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January 9, 2026
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Public Record

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

BNSF RAILWAY COMPANY'S MOTION TO COMPEL

INTRODUCTION

UP and NS seek approval of a merger that they claim “will shape the next hundred years of American railroading.” App. Vol. 1 at 309. They argue that their “unprecedented” transaction will “transform the nation’s supply chain.” *Id.* at 13–14. The merger, they say, “creates a ripple effect that lifts everyone.” *Id.* at 304.

Others disagree. Others believe the merger will create an industry behemoth that would be able to exert market power against shippers, workers, and competing railroads in many harmful ways. Perhaps the only point of agreement is that, if the proposed transaction proceeds, it will irreversibly shape American railroading for decades.

Despite the stakes, UP and NS want exemptions from the most basic discovery obligations. UP and NS have not provided basic information that stakeholders and the Board need to test UP and NS’s contentions: their board materials, banker

presentations, and relevant internal emails. In other words, UP and NS are blocking efforts to see what they actually believe and discuss internally: whether the merger will hurt competition by reducing service or leading to higher rates for shippers; whether the executive teams actually believe the merger will enhance competition; where the integration could go awry and cause disruptions; and whether the purported benefits are achievable at all, or alternatively, achievable absent a merger.

To date, UP has been at war with its own positions. In the CP/KCS merger, UP argued that an end-to-end merger could still lead to foreclosure and harm competition. *See* UP Comments, V.S. Salop, paras. 32-51, 98, Feb. 28, 2022, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500. Now that it wants to merge with NS, UP sheds those principled positions. The contradictions extend to discovery, too. In the CP/KCS merger, UP sought communications from the applicants, as well as documents provided to KCS by CP to persuade the KCS board; studies or analyses evaluating the impacts of the CP/KCS combination; and studies relied on by KCS to evaluate the merger. *See* Ex. 1 (UP's First Set of Disc. Reqs. To KCS, *Canadian Pacific Railway—Control—Kansas City Southern*, FD Docket No. 36500 (Aug. 19, 2021)).

Here, UP and NS take the opposite approach. Their efforts to block basic discovery would be unacceptable in any contested merger—or any business litigation in any forum. But it is particularly indefensible when the merging parties claim they will change the industry for the next hundred years. Too much is at stake to let UP and NS shield their internal, candid assessments and conversations from other

parties and the Board. UP and NS should be compelled to produce this basic information.

* * * * *

UP and NS had more than five months to work toward meeting their discovery obligations. They chose not to do so and, consequently, they are far behind. Other stakeholders should not bear the consequences of that failure. Substantial discovery remains outstanding and will now need to be expedited before depositions can begin. The parties will need to complete depositions before stakeholders' merits comments are due.

Despite months to prepare, UP and NS have collectively produced just 1,653 documents. Much of UP and NS's productions to date concern lease agreements and contracts with regional or short line railroads—not the core materials that are needed to test the contentions in the Application. They have neither provided a full and complete copy of the merger agreement, nor have they produced board materials or other internal assessments from their investment bankers and financial advisors. UP and NS have yet to produce a single email. They refuse to answer whether they have **collected** a single email. They have not identified a single custodial or non-custodial source they are searching. There are other data issues, too. UP and NS still have not provided **92 missing** workpapers and intermediate files. The failure to provide this data impairs other stakeholders and the Board from beginning their assessments.

In short: substantial discovery work remains. UP and NS have simply not done their job—they have stalled, stonewalled, and deferred. That is not only unfair, but it is not a process that will permit the parties to exercise their rights to provide comments to the Board and for the Board to make an informed decision. A longer schedule is needed so that UP and NS can catch up with their discovery obligations and so that other stakeholders have time to review those documents before depositions.

Accordingly, BNSF brings this motion to set a series of interim discovery deadlines to permit the development of a fulsome record. BNSF asks the Board to compel UP and NS to produce board materials, banker materials, and relevant emails—and adjust any schedule to account for the significant catch-up work that UP and NS need to do.

BACKGROUND¹

BNSF and other railroads have been trying for months to move discovery forward. Two months before UP and NS filed the Application, BNSF served its first set of discovery requests. Ex. 2 (BNSF's First Set of Disc. Reqs. To UP & NS (Oct. 1, 2025)) at 7-11. BNSF requested that UP and NS produce, among other things:

- Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b)

¹ The parties are discussing proposed procedural guidelines for the discovery process, including expedited letter briefs for discovery disputes. BNSF favors letter briefs on discovery issues. Because the discovery guidelines are not yet agreed or approved, however, BNSF makes this initial request as a motion, consistent with the Board's default rules.

operation integration, and (c) the operation of jointly owned companies.

- Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented.
- Documents in UP and NS's possession (including any strategy plans or competitive assessments) that show or concern the impact of the on proposed merger on synergies, competition, traffic diversions, rail service, rail safety, employment, passenger or commuter service, rates for rail transportation, or proposed gateway commitments.
- Studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.
- Studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

These requests targeted core materials that will help develop a fulsome record.

Responsive documents would include board materials, materials from bankers or financial advisors, and email communications regarding the proposed merger and its competitive effects.

On October 16, 2025, UP and NS served objections to BNSF's First Set of Discovery Requests. Ex. 3 (UP's Resps. & Objs. To BNSF's First Set of Disc. Reqs.(Oct. 16, 2025)); Ex. 4 (NS's Resps. & Objs. To BNSF's First Set of Disc. Reqs. (Oct. 16, 2025)). On November 12, 2025, BNSF sent letters to UP and NS regarding their objections and production to date, noting that UP and NS had produced no emails, board materials, or internal analyses of the merger and its expected effects. Ex. 5 (Letter M. Thompson to M. Rosenthal (Nov. 12, 2025)); Ex. 6 (Letter M.

Thompson to M. Warren (Nov. 12, 2025)). UP and NS waited nearly a month to substantively respond to BNSF's efforts to push discovery forward. They replied on December 5, 2025 that "widespread email, text message, and chat collection is not proportional to the needs of this proceeding" and that it was unnecessary to identify executives and consultants who were involved in negotiating the merger. Ex. 7 (Letter K. Kelly to M. Thompson (Dec. 5, 2025)); Ex. 8 (Letter M. Warren to M. Thompson (Dec. 5, 2025)). In other words, UP and NS's position is that none of BNSF's requests require custodial document collection and review.

On December 30, 2025, counsel for BNSF, UP, and NS conferred regarding the discovery at issue in this Motion. The parties discussed: (1) whether UP and NS are willing to search and produce board materials related to the merger; (2) whether UP and NS are willing to search and produce information or analyses from their bankers, economists, and financial advisors that relate to the merger; (3) whether UP and NS are searching and producing emails in these proceedings; and (4) whether UP and NS are willing to identify and disclose the custodial and non-custodial sources they are searching to identify relevant information. UP and NS refused to confirm whether they have collected any emails, and they refused to commit to producing emails, board materials, or banker materials.

Following the meet and confer, UP and NS subsequently doubled down on those positions. In a January 6, 2026 email to BNSF's counsel, UP and NS asserted that they do not believe "wholesale collections" of custodial emails are necessary for this proceeding and that instead "targeted collections" will be sufficient. Ex. 9 (Email

M. Thompson to K. Kelly (Jan. 9, 2026)). UP and NS also reiterated that they “remain skeptical that the requested board of directors materials and banker/financial documents are necessary for the Surface Transportation Board’s evaluation of the Proposed Transaction.” *Id.*

In sum, three months have passed since BNSF served its initial discovery requests seeking board materials, banker analyses, and email communications—none of which have been produced. UP and NS’s refusal to engage in basic discovery leaves BNSF with no choice but to seek relief from the Board.²

ARGUMENT

BNSF seeks access to basic discovery: board materials, banker materials, identification of custodians, and email communications. This information is relevant, proportional, and necessary to test UP and NS’s claims concerning the proposed merger. The failure by UP and NS to get ahead of their obligations means that UP and NS are behind on their discovery obligations. If the Application is accepted, scheduling adjustments will be needed to allow sufficient time for document discovery to conclude before depositions begin.

² On December 22, 2025, BNSF served its Second Set of Discovery Requests, which included follow-up requests explicitly seeking materials from UP and NS’s board concerning the proposed merger, as well as materials from bankers or financial advisors about the same. UP and NS served responses and objections to these requests on January 6, 2025. As to board materials, UP and NS reiterate their positions described in this motion and point BNSF to public filings that do not reflect the documents sought. As to third-party advisor materials, UP and NS agreed only to produce “final” materials on a subset of topics, rather than all third-party advisor materials related to the merger and alternatives to it.

