COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

ENTERED
Office of Chief Counsel
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Public Record

By E-Filing

November 23, 2026

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

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

Dear Judge Soulikias:

In accordance with Your Honor's directive at the November 13, 2026 discovery conference and Decision No. 48, Applicants submit this supplemental letter addressing the relevance of the custodial documents Applicants have sought from BNSF through their proposed responsiveness Criterion 11 on BNSF's pricing and growth strategies. *See* UP-128/NS-122, App'x A, Criterion 11. BNSF has made the transaction's alleged competitive harms—and in particular allegations about anticipated pricing—the centerpiece of its opposition. As explained below, BNSF's pricing and growth strategy documents are highly relevant to issues BNSF has raised.

I. Background

On June 1, 2026, Applicants served discovery requests on BNSF which sought, among other materials, documents relating to BNSF's "policies or strategies for the pricing of [its] rail transportation services," "strategies for growing [its] rail traffic," "strategies for obtaining or maintaining business from customers with multiple facilities," including with respect to "pricing, bundling, tying, or linking rates or services," and documents discussing BNSF's "plans or strategies for retaining or increasing the revenues obtained from rail customers." Ex. A, Reqs. 25–29. These requests mirror discovery that Non-Applicants, including BNSF, sought and obtained from Applicants. *See, e.g.*, Ex. B, Reqs. 55–59; *see also* UP-58/NS-56 at 2–3.

During negotiations over BNSF's custodial document searches, BNSF proposed responsiveness criteria that omitted any category on pricing or growth strategies. UP-128/NS-122, Ex. C. Applicants proposed Criterion 11 to close that gap, *id.*, App'x A, and moved to compel when the parties reached an impasse, *id.* at 4. BNSF opposed, arguing principally that its pricing and growth strategy documents are irrelevant. *See* BNSF-70 at 2–3. At the November 13 discovery conference and in Decision No. 48, Your Honor directed the parties to submit supplemental briefing on this issue.

II. BNSF's Pricing and Growth Strategy Documents Are Highly Relevant.

The Board's regulations permit discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). Relevance in

this context is interpreted "[b]roadly." Decision No. 31 at 1–2 (citing *Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 7), FD 36500, slip op. at 4 (STB served Aug. 2, 2021)).

In evaluating a major transaction, the Board must consider "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system," 49 U.S.C. § 11324(b)(5), and whether the transaction is consistent with the public interest, *id.* § 11324(c). In a contested proceeding like this one, the Board will answer those questions by weighing Applicants' showing against the competing evidence BNSF and other opponents have submitted. Indeed, Your Honor has recognized that discovery is appropriate not just "to evaluate the transaction," but also to assess "non-Applicants' responsive filings," and "to contest non-Applicants' arguments." Decision No. 31 at 2.

BNSF's submissions make alleged competitive harms—and in particular allegations about the ability of a combined UP-NS to "maximize price"—the centerpiece of its opposition. For example, the "Summary of Evidence" BNSF filed with its opposition opens with an entire section titled "UP Will Maximize Price – On Even More Shippers." BNSF-73 at 1 (cover letter); *id.*, Presentation at 3–9. That section is devoted to UP executives' statements about pricing, including that UP "will maximi[z]e price" and is "the last to lower, the first to increase" on price. *Id.*, Presentation at 4–5. The next section, "UP Will Be UP – With More Market Power," continues the same theme, asserting that UP "Will Raise Rates," would "reset the price higher" for trackage rights, and "Will Extract Every Dollar." *Id.*, Presentation at 10–14. And BNSF's closing section on alleged harms features shipper and state attorney general submissions predicting that the merger "[l]eads to [r]ate [h]ikes." *Id.*, Presentation at 64–66, 68–69. *See also* BNSF-74, Vol. 1 at 3–4, 9, 49–54 (arguing that "UP's strategy is to 'maximize price'" and that the merger would "export[] its 'maximize price' strategy to the NS network").

Indeed, BNSF's submissions focus on the alleged effects of UP's pricing *on the attractiveness of BNSF's pricing*. *See, e.g.,* Sub-No. 33, BNSF-1, Ex. 12-A, V.S. of Jon Gabriel at 18 (asserting UP/NS "would have the ability to manipulate the NS rates to make a BNSF/NS movement unattractive" and could offer "favorable bundled pricing" to foreclose BNSF).

As discussed below, BNSF's own pricing and growth strategy documents are highly relevant to assessing BNSF's arguments for multiple independent reasons.

A. BNSF's documents will test BNSF's own pricing-related claims.

At the core of BNSF's opposition to the transaction and its November 18 submissions are a series of allegations about how a combined UP-NS will set prices, and how those prices will affect shippers' views of BNSF's pricing and offerings. BNSF's own ordinary course practices in comparable situations are directly relevant to each.

Price maximization. BNSF insists that UP will maximize price. *See, e.g.*, BNSF-73, Presentation at 3–9; BNSF-74, Vol. 1 at 41–42, 49–54, 66; Sub-No. 33, BNSF-1, Ex. 12-A, Gabriel V.S. at 17–19. BNSF's documents will show the circumstances and the extent to which BNSF itself seeks to maximize the price it obtains for its services, allowing the Board to evaluate whether the conduct BNSF attributes to Applicants is anything other than ordinary competitive behavior.

