work in-house. It is difficult to opine on hypothetical future scenarios, but they do demonstrate the flaw in Mr. Smith's logic.

Responding to all of these requests is burdensome. *See Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308—CSX Transp., Inc. & Norfolk S. Ry.*, Docket No. FD 36495, at 3 (STB served July 22, 2022). Mr. Smith, a former NS employee, is aware of how burdensome the requests are. He knows without any discovery responses that there is no single source or database from which NS can comprehensively pull all of the information in Mr. Smith's requests, including "counts." For example, Request for Production No. 2 requests the "most recent structural analysis and the most recent inspection report for each Communications Structure constructed before 2000." As Mr. Smith knows, NS has no centralized source dating back that far, or he would have identified it by name.

Mr. Smith has not signed the Protective Order and, in any event, cannot access Highly Confidential material. At the risk of being repetitive of prior pleadings, NS restates that most of the information Mr. Smith requests is not public under the Protective Order in this proceeding. Even if Mr. Smith were to sign the Protective Order, he would still not be entitled to Highly Confidential material, which is limited to outside counsel and outside consultants.[5] This is for good reason. For example, Mr. Smith requests detailed information about the remote operations of certain moveable bridges. This includes the location of the remote operation and the type of communications path used.[6] While some of this information may be

[5] *See* Decision No. 1, Protective Order at ¶ 8.

[6] Mr. Smith says that it is his "professional judgement" that "a bridge operated from somewhere else should have two physically separate paths back to its operator, not two routes through a single router." Motion at 4. Setting aside whether or not NS's current operation follows that approach, Mr. Smith's self-professed professional

publicly accessible—Mr. Smith cites some relevant Coast Guard regulations—that is not the same as NS organizing and sharing this security-sensitive information in an unprotected matter that could be viewed and used by anyone for any purpose.

Separate and apart from the fact that Mr. Smith's requests are not relevant, burdensome, and inaccessible by him, he makes a few other arguments that NS must respond to.

1. Mr. Smith objects to counsel for NS informing him that Union Pacific would have the responsive information as the buyer in the proposed transaction for certain of Mr. Smith's discovery requests. He writes that he asked Union Pacific for certain information and that "Union Pacific sends me to Norfolk Southern." Motion at 5. He is suggesting that NS and Union Pacific are pointing back and forth at each other instead of responding to the discovery requests. But the cited information Union Pacific directed Mr. Smith to NS for is different than the discovery requests that NS deferred to Union Pacific. In fact, of the seven discovery requests NS directed Mr. Smith to Union Pacific for (RFA Nos. 16, 18, 35, 54, 55, 81, and Int. No. 22(d)), Mr. Smith only served Union Pacific with two overlapping discovery requests. In any event, NS does not have information responsive to the discovery requests for which it explained to Mr. Smith that Union Pacific has responsibility. But, even if NS did, the information would not be relevant.

2. Mr. Smith asserts that NS improperly objected that he was seeking a special study in certain of his discovery requests. *Id.* at 2. For example, Interrogatory No. 5 requests the number of Host Buildings, as defined by Mr. Smith, and certain information about those buildings. The Board has previously found that a respondent "does not have to conduct special studies or attempt to recreate information that was not kept in the ordinary course of business." *Entergy Ark., Inc. v. Union Pac. R.R.*, Docket No. NOR 42104, at 6 (STB served May 19, 2008). Mr. Smith says he asked for "no survey" and a "count is not a study." Motion at 2. It is true that if NS were to provide counts to Mr. Smith, those themselves would not be studies. But the calculation of that information, which NS does not keep in a centralized matter in the ordinary course of business, is a special study, and Board precedent does not require NS to undertake that work.

3. Mr. Smith invokes NS responses to another party, the City of Decatur, and claims that NS made the "same objections" to Decatur's interrogatories but still

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judgment cannot possibly be the basis for whether information is discoverable in this proceeding.

