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Office of Chief Counsel
November 23, 2026
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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:

Applicants submit the following letter regarding the potential November 25, 2026, discovery conference in the above-listed proceeding.

Applicants do not have any items to raise for discussion at the November 25, 2026, conference and have no objection to Your Honor canceling the conference. For Your Honor's convenience, below is a brief status update on certain pending discovery matters.

I. Pending Discovery Matters

A. Brian S. Smith's Motions to Compel NS to Produce Certain Documents

On November 5, 2026, Brian S. Smith moved to compel NS to produce four categories of materials related to NS's communications structures (*i.e.*, the towers and other structures on which NS places radio equipment). On November 10, NS filed a response opposing the motion because the discovery requests are not relevant to the Proposed Transaction and are burdensome.

At the November 13, 2026, discovery conference, Mr. Smith requested that his motion be deferred. In Decision No. 48, Your Honor held the motion in abeyance.

Separately, on November 19, 2026, Mr. Smith filed a second letter motion to compel. On November 23, 2026, NS filed a response opposing the motion.

By agreement between Norfolk Southern and Mr. Smith, Mr. Smith's November 19 letter brief is to be carried over to the December 11, 2026 conference, so the November 25 conference is not needed for it. Mr. Smith's requests remain pending; none is withdrawn or narrowed.

B. Applicants' Motion to Compel BNSF to Adopt Applicants' Proposed Custodial Search Parameters (UP-128/NS-122)

On November 5, 2026, Applicants moved to compel BNSF to conduct its custodial document searches using Applicants' proposed parameters. The motion explained that BNSF's proposed search parameters are deficient because they omit custodians with unique, relevant documents, including former executives; apply an unduly narrow date range to requests seeking ordinary course documents; and rely on insufficient responsiveness criteria to identify documents concerning the impacts of the Proposed Transaction. The motion also sought an order requiring BNSF to conduct an adequate search for non-privileged, non-custodial documents responsive to Applicants' First Set of Discovery Requests. On November 10, BNSF filed a response opposing the motion.

In Decision No. 48, Your Honor granted the motion as to additional custodian Matt Igoe; denied it as moot as to Matt Garland because BNSF agreed to search Mr. Garland's documents; denied it as to the request for an adequate non-custodial search because BNSF will produce a privilege log, without prejudice to Applicants' ability to contest the contents of that log once produced; and held the remainder in abeyance, including the remaining additional custodians and the time frame and relevance of Applicants' pricing and growth strategy requests, on which Your Honor ordered supplemental briefing.

On November 23, 2026, Applicants submitted their supplemental brief (UP-135/NS-131), which explains that BNSF's pricing and growth strategy documents are highly relevant. BNSF's supplemental brief is due by Tuesday, November 24, 2026, at 6:00 p.m. ET.

In Applicants' view, the relevance of BNSF's pricing and growth strategy documents may be decided on the papers following submission of BNSF's November 24 supplemental brief, without the need for further argument.

Respectfully submitted,

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cc: All Parties of Record

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