Bundling. BNSF contends that the merger would give the combined UP-NS "new leverage to use bundling and tie-in sales to raise rates," and that UP "uses the customer's dependence at its closed facilities as leverage to win—and to extract higher rates on—traffic at the facilities where the customer has a choice," including for Gulf Coast shippers. BNSF-74, Vol. 1 at 216–17, 222. BNSF already serves shippers at multiple locations—including in the Gulf Coast region where it seeks a condition—and has every opportunity to engage in the type of conduct it ascribes to Applicants. Its documents will show whether such bundling is characteristic of how the industry actually operates and, if BNSF does not engage in it, whether there is any basis to expect the combined carrier to behave differently.

Single-line and interline options. BNSF contends that the combined carrier would be "incentivized to create as much density as possible on the new UP/NS single-line service routes by diverting traffic that currently moves under the BNSF/NS interline arrangement," and would have "both the ability and incentive" to "ensure that BNSF is not a competitive option for this traffic from a pricing and service perspective." BNSF-74, Vol. 1 at 211. Applicants disagree and expect that the combined carrier will price efficiently. To evaluate these contentions, it will be highly relevant to compare the pricing and growth strategies BNSF has deployed in situations where it has offered single-line service in competition with interline routings.

New facilities. Competition for new rail-served facilities is a form of head-to-head rail competition, and BNSF seeks trackage rights that would allow it to access not only existing NS intermodal facilities but also "any new intermodal facilities that are served by the subject lines." BNSF-74, Vol. 1 at 214. BNSF's documents will show how BNSF presently competes for new facilities, including in areas served by UP or NS. This will bear on whether that competition is likely to persist after the transaction and whether the relief BNSF seeks is warranted.

BNSF's requested conditions. BNSF seeks trackage rights over approximately 851 route miles of NS lines between Chicago, IL and Bethlehem, PA, *see* Sub-No. 33, BNSF-1 at 1, 24–25, and has asked the Board to require a neutral switching or terminal railroad serving BNSF- and UP-served facilities in the Gulf Coast, *see* BNSF-74, Vol. 1 at 172–73. The Board will have to evaluate whether those conditions are needed and whether they would remedy any harm. How BNSF prices and pursues growth in those markets bears on that inquiry. Applicants are entitled to test BNSF's request for relief against BNSF's own commercial strategies in the region in question.

During the November 13 conference, BNSF tried to brush away arguments about its own statements by asserting that relevance must be tied to the Application, rather than to BNSF's submissions. BNSF made a similar argument in its November 10 brief, relying on *Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R.*, FD 36836 (STB served July 25, 2025) (Decision No. 8), to assert that relevant information is only that which could "affect the outcome of a proceeding." BNSF-70 at 2. But BNSF misreads the *NPBL* decision. *NPBL* held that information is relevant when it "***might be able to*** affect the outcome of a proceeding," and reiterated that parties may obtain discovery on "any matter, not privileged, which is relevant to the subject matter involved in a proceeding." *NPBL*, slip op. at 3 (citation omitted) (emphasis added). The Board applied that "broad discovery standard" to compel production. *Id.* at 4.

NPBL also confirms that relevance "for purposes of discovery" turns on "the issues that have been ***raised in this proceeding***," not only those in the Application. *Id.* at 4 (emphasis added). By opposing the merger on the ground that it will harm competition and shippers—and will affect how shippers view BNSF's own pricing and offerings—BNSF has placed its own competitive position, pricing, and ability to serve customers at issue. *See generally* BNSF-74. Discovery on those subjects is highly relevant.

B. BNSF's documents will help establish the competitive baseline.

BNSF's pricing and growth strategy documents are independently relevant because they will assist in setting a baseline against which merger-related effects can be assessed. BNSF and its supporters have argued that the Proposed Transaction will result in rate increases and other harms. *See, e.g.*, BNSF-74, Vol. 1 at 4. Whether those effects in fact would result from the merger depends in part on what BNSF, UP's principal rail competitor in the West, would do absent the transaction. BNSF's ordinary course strategy documents will show whether BNSF itself plans to raise rates, how it sets rate levels and return thresholds, and how it intends to grow traffic in the absence of the Proposed Transaction. If BNSF plans to pursue price increases on its own, rate increases that BNSF or its shippers attribute to the merger may instead reflect ordinary behavior driven by service quality, input costs, or market conditions unrelated to the transaction.

The Board has recognized the value of this kind of evidence. As Decision No. 13 explains, ordinary course documents "reflect[] real-time business decisions and forecasts concerning the merging parties' operations, and views of past, present, and future market conditions," and may be "more probative than party advocacy, expert analysis, and self-serving statements." Decision No. 13 at 5–6 (quotation omitted). That reasoning applies with full force to the ordinary course documents of a principal competitor whose conduct informs the competitive landscape.

C. BNSF's documents will show how BNSF actually competes on price.

BNSF's pricing and growth strategy documents also will show how BNSF itself competes on price and whether competition is likely to constrain pricing if the transaction proceeds.