I. Board materials, banker analyses, and email communications are relevant to these proceedings and to test UP and NS’s contentions.

The Board allows parties to obtain 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). Information is relevant when it could impact the outcome of a proceeding. *See Appl. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry.*, FD 35743, slip op. at 8 (STB served Sept. 23, 2014). Relevant information includes “all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses” *Simplified Standards for Rail Rate Cases*, EP 646 (Sub.-No. 1), slip op. at 69 (STB served Sept. 5, 2007).

Disclosing board materials, banker materials, and email communications about a merger is standard fare in merger proceedings. *See, e.g., F.T.C. v. Whole Foods Mkt., Inc.*, 548 F.3d 1028, 1032 (D.C. Cir. 2008) (noting that FTC relied on emails from the CEO to the board regarding the purpose of the merger); *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 25-26 (D.D.C. 2017) (noting that internal assessments of competition, including internal emails, were “ubiquitous” at trial). For certain mergers, the Hart-Scott-Rodino (“HSR”) Act *requires* parties to submit—without a request—executive-level and board documents evaluating the merger’s effect on competition and proposed synergies or efficiencies, among other things.³ The

³ Federal Trade Commission, *Antitrust Improvements Act Notification for Certain Mergers and Acquisitions – Acquiring Person Instructions* (Oct. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/acquiring-person-instructions-october-2024.pdf.

materials required for federal merger approval are presumptively relevant to the Board's competition analysis. *See Pharm. Rsch. & Mfrs. of Am. v. F.T.C.*, 790 F.3d 198, 199 (D.C. Cir. 2015) ("The principal purpose of the [HSR] Act is to facilitate Government identification of mergers and acquisitions likely to violate federal antitrust laws before the proposed deals are consummated.").

Here, UP and NS have produced zero board materials and banker analyses concerning the proposed merger. Those materials bear on multiple relevant issues, including:

- ***Alternatives to Merger.*** 49 C.F.R. § 1180.6(b)(11) requires UP and NS to discuss whether the proposed merger's benefits "could be achieved short of merger." Presentations made to the UP/NS boards or analyses by UP and NS's bankers or other advisors are directly relevant to the viability of merger alternatives, even if ultimately rejected by UP and NS leadership.
- ***Competition Analysis.*** The Board has made it clear that UP and NS must provide a plan for enhancing competition in connection with the UP/NS combination. *See* 49 C.F.R. § 1180.1(c)(2)(iv). Stakeholders should have an opportunity to assess board-level and banker presentations concerning what UP and NS believe are the merger's competitive effects, including claims that the merger will enhance competition against trucks and other railroads.
- ***Conditions.*** UP and NS must propose measures to mitigate any merger-related harms, and that those measures must enhance competition. 49 C.F.R. § 1180.6(b)(10). On their December 19, 2025 analyst call, UP and NS explained that they no longer budget \$750 million in concessions. UP and NS have also proposed several gateway conditions, including Committed Gateway Pricing. Internal discussions about UP and NS's decisions on each of these topics is relevant and an efficient way to test what the Application claims.

- ***Effect on Customers.*** 49 C.F.R. § 1180.6(b)(11) requires UP and NS to quantify the net public benefits of their merger, including any cost savings. UP and NS’s internal analyses of the rates they will charge shippers after the merger is directly relevant under the Board’s rules.
- ***Integration of Operations.*** 49 C.F.R. § 1180.10(a) requires that UP and NS describe “how the proposed transaction would result in improved service levels and how and where service might be degraded.” UP and NS claim their combination “will be the most thoroughly planned and carefully executed railroad merger in history.” App. Vol. 1 at 183. The Board and stakeholders are not resigned to accepting that as true; they are entitled to test that in discovery.

BNSF also expected that UP and NS would have taken the steps to be ready to produce relevant emails. UP and NS are no strangers to custodial collections in antitrust litigation. *See In re Rail Freight Fuel Surcharge Antitrust Litig.*, 2009 WL 3443563, at *9 (D.D.C. Oct. 23, 2009) (discussing UP and NS designating a subset of custodians for ESI searches and prioritized production). But to remove any issue, BNSF made several initial requests that plainly call for email, including requests for communications with stakeholders concerning the proposed merger and UP-NS communications about integration and shipper rates. *See, e.g.*, Ex. 2, at No. 7, 8, 15, 17, 20, 21, 22, 23, 24. Three months later, UP and NS have produced zero emails, despite the clear relevance of being able to test candid communications concerning the negotiation, analysis, and discussion of the proposed merger and its effects.