"gave the City of Decatur something on each of seven interrogatories." *Id.* This is an inapt comparison for several reasons. First, although NS may have made some overlapping general and specific objections to the City of Decatur, they were not, in total, the "same objections." Each discovery response and objection are crafted to the particular request being made. Second, outside counsel and expert consultants for the City of Decatur signed the Protective Order, so NS did not raise any objection that their requests sought non-public information. Because the City of Decatur has outside counsel and expert consultants and signed the Protective Order, NS could freely respond and produce documents in response to Decatur's requests without concern about the non-public nature of the information sought. Third, the City of Decatur's requests were substantively different than those of Mr. Smith. And although NS stands by each of its objections, it was able to provide several partial responses to Decatur, whose requests were almost entirely geographically limited to the impact of operations at a specific Norfolk Southern terminal in that city that is relevant to the Board's review of the proposed transaction.

NS appreciates that Mr. Smith has a keen interest in these topics and a good deal of personal knowledge. But that does not make his discovery requests appropriate for the proposed transaction pending before the Board. NS respectfully requests that your Honor deny Mr. Smith's motion.

Respectfully submitted,

/s/ Matthew J. Warren
Matthew J. Warren

Counsel for Norfolk Southern Corporation and
Norfolk Southern Railway Company

cc: Parties of Record

Exhibit 1

Request Number	Text
RFP No. 2	The most recent structural analysis and the most recent inspection report for each Communications Structure constructed before 2000, or, if production of all is unduly burdensome, Documents sufficient to show each such structure's most recent analysis date, the standard revision used, and whether the structure passed.
RFP No. 4	All Documents identified in response to Interrogatory Nos. 6 and 7, and all other Documents concerning Network Integration of communications systems, including plans, schedules, engineering estimates and cost estimates.
RFP No. 13	All Documents identified in response to Interrogatory No. 17.
RFP No. 14	Documents sufficient to show the annual budgets and spending identified in response to Interrogatory No. 18, and each assessment identified in response to Interrogatory No. 18(e).
Int. No. 5	State the number of Host Buildings, and for each Host Building state, as reflected in existing records: (a) its location and year of construction; (b) the date and result of its most recent structural or building-condition assessment, or that none is recorded; (c) whether it is occupied, vacant, or out of service for purposes other than housing Communications Equipment; (d) whether it carries any unsafe, restricted-access or do-not-enter designation, or has been recommended for repair or demolition; and (e) whether Communications Equipment in it is planned for relocation, and if so, when.
Int. No. 6	State whether, since January 1, 2025, NS, UP or anyone acting for either has performed, commissioned or received any structural analysis, loading study, mapping, engineering estimate or cost estimate concerning the modification, reinforcement or replacement of Communications Structures, Host Buildings or Communications Shelters in connection with Network Integration. If so, Identify each, state its date and the number of structures or buildings it covers, and state any total cost it estimates. If none exists, so state.

Request Number	**Text**
Int. No. 7	State whether, since January 1, 2025, NS has received, prepared or participated in preparing any plan, proposal or assessment for Network Integration. If none exists, so state. If any exists, describe it, including: (a) any change to NS radios, routers, antennas or transmission lines; (b) any interconnection of NS and UP microwave (licensed or unlicensed) or IP/MPLS networks; (c) any change to land mobile radio, PTC communications, dispatch communications or unlicensed radio systems; and (d) the number of Communications Structures expected to receive additional or replacement Communications Equipment, and the anticipated schedule.
Int. No. 16	State the number of Communications Shelters constructed before 1981, or located in Host Buildings constructed before 1981, and for those, state: (a) the number that have been inspected or surveyed for asbestos-containing material, including any inspection under 40 C.F.R. § 61.145; (b) the number in which asbestos-containing or presumed asbestos-containing material was identified; and (c) whether Network Integration is expected to involve renovation or demolition at any of them.
Int. No. 17	State whether any cost of bringing Communications Structures, Host Buildings, Communications Shelters or the NS communications network into structural, environmental, historic-preservation, asbestos, security or FCC compliance was identified, estimated or reflected in any valuation, due diligence, purchase-price or synergy analysis for the Proposed Transaction. If so, Identify each Document in which it appears and state the amount.
Int. No. 18	Identify each program, budget line or capital project in effect at any time since May 19, 2013 for the inspection, replacement, rebuilding or structural remediation of Communications Structures or Communications Shelters. For each, state: (a) the department or group that held it; (b) the amount budgeted and the amount spent in each year; (c) the number of Communications Structures and the number of Communications Shelters inspected, replaced or remediated under it in each year; (d) whether and when it was reduced, transferred or discontinued, and the reason; and