BNSF contends that "the real purpose of this transaction" is "acquiring market power" to maximize price. BNSF-74, Vol. 1 at 3. BNSF further argues that, absent conditions, the combined carrier "would have both the ability and incentive to divert existing BNSF/NS traffic to UP/NS and to ensure that BNSF is not a competitive option for this traffic from a pricing and service perspective." *Id.* at 211. But whether a combined UP-NS could profitably raise rates depends on whether rivals—including BNSF—have the ability and incentive to respond. BNSF's pricing and growth strategy documents will show how BNSF actually sets rates to win or retain traffic, including where it has lowered prices, offered incentives, or pursued growth in markets where it competes with UP or NS. Those documents bear on whether BNSF will remain a vigorous price competitor after the transaction—which goes to the central premise of BNSF's theory of harm.

The same documents will bear on whether BNSF and UP discipline each other's pricing and are likely to do so in the future. BNSF portrays UP as a carrier with a "strategy of maximizing price at every turn." BNSF-74, Vol. 1 at 66. BNSF's documents will show whether BNSF and UP

track, respond to, or set rates with reference to each other's rates. Evidence that the railroads have constrained each other's pricing bears on whether rail-to-rail competition will continue to discipline rates after the transaction. Those constraints run in both directions and cannot be assessed by examining only one side of the competitive relationship.

BNSF's documents also will show how BNSF has responded when rival railroads have improved their offerings, as in the wake of the CP/KCS merger. BNSF claims it will be harmed by the UP-NS merger, but its documents will show whether it suffered such harm in a similar situation just three years ago—or instead responded by competing harder (and, if not, why not).

In the final analysis, BNSF should not be permitted to place competition at the center of its opposition while declaring that how it competes on pricing and growth is off limits. Applicants are entitled to test BNSF's allegations against BNSF's records of how it actually prices and competes. Otherwise, the Board would be asked to evaluate BNSF's pricing and competition allegations without the contemporaneous evidence well-suited to confirm or refute them, leaving the record incomplete on the very issues BNSF has asked the Board to decide.

III. Criterion 11 Is Not Unduly Burdensome.

BNSF's November 10 brief argues that producing the documents Applicants seek would be unduly burdensome because BNSF "prices movements in tens of thousands of lane and commodity combinations," and pricing decisions are made "by dozens of commercial personnel." BNSF-70 at 3. BNSF appeared to drop that argument at the November 13 conference after Applicants emphasized that they do not seek individual price quotes or customer communications. To the extent BNSF attempts to revive this argument, Your Honor should reject it.

Criterion 11 will be applied only to the files of the limited number of custodians that BNSF has agreed or has been ordered to search. Currently, there are five such custodians, all in the C-suite or one level below it. *See* BNSF-70 at 1. BNSF has not shown that the number of documents relating to pricing and growth strategies in these custodians' files is likely to be disproportionate.

Contrary to BNSF's argument, Applicants' showings of relevance would not "make discoverable the pricing and strategy documents from every railroad, intermodal carrier, shipper, and trucker." BNSF-70 at 2. Applicants seek these documents from a Class I competitor that has elected to participate as a party, has made its own pricing competitiveness a centerpiece of its opposition, and seeks trackage rights and other conditions premised on its competitive position. *See supra* Section II. As to BNSF, the documents are relevant and should be produced.

IV. Conclusion

Applicants respectfully request that Your Honor order BNSF to apply Criterion 11 in its custodial searches and produce non-privileged materials on BNSF's pricing and growth strategies.

Respectfully submitted,

/s/ Laura Flahive Wu

Michael L. Rosenthal
Derek Ludwin
James J. O'Connell
Laura Flahive Wu
Michael M. Maya
Kevin M. Kelly
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

Christina B. Conlin
James B. Boles
Tonya W. Conley
Jennifer L. Galer
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

cc: All Parties of Record

Exhibit A

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

APPLICANTS' SECOND SET OF DISCOVERY REQUESTS TO BNSF RAILWAY COMPANY

RAYMOND A. ATKINS
CARRIE C. MAHAN
MATTHEW J. WARREN
ALLISON C. DAVIS
MARC A. KORMAN
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

MICHAEL L. ROSENTHAL
DEREK LUDWIN
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

June 1, 2026

Pursuant to 49 C.F.R. §§ 1114.21-.31, Union Pacific Railroad Company, Union Pacific Corporation, Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively "Applicants") request that BNSF Railway Company ("BNSF") respond to and produce Documents responsive to the following discovery requests in accordance with the Surface Transportation Board's rules and the definitions and instructions set forth below.

Responses should be served as soon as possible, and in no event later than June 16, 2026, unless otherwise agreed to by the parties. Please 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

1. "Applicants" means Union Pacific Railroad Company, Union Pacific Corporation, Norfolk Southern Corporation, and Norfolk Southern Railway Company.

2. "BNSF" means BNSF Railway Company.

3. "Communication" means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

4. "CSXT" or "CSX" means CSX Transportation Inc.

5. "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.

6. "KCT" means Kansas City Terminal Railway.

7. "Norfolk Southern" or "NS" means Norfolk Southern Corporation and Norfolk Southern Railway Company.

8. "PPU" means Peoria and Pekin Union Railway Company.

9. "Produce" means to make legible, complete, and exact copies of responsive Documents and send them by expedited delivery to the undersigned counsel.

10. "Proposed Transaction" means the proposed combination of NS and UP for which NS and UP are seeking STB approval in Finance Docket No. 36873.