There is no merger litigation in America where the approach taken by UP and NS would be acceptable. *See, e.g., Parsi v. Daiouleslam*, 778 F.3d 116, 132 (D.C. Cir. 2015) (describing the “withholding of relevant emails as ‘indefensible’”); *Peskoff v.*

Faber, 240 F.R.D. 26, 31 (D.D.C. 2007) (ordering defendant to “conduct a search of all depositories of electronic information” for relevant emails and producing them to plaintiff), *subsequent determination*, 244 F.R.D. 54 (D.D.C. 2007); *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309, 317 (S.D.N.Y. 2003) (ordering the production of all responsive emails since email is a “substantial means of communication” among employees). Applicants’ approach is even more strained because they have not identified any custodians to date, which complicates the discovery steps necessary for stakeholders to prepare for depositions. *See Brown v. Barnes & Noble, Inc.*, 474 F. Supp. 3d 637, 644 (S.D.N.Y. 2019) (“Where ESI is concerned . . . the parties are expected to meet and confer about custodians of relevant ESI, date ranges for searches of ESI, and other search parameters.”) (citing Fed. R. Civ. P. 1, 26(f)), *reconsideration denied*, 2020 WL 1082464 (S.D.N.Y. Mar. 5, 2020), *aff’d*, 2020 WL 5037573 (S.D.N.Y. Aug. 26, 2020).⁴

In short, stakeholders are impaired in their ability to critically evaluate the UP/NS merger without access to those documents and communications. UP and NS should not be allowed to run out the clock on discovery by refusing to search for and produce those relevant materials.

⁴ Although UP’s counsel informed BNSF in a January 6, 2026, email that UP and NS were “willing to provide additional information regarding the sources from which they have collected responsive materials,” *see* Ex. 9, no custodians have been identified by UP or NS to date. While BNSF will continue to engage with UP and NS on the identification of custodial and non-custodial sources, BNSF reserves the right to return to the Board promptly should UP and NS not provide fulsome disclosures or continue to delay doing so.

II. Requests for board materials, banker materials, and email communications are proportional to the needs of this proceeding.

UP and NS's proportionality objection to searching for board presentations, banker materials, and emails has no merit. The stakes of the proposed merger could not be higher—as Applicants themselves have loudly claimed.

Courts weigh six factors in assessing proportionality: “(1) the importance of the issues at stake in this action; (2) the amount in controversy; (3) the parties’ relative access to relevant information; (4) the parties’ resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.” *See Oxbow Carbon & Mins. LLC v. Union Pac. R.R. Co.*, 322 F.R.D. 1, 6 (D.D.C. 2017) (quotation and citations omitted). All those factors weigh in favor of granting this Motion. If approved, the \$85 billion UP/NS merger will, according to Applicants, “shape the next hundred years of American railroading.” App. Vol. 1 at 309. If this will be the defining moment for the U.S. rail industry for generations, there should be more discovery, not less.

UP and NS's “go-get” strategy of discovery is inadequate for the needs of this proceeding. The approach has been rejected in other litigation. *See Juniper Networks, Inc. v. Bahattab*, 2009 WL 10696661, at *4 (D.D.C. Mar. 3, 2009) (refusing to let a party use a “sufficient to show” standard to limit document productions for relevant materials); *DL v. Dist. of Columbia*, 251 F.R.D. 38, 47-48 (D.D.C. 2008) (finding document production inadequate where defendant only produced responsive documents it thought were relevant).

Without custodial document collection and the production of board materials, banker materials, and relevant emails, stakeholders cannot see UP's or NS's candid views about the proposed merger and its effects. UP and NS should not be allowed to hide behind proportionality objections for basic and necessary discovery requests.

III. The Procedural Schedule must be deferred until UP and NS meet their discovery obligations.

To the extent the Board is inclined to accept the application for further proceedings, the Board should at least pause the Procedural Schedule until UP and NS can catch up on and then satisfy their discovery obligations. If the Board were to adopt its proposed schedule, opponents' comments would be due by April 18, 2026. These comments will require extensive preparation, including the depositions of at least two dozen individuals around the country. And those depositions cannot begin until UP and NS complete their document productions. Because UP and NS are not willing to confirm that they have even *collected* emails, BNSF is concerned that UP and NS will be unable to comply with the Board's proposed schedule. A full record is necessary to test the Application on the merits, and the Board should not proceed until UP and NS provide the discovery that allows stakeholders to develop that record for the Board.