Request Number	**Text**
	(e) whether, before any reduction, transfer or discontinuance, NS assessed its effect on regulatory compliance, and if so, Identify the assessment.
Int. No. 21	State the number of Communications Structures on which NS leases, licenses or otherwise provides space to any third party, including wireless carriers and broadcast stations, whether under a written or oral agreement or without any agreement, and including arrangements that began before May 19, 2013. For those structures state: (a) the number of arrangements for which no written agreement exists, and the total annual revenue NS receives from all such arrangements, if any; (b) whether NS has a structural analysis that accounts for the third-party equipment currently installed, and the date of the most recent such analysis; (c) whether NS has records of environmental and historic-preservation review for the structure; and (d) whether Applicants plan to relocate, modify or terminate any third-party installation in connection with Network Integration.
Int. No. 22(a), (b), and (d)	For each Bridge, state: (a) the Remote Operating Location of the Bridge as of the date of the answer, by city and state; (b) which of the following classes of communication path are used anywhere in the Control Link for the Bridge (NS need not identify individual paths, intermediate facilities or the sequence in which the classes are used): (i) fiber-optic or other wireline facilities owned by NS; (ii) a wireline circuit or service leased from a telecommunications carrier; (iii) a Licensed Radio Path; (iv) an Unlicensed Radio (d) whether NS expects the Bridge to be operated from a different Remote Operating Location as part of implementing the Proposed Transaction and, if so, the city and state of the expected location; if no determination has been made, NS may so state.

Request Number	**Text**
RFA No. 16	Admit that NS expects Network Integration to require the installation, replacement or reconfiguration of Communications Equipment at NS Communications Sites.
RFA No. 18	Admit that NS expects Contractor Personnel to perform part of the Integration Field Work.
RFA No. 33	Admit that NS requires all Contractor Personnel who install, repair or maintain NS signal or communication systems to be trained and qualified as 49 C.F.R. Part 243 requires before performing that work Independently.
RFA No. 35	Admit that NS will permit Contractor Personnel to perform Integration Field Work on signal, train-control or communication systems Independently only if they have been trained and qualified as 49 C.F.R. Part 243 requires.
RFA No. 36	Admit that, for each contractor whose training NS relies on to qualify Contractor Personnel to perform safety-related duties covered by 49 C.F.R. Part 243, NS keeps the document described in 49 C.F.R. § 243.101(f).
RFA No. 38	Admit that the Safety Integration Plan identifies training of the kind described in 49 C.F.R. § 244.13(b) that applies to Non-Agreement Employees who will maintain or upgrade communication systems affecting rail operations during Network Integration.
RFA No. 39	Admit that the Safety Integration Plan identifies training of the kind described in 49 C.F.R. § 244.13(b) that applies to Contractor Personnel who will maintain or upgrade communication systems affecting rail operations during Network Integration.
RFA No. 45	Admit that NS completed at least one Replacement during the Covered Period.
RFA No. 51	Admit that NS can determine, from records it keeps in the ordinary course of business, the number of Replacements completed during the Covered Period and the Replacement Cost of each.
RFA No. 53	Admit that NS requires a structural analysis of a Communications Tower before it adds or changes antennas or transmission lines on that tower.

Request Number	**Text**
RFA No. 54	Admit that NS expects Network Integration to require at least one Replacement.
RFA No. 55	Admit that, as of the date of its response, NS has not estimated the total cost of the Replacements it expects Network Integration to require.
RFA No. 81	Admit that NS expects that, as part of implementing the Proposed Transaction, at least one Bridge will be operated from a Remote Operating Location different from its Remote Operating Location as of the date of NS's response.