11. "TRRA" means Terminal Railroad Association of St. Louis.

12. "TTX" means TTX Company.

13. "Union Pacific" or "UP" means Union Pacific Corporation and Union Pacific Railroad Company.

14. "You" and "Your" refer to BNSF and its predecessors and successors in interest, as well as its present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on its behalf.

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. If any information or Document is withheld on the ground that it is privileged or otherwise not discoverable: (a) identify the type of Document (*e.g.*, letter, memorandum, report, chart); identify the author, each addressee and each recipient; state the number of pages, title and date of the Document, and (b) state the basis for the claim that it is privileged or otherwise not discoverable.

4. To the extent materials called for herein are confidential, Applicants will treat them in accordance with the Protective Order entered in this proceeding in the Decision served August 5, 2025.

5. Unless otherwise specified, these requests cover the period January 1, 2019 and to the present.

6. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

REQUESTS[1]

5. Produce all Documents and information that You produce or have previously produced in response to discovery requests submitted by other participants in this proceeding.

6. Produce all Documents and Communications relating to the Proposed Transaction that You have sent to, received from, or submitted to any persons other than Applicants, including but not limited to customers, shippers, industry groups, labor organizations, labor officials, government agencies or officials, other rail carriers, public officials, ports, rail industry suppliers, the Surface Transportation Board, the United States Department of Justice, the United States Department of Transportation, the Federal Railroad Administration, the governor of any state, the attorney general of any state, the White House, or any other federal or state government agency.

7. Produce all Documents concerning or consisting of any talking points or prepared messaging relating to the Proposed Transaction that You used for communications to persons other than Applicants, including but not limited to customers, shippers, industry groups, labor organizations, labor officials, government agencies or officials, other rail carriers, public officials, ports, rail industry suppliers, the Surface Transportation Board, the United States Department of Justice, the United States Department of Transportation, the

[1] The numbering of Applicants' discovery requests is continuous across sets of discovery requests served on the same party.

Federal Railroad Administration, the governor of any state, the attorney general of any state, the White House, or any other federal or state government agency.

8. Identify all individuals and/or entities from whom You have sought, solicited, or discussed a potential comment, letter, or statement of opposition relating to the Proposed Transaction.

9. Produce all Documents and Communications relating to any discounts, contract extensions, or any other economic value or concession requested or offered in connection with or related to any discussion with a customer or stakeholder related to its opposition to or non-support for the Proposed Transaction.

10. Produce all Documents and Communications that You have created or received from January 1, 2019, to the present relating to potential railroad mergers, acquisitions, or other control transactions (collectively, "mergers") involving BNSF, CSX, NS or UP, or discussing railroad mergers or alternatives to railroad mergers generally, including any mergers between BNSF, CSX, NS, or UP and any other Class I railroads and any mergers You have considered executing with BNSF, CSX, NS, or UP.

11. Produce all Documents and Communications relating to competition in the railroad industry, consolidation in the railroad industry, Your position in the railroad industry, UP's or NS's position in the railroad industry, Your growth or strategies for growth, and UP's or NS's growth or strategies for growth.

12. Produce all Documents and Communications relating to the Proposed Transaction's potential impacts on Your, the Applicants', or any other rail carrier's

rates, routes, services, revenues, costs, expenses, operations, investments, traffic volumes, service offerings, markets, market shares, growth, financial viability, competitive position, relationships with other railroads, or relationships with customers.

13. Produce all Documents and Communications relating to the Potential Transaction's potential impacts on Class II or Class III railroads, including but not limited to KCT, PPU, TRRA, or TTX.

14. Produce all Documents and Communications relating to the Proposed Transaction's potential or projected public benefits, diversions of railroad or truck traffic, operating efficiencies, or cost savings; the Proposed Transaction's potential or projected impacts on railroad or truck competition, You or other Class I railroads, short line railroads, or ports; and the potential or projected impacts of the Applicants' proposed Committed Gateway Pricing program.

15. Produce all Documents and Communications relating to potential requests for conditions or responsive applications relating to the Proposed Transaction.

16. Produce all Documents and Communications relating to any actual or potential joint ventures, alliances, partnerships, initiatives, or other forms of cooperative arrangements between You and any other Class I railroad, regardless of whether such arrangements were implemented.

17. Produce all Documents and Communications relating to the Proposed Transaction's impact or potential impact on interchange arrangements; interline or

joint line rates, services, or routes; interline or joint line routing options;, or cooperation with UP, NS, or other rail carriers, including but not limited to potential changes in interchange volumes, gateway usage, or service offerings.

18. Produce system-wide car and, where applicable, container, movement event data for all Your traffic. Car event data should be sufficient to identify all events and the sequence of cars within a train for each applicable event. Container event data should be sufficient to identify the car conveying the container for each applicable event and all events, including in-gate, out-gate, ramp, and deramp events.

19. Produce system-wide train event data for all Your trains.

20. Produce data relating to reciprocal switching for the period from January 1, 2019, through December 31, 2025, including but not limited to car-level movement records, switch lists, interchange logs, line-segment level usage data, and any other records or communications reflecting reciprocal switching arrangements or traffic. To the extent not otherwise encompassed by this request, Your response should include: (1) waybill date, number, and identifiers associated with the switch operation; (2) the switching locations where the actual car switching between roads occur (FSAC, SPLC, Rule 260 junction code, station name, and state/province); (3) local customer information where the switched cars are picked-up or delivered in the switching terminal area (CIF, Parent Customer Name, FSAC, SPLC, station name, and state/province); (4) payment information for that switch; and (5) date of operation.

