November 23, 2026

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

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ENTERED
Office of Chief Counsel
November 23, 2026
Part of
Public Record

BNSF-76/CPKC-83/CSXT-51

Re: STB Docket No. FD 36873 – Issues for Resolution at November 25 Conference

Dear Judge Soulikias:

BNSF, CPKC, and CSXT write regarding the agenda for the November 25 conference.

I. UP's Supplemental Motion to Compel BNSF's Pricing and Growth Strategies

UP moved to compel BNSF to produce seven years of pricing and growth strategies. UP-128/NS-122. BNSF opposed the motion. BNSF-70. At the last hearing, UP raised new relevance arguments in support of its motion. Your Honor ordered supplemental briefing on the relevance of BNSF's pricing and growth strategies. Decision No. 48 at 10. UP filed its supplemental brief this afternoon. UP-135/NS-131. BNSF will file its supplemental opposition tomorrow afternoon. In that opposition, BNSF will show that UP's requests remain overbroad, irrelevant, and unprecedented. And even if the discovery had some relevance (which UP has failed to show after two attempts), UP's overbroad and intrusive requests raise undue burden and retaliation concerns.

Separately, UP had asked that BNSF search the custodial file of Zak Andersen, BNSF's Chief Communications Officer. BNSF opposed that search because of relevance, burden, and retaliation concerns. BNSF-70 at 5. Your Honor deferred consideration of whether BNSF should search Andersen's files until BNSF moved for a protective order regarding a parallel UP request to depose Andersen. Decision No. 48 at 9. Then, last week, UP withdrew its notice of Andersen's deposition. Because UP withdrew the notice, BNSF did not move for a protective order on the deposition. Because UP is not pursuing Andersen's deposition at this time, BNSF's arguments against searching Andersen's custodial file are even stronger today. And to the extent that UP chooses to later renew requests related to Andersen, any such issues can be further briefed and addressed at that later time.

II. Brian Smith's Letter Brief on Discovery Disputes.

On November 19, Brian Smith renewed requests concerning NS's communication infrastructure and railroad bridges. B. Smith Ltr. at 1-5 (Nov. 19, 2026). NS opposes the renewed requests. NS-130.

LIST OF ATTENDEES

A. BNSF

1. Daniel Donovan
2. McClain Thompson

B. CSXT

1. Eric Enson
2. Luke van Houwelingen
3. Eric Fanchiang

C. CPKC

1. Joseph J. Matelis
2. David L. Meyer
3. Noah P. M. Stern

D. Brian S. Smith

Based on recent hearings:

A. Union Pacific

1. Mike Maya
2. Laura Flahive Wu
3. Kevin Kelly

B. Norfolk Southern

1. Matthew Warren
2. Marc Korman

Respectfully,

/s/ Dan Donovan
Daniel T. Donovan, P.C.
KIRKLAND & ELLIS LLP
Counsel for BNSF Railway Company

/s/ Joseph J. Matelis
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SULLIVAN & CROMWELL LLP
Counsel for CPKC

/s/ Eric Enson
Eric Enson
CROWELL & MORING LLP
Counsel for CSXT

CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Onika Williams
Attorney for BNSF Railway Company
November 23, 2026