21. Produce data sufficient to show all interchange volumes with other rail carriers, broken down by line, location, and counterparty, together with any associated payments, settlements, or charges between carriers for haulage, switching, or other car handling (including waybill identifiers, car initials and numbers, dates and times, service type, payment types, and amounts), for the period from January 1, 2019, through December 31, 2025.

22. Produce all studies, analyses, or presentations from the past ten years created by You relating to the 1997 I-5 Proportional Rate Agreement, including but not limited to any studies or analyses relating to competition in the geographic areas covered by the 1997 I-5 Proportional Rate Agreement after the agreement was entered into, any studies or analyses relating to your profits or losses on routes in the geographic areas covered by the 1997 I-5 Proportional Rate Agreement, and any studies or analyses relating to Your compliance with the terms of the 1997 I-5 Proportional Rate Agreement.

23. Produce Documents sufficient to show how You determine the rates that You establish for rail transportation for each route, commodity, and customer, including but not limited to any pricing models, pricing systems, or internal pricing formulas You have utilized.

24. Produce all Documents relating to Your calculations of movement-related costs for the rail transportation services You provide, including detailed breakdowns of cost (such as by route, commodity, car type, and customer) in documents and/or a computer-readable database or electronic spreadsheet.

25. Produce all Documents and Communications relating to Your policies or strategies for the pricing of Your rail transportation services, including without limitation the level of returns that You require when pricing rail traffic.

26. Produce all Documents and Communications relating to Your strategies for growing Your rail traffic.

27. Produce all Documents and Communications relating to Your strategies for obtaining or maintaining business from customers with multiple facilities on Your rail lines, including with respect to pricing, bundling, tying, or linking rates or services, and providing discounts or otherwise reducing fees for customers that have multiple facilities.

28. Produce all Documents and Communications relating to instances in which You made offers (such as bids on Request for Proposals) to customers opening new facilities that could be served by a rail carrier.

29. Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss Your plans or strategies for retaining or increasing the revenues obtained from rail customers (whether by growing traffic, increasing prices, or otherwise).

30. Produce all Documents and Communications that concern, discuss, or support any aspect of Your claims in the following publications:

a. "The UP-NS Merger: Still a Monopoly in the Making," available at https://www.bnsf.com/ship-with-bnsf/preserve-rail-competition/bnsf-flyer-the-up-ns-merger-a-monoply-in-the-making.pdf;

b. "The Case Against the UP-NS Merger: Preserve Competition," available at https://www.bnsf.com/ship-with-bnsf/preserve-rail-competition/index.html#preserve-competition;

c. "The Case Against the UP-NS Merger: Protect the Supply Chain," available at https://www.bnsf.com/ship-with-bnsf/preserve-rail-competition/index.html#protect-supply-chain;

d. "Opposing the UP-NS Merger How to Make Your Voice Heard," available at https://www.bnsf.com/ship-with-bnsf/preserve-rail-competition/page2.html, including the section regarding "What to Include in Your Letter"; and

e. "Costly, Unnecessary, Anti-Competitive and Bad for the U.S. Economy," available at https://www.bnsf.com/bnsf-resources/news-media/customer-notifications/pdf/2025-09-29%20BNSF%20Merger%20Position.pdf.

Respectfully submitted,

/s/ Raymond A. Atkins
RAYMOND A. ATKINS
CARRIE C. MAHAN
MATTHEW J. WARREN
ALLISON C. DAVIS
MARC A. KORMAN
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

/s/ Laura Flahive Wu
MICHAEL L. ROSENTHAL
DEREK LUDWIN
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

June 1, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 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/ Molly Brown

Exhibit B

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION, ET AL.
—CONTROL—
NORFOLK SOUTHERN CORPORATION, ET AL.

BNSF RAILWAY COMPANY'S SECOND SET OF DISCOVERY REQUESTS TO UNION PACIFIC AND NORFOLK SOUTHERN

Pursuant to 49 C.F.R. Part 1114, BNSF Railway Company ("BNSF") requests that Applicants respond to and produce documents responsive to the following discovery requests to Steptoe LLP, 1330 Connecticut Avenue, NW Washington, DC 20036, consistent with the Discovery Guidelines and no later than January 6, 2026.

DEFINITIONS AND INSTRUCTIONS

Unless otherwise stated, BNSF incorporates by reference its Definitions and Instructions contained in BNSF's First Set of Discovery Requests to Union Pacific and Norfolk Southern, dated October 1, 2025.

1. "Application" refers to the Railroad Control Application filed by Applicants on December 19, 2025, and all exhibits thereto.

2. "Merger Agreement" means the Agreement and Plan of Merger, dated July 28, 2025 by and among Norfolk Southern, Union Pacific, Ruby Merger Sub 1 Corporation, and Ruby Merger Sub 2 LLC, and any amendments or supplements thereto.

DOCUMENT REQUESTS

1. Documents and Communications received from any banker, economist, or financial advisor that relate to the Proposed Transaction, competition in the rail industry, consolidation in the rail industry, UP's position in the rail industry, NS's position in the rail industry, UP's growth, NS's growth, and/or alternatives to the Proposed Transaction. For the avoidance of doubt, this request seeks, among other things, all studies, surveys, analyses, and reports prepared by investment bankers, consultants, economists, or other third-party advisors in connection with the Proposed Transaction for any officer or director of UP or NS for the purpose of evaluating or analyzing market shares, competition, markets, potential sales growth or expansion into product or geographic markets.

2. All Documents and Communications (including agendas, minutes, presentations, reports, memoranda, recommendations, actions, or pre-read materials) concerning UP and NS's Board of Director Meetings, including all committees and subcommittees, concerning the Proposed Transaction, competition in the rail industry, consolidation in the rail industry, UP's position in the rail industry, NS's position in the rail industry, UP's growth, NS's growth, and/or alternatives to the Proposed Transaction.

3. All pages and entries (*e.g.*, notes, lists, etc.) in Jim Vena's black notebook, as discussed by Jim Vena in his interview with Bill Stephens of Trains Magazine (https://www.trains.com/pro/freight/class-i/inside-the-merger-mind-of-union-pacific-ceo-jim-vena/), that relate to the Proposed Transaction, competition in the rail

industry, consolidation in the rail industry, UP's position in the rail industry, NS's position in the rail industry, UP's growth, NS's growth, and/or alternatives to the Proposed Transaction.

4. All pages and entries (e.g., notes, lists, etc.) in Jennifer Hamann's black folder, as discussed by Jennifer Hamann during the Q2 2025 NS earnings call on July 29, 2025, that relate to the Proposed Transaction, competition in the rail industry, consolidation in the rail industry, UP's position in the rail industry, NS's position in the rail industry, UP's growth, NS's growth, and/or alternatives to the Proposed Transaction.

5. All Documents and Communications that concern, discuss, or support any aspect of UP's claim, as stated in its July 29, 2025 press release (https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729), that "[UP] and [NS] shareholders are expected to realize significant value from the transaction, including more than $30 billion in potential value creation through the expected achievement of approximately $2.75 billion in annualized synergy opportunity."

6. All Documents and Communications, including business plans, market studies, operational analyses, forecasts, modeling outputs, and internal reports related to or supporting UP and NS's statements during the December 19, 2025 analyst call that UP and NS expect up to $2 billion in net revenue EBITDA synergies and "no longer expect significant concessions due to competition enhancements." For the avoidance of doubt, this request seeks, among other things, information regarding

the approximately $750 million in concessions that UP and NS no longer intend to offer.

7. All Documents and Communications, including business plans, market studies, operational analyses, forecasts, modeling outputs, and internal reports related to or supporting Jim Vena's statements during UP's earnings call on October 24, 2025 that:

a. The Proposed Transaction will "remove 1,000 trucks of rail-to-rail or our portion of it in Chicago and other places that today runs on the highway instead of going rail to rail."

b. UP is "absolutely sure we can grow the business because of the watershed area of the United States that's underserved and a railroad that is seamless."

c. UP will provide 2-to-1 customers access "to another railroad to give them the optionality that they had before so that nobody in this merger loses anything."

d. The Proposed Transaction will not "remove 300 lanes of traffic."

e. The Proposed Transaction will "have more options for our customers, not less."

8. All Documents and Communications concerning the Committed Gateway Pricing program as defined and discussed in the Application.

9. All Documents and Communications concerning UP and NS's commitment to keeping all existing gateways open for eligible traffic on commercially reasonable terms, as discussed in the Application.

10. All Documents and Communications concerning UP and NS's commitment to divest portions of their shares in the Peoria & Pekin Union Railway Company ("PPU"), Terminal Railroad Association of St. Louis ("TRRA"), and TTX Company ("TTX").

11. System-wide manifest, intermodal, and first mile/last mile performance data, as referenced in Table 2 of the Verified Statement of Jim Vena in the Application, from 2019 to present at the most disaggregated level maintained, at least sufficient to separately identify interline and single service and at least on a quarterly basis.

12. All Documents and Communications sufficient to show the practical operating capacity (defined as average daily carloads/tonnage) of all NS facilities located within eastern Pennsylvania from 2019 to present.

13. Documents sufficient to show the volume, origin, and destination of all UP owned or managed containerized intermodal traffic that uses NS or CSX trackage or facilities within 200 miles of Harrisburg, Pennsylvania from 2019 to present. This request includes Documents concerning interchange, routing, rail ramp, location at origin and destination, beneficial cargo owner and commodity, and throughput for the specified traffic type.

14. Documents sufficient to show the volume, origin, and destination of all containerized intermodal traffic that was interchanged between UP and CSX within 20 miles of Chambersburg, Pennsylvania from 2019 to present. This request includes Documents concerning interchange agreements, routing protocols, and throughput data for the specified traffic type.

15. For each shipment handled by UP or NS in 2023 or 2024, data sufficient to identify actual transit time, original trip plan, and on-time performance (i.e., trip plan or OETA compliance) for all shipments.

16. Documents showing the blocking plan for each shipment handled by UP or NS in 2023 or 2024.

17. Documents and Communication concerning adherence to the blocking plan provided in response to the immediately preceding Request No. 16 for 2023 through 2024 on at least a monthly basis, disaggregated by yard location and switch type (e.g., interchange, block swap, etc.).

18. For each track segment on the UP and NS systems, at a subdivision or smaller level, all Documents sufficient to identify current track capacity, including maximum train per day track capacity.

19. For each segment on the UP and NS systems, at a subdivision or smaller level, Documents sufficient to identify track utilization, including but not limited to average and peak trains per day on at least a monthly basis from 2023 through 2024.

20. For each yard on the UP and NS systems, Documents sufficient to identify current yard capacity, including but not limited to the number and length of

yard tracks by type, maximum fluid car capacity, and maximum switch capacity per day by type (e.g., classification, block swaps, etc.).

21. For each yard on the UP and NS systems, Documents sufficient to identify yard utilization, including but not limited to daily average and peak cars in yard per day, and daily average and peak switches by type (e.g., block swaps, industry, etc.) on at least a monthly basis from 2023 through 2024.

22. For each intermodal terminal on the UP and NS systems, Documents sufficient to identify current terminal capacity, including maximum lifts per day.

23. For each intermodal terminal on the UP and NS systems, Documents sufficient to identify terminal utilization, including average lift per day on at least a monthly basis from 2023 through 2024.

24. UP and NS system-wide train plans and train schedules on at least a monthly basis for 2023 through 2024, including Documents sufficient to identify service design analysis supporting the creation of these schedules, including but not limited to input and output of MultiRail modeling runs.

25. Documents and Communications showing UP and NS planned and actual train operations, including but not limited to schedule adherence for planned train starts on at least a monthly basis.

26. Documents concerning UP and NS interchange performance metrics, including by interchange location and partner carrier, total loaded and total empty interchanged cars placed and received, and the percentage of car interchanges

performed according to plan/schedule on at least a monthly basis for 2023 through 2024.

27. Documents and internal analyses from 2019 through 2024 concerning UP's or NS's potential or planned changes or improvements to existing interchange operations and/or potential or planned capital investment related to expanding interchange capacity or improving interchange operations.

28. Documents sufficient to identify all UP or NS shipments from 2023 through 2024 moving under contracts or pricing authorities with volume incentives, including minimum volume commitments or more variable pricing tiers that depend in any way on the level or share of traffic transported under the contract.

29. Documents sufficient to show all transitional service agreements or comparable arrangements that Applicants will or may provide to any stakeholder, the reason or need for any such service, who among Applicants will provide such service, and the duration of any such arrangement.

30. A personnel-level organizational chart or comparable document showing functionally equivalent positions, departments, and other organizational units at UP and NS before and after the Proposed Transaction is completed.

31. An entity-level organizational chart or comparable document showing the structure of UP and NS entities before and after the Proposed Transaction is completed.

32. Documents and Communications sufficient to identify and explain any formal or informal terms or conditions of the Proposed Transaction that are not reflected in the Merger Agreement or schedules or exhibits thereto.

33. All proposed and executed modifications, addendums, or amendments to the Merger Agreement.

34. Communications between UP and NS concerning the Proposed Transaction before and after the execution of the Merger Agreement related to integration planning, the Proposed Transaction's effect on competition in the rail industry, the downstream effects of the Proposed Transaction, shipper / customer reactions and feedback to the Proposed Transaction, and/or potential alternatives to the Proposed Transaction.

35. Documents and Communications concerning any benefits that may result from the Proposed Transaction—including cost savings, economies of scale, new services, rail service improvements, software improvements, data collection improvements, and/or other efficiencies or synergies.

36. Documents or Communications concerning any risk that may result from the Proposed Transaction—including risks related to costs, services, interchanges, competition, or personnel. This request includes any audit committee or auditor materials summarizing, evaluating, categorizing, or quantifying such risks.

37. Documents and Communications concerning the Proposed Transaction's impact on UP's ability to provide adequate and efficient rail services to shippers and the public, including plans to eliminate or reduce any existing services by UP or NS.

38. Documents and Communications concerning the impact of the Proposed Transaction on UP's ability to enter transportation contracts with any shipper, including shippers that would be considered captive shippers following the Proposed Transaction.

39. Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on PPU (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of PPU.

40. Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on TRRA (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of TRRA.

41. Documents and Communications concerning any business plans, agreements, or internal discussions by UP or NS concerning the effect of the Proposed Transaction, consolidation in the rail industry, or rail industry competition on TTX (as defined in the Application). This includes, but is not limited to, studies, analyses, reports, or valuations of TTX.

42. Documents that discuss quality surveys or satisfaction surveys, including interviews and focus groups, taken or conducted by UP or NS customers

concerning the Proposed Transaction, along with any studies performed or summaries prepared by UP or NS that are based on such surveys.

43. All studies, surveys, analyses, confidential information memoranda, and reports prepared by or for any officers, directors, or management for the purpose of evaluating or analyzing the Proposed Transaction with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets.

44. Documents and Communications that concern any talking points and prepared messaging used for outreach to customers, labor organizations, labor officials, government agencies or officials, and other stakeholders.

45. Documents and Communications from customers, labor organizations, labor officials, government agencies or officials, and other stakeholders that have expressed or communicated concern to UP or NS (or voiced objection to UP or NS) about the Proposed Transaction.

46. Any joint-defense and/or common interest agreements between UP and NS that relate to the Proposed Transaction.

47. All internal analyses and internal communications, as well as communications between UP and NS, regarding the claims and contentions in at pages 2-3 of the Notice of Intent that:

a. The Proposed Transaction will "transform the U.S. supply chain."

b. The Proposed Transaction will "unleash the industrial strength of American manufacturing."

c. The Proposed Transaction will "create new sources of economic growth and workforce opportunity."

d. The Proposed Transaction will create "more accessible, sustainable, and lower-cost supply chain for manufacturers and consumers."

e. The Proposed Transaction will "drive additional employment opportunities in towns and cities across the combined rail network."

f. The Proposed Transaction will "generate economic growth in communities across the United States."

g. "[T]he combined company will compete more effectively with Canadian railroads to win back U.S. freight volume and American jobs."

48. Documents, Communications, and internal analyses concerning the investments that the merged carrier will undertake as a result of the Proposed Transaction and that would not have occurred absent the Proposed Transaction.

49. Documents, Communications, and internal analyses concerning the investments UP and NS separately planned to make before discussions of the Proposed Transaction but will not undertake because of the Proposed Transaction.

50. Documents, Communications, and internal analyses showing the set of all tracks that will be abandoned or added as a result of the Proposed Transaction.

51. Documents, internal analyses, and datasets that include descriptions and analyses of the truck and barge alternatives currently available to each commodity shipped on UP or NS, by route or corridor from 2019 to present.

52. Documents listing all complaints that UP or NS have made or received regarding failure of other rail carriers to interline with them from 2019 to present, including pursuant to stipulated remedies from prior rail transactions.

53. Documents and Communications concerning any business plans, agreements, or internal discussions by UP concerning the effect of the Proposed Transaction on the UMAX Domestic Container Program. This includes studies, analyses, reports, data, ownership shares, governance structure, or valuations of the UMAX Domestic Container Program.

54. Documents and internal analyses on all facilities closed by UP or NS from 2019 to present, including internal analyses on how the closure of these facilities affect prices and costs.

55. Documents and internal analyses concerning UP or NS information on pricing, quality, and cost efficiencies related to interline arrangements from 2019 to present, as well as Documents and Communications sufficient to show how the Proposed Transaction would affect these interline arrangements.

56. Documents and internal analyses sufficient to show how UP and NS determine prices for each route and customer, to include any pricing models, pricing systems, and internal pricing formulas from 2019 to present.

57. Documents and internal analyses concerning UP and NS internal cost calculations, including detailed breakdowns of cost (such as by route, commodity, car, and customer) in documents and/or a computer-readable database or electronic spreadsheet from 2019 to present.

58. Documents and internal analyses sufficient to show UP and NS customer "wins" and "losses," including information on shippers as well as the carriers to whom UP and NS have lost or won business to/from—in a computer readable database or electronic spreadsheet—from 2019 to present.

59. Documents and internal analyses related to instances in which UP or NS made offers (such as bids on Request for Proposals) to customers opening new facilities that could be served by a rail carrier.

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60. Identify all consultants and advisors UP has engaged, retained, and/or received services from in connection with (i) the Proposed Transaction, (ii) evaluation of alternatives to the Proposed Transaction, and/or (iii) the implementation of the Proposed Transaction. Please also provide a short description of the general role for each (e.g., investment banking services).

61. Identify the top ten (10) UP customers with the greatest tonnage of freight that originated, terminated, or passed through a location within a 20-mile

radius of Harrisburg, Pennsylvania via NS routes, from 2019 to present. For each customer, please state the specific tonnage and the general commodity type.

62. Identify all UP and NS personnel and advisors with responsibility for evaluating, analyzing, and developing the Proposed Transaction. Please also provide a short description of the general role for each (e.g., managed due diligence related to Chicago interchanges).

63. Identify all UP and NS personnel and advisors with responsibility for negotiating the Proposed Transaction.

64. Identify all UP and NS personnel and advisors with responsibility for post-signing shipper or stakeholder outreach. Please also provide a short description of the general role for each (e.g., responsible for outreach to shippers in chemical sector).

65. Identify all UP and NS personnel and advisors with responsibility for integration planning and implementation for the Proposed Transaction. Please also provide a short description of the general role for each.

Respectfully submitted,

/s/ *Daniel Donovan*

Peter W. Denton
Anthony J. LaRocca
Timothy J. Strafford
Steptoe LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-3000

Daniel Donovan
Matthew Reilly
Richard Cunningham
T.J. McCarrick
McClain Thompson
Kirkland & Ellis LLP
1301 Pennsylvania Ave., NW
Washington, DC 20004
(202) 389-5000

Counsel for BNSF Railway Company

Adam Weiskittel
Courtney B. Estes
Tyler R. White
BNSF Railway Company
2500 Lou Menk Dr.
Fort Worth, TX 76131
(817) 352-2383

December 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2025, I have caused the foregoing *BNSF Railway Company's Second Set of Discovery Requests to Union Pacific and Norfolk Southern* to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ *Onika K. Williams*
Onika K. Williams
Attorney for *BNSF Railway Company*

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of November, 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 J. Soulikias.

/s/ Jamie Dominique U. Magcale
Jamie Dominique U. Magcale