CONCLUSION AND REQUESTS FOR RELIEF

The Board has one chance to make a fully informed decision on the merits of the UP/NS merger. The Board can only do so if the stakeholders have a fair opportunity to develop the record in discovery. To develop that record—and correct

course on a discovery process that UP and NS seek to truncate—BNSF seeks the following relief:

- Direct UP and NS to produce all board materials that would be required in an initial HSR filing and are within the scope of BNSF's discovery requests to date (and to continue to supplement board-related productions that are responsive to forthcoming requests).
- Direct UP and NS to produce all banker and financial materials that would be required in an initial HSR filing and are within the scope of BNSF's discovery requests to date (and to continue to supplement board-related productions that are responsive to forthcoming requests).
- Direct UP and NS to collect, process, and search emails from each fact witness that submitted Verified Statements in support of the Application, as well as the relevant support teams for each such fact witness.
- Direct UP and NS to finish its email collection and processing within 10 days of the order.
- Direct UP and NS to meet and confer with BNSF and other interested stakeholders on search terms and hit reports within 14 days of the order.
- Direct UP and NS to complete custodial productions at least 21 days before each fact declarant is deposed.
- If the Application is accepted, defer the Procedural Schedule until such time as UP and NS can meet their e-discovery obligations and/or modify it such that UP and NS can complete their document discovery obligations before depositions.

[Signature page follows.]

Respectfully submitted,

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

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

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

Counsel for BNSF Railway Company

Dated: January 9, 2026

EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36500

302882
UP-2
ENTERED
Office of Proceedings
August 19, 2021
Part of
Public Record

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.
—CONTROL—
KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

**UNION PACIFIC RAILROAD COMPANY'S
FIRST SET OF DISCOVERY REQUESTS TO KANSAS CITY SOUTHERN**

Pursuant to 49 C.F.R. §§ 1114.21-.31, Union Pacific Railroad Company requests that Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “Kansas City Southern”) respond to the following discovery request in accordance with the Surface Transportation Board’s rules.

Kansas City Southern’s response should be served as soon as possible, and in no event later than 15 days from the date of service hereof. Kansas City Southern is requested to contact the undersigned promptly to discuss any objections or questions regarding this request with a view to resolving any disputes or issues of interpretation informally and expeditiously.

REQUEST

1. Produce copies of all information and documents that Kansas City Southern produces in response to discovery requests submitted by other participants in this proceeding, including discovery requests submitted by Applicants Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

August 19, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2021, I caused a copy of Union Pacific's First Set of Discovery Requests to Kansas City Southern to be served by email or by first-class mail, postage prepaid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all other parties of record.

/s/ Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

**UNION PACIFIC RAILROAD COMPANY'S
FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS**

Pursuant to 49 C.F.R. §§ 1114.21-.31, Union Pacific Railroad Company requests that Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Main & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, "CP") and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, "KCS") respond 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 November 23, 2021, unless otherwise agreed to by the parties. 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

1. “Applicants” means CP and KCS.
2. “Application” means the Railroad Control Application filed in STB Docket No. 36500.
3. “BNSF” means BNSF Railway Company.
4. “Brooks VS” means the Verified Statement of John Brooks contained in the Application.
5. “Brown/Zebrowski VS” means the Verified Statement of Richard W. Brown and Nathaniel S. Zebrowski contained in the Application.
6. “Clements VS” means the Verified Statement of James Clements contained in the Application.
7. “CN” means Canadian National Railway Company.
8. “COFECE” means the Comisión Federal de Competencia Económica.
9. “CP” means Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Main & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.
10. “CPKC” means Canadian Pacific Kansas City.
11. “Creel VS” means the Verified Statement of Keith Creel contained in the Application.

12. “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.

13. “FXE” means Ferrocarril Mexicano SA de CV.

14. “IFT” means Instituto Federal de Telecomunicaciones.

15. “KCS” means Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company

16. “KCSM” means Kansas City Southern de México, S.A. de C.V. and its predecessors, including TFM, S.A. de C.V.

17. “KCSR” means The Kansas City Southern Railway Company and its U.S. rail carrier subsidiaries.

18. “KCS-TM-TFM Transaction” means KCS’s combination with TM and TFM in 2005, as described on pages 16–17 of the Verified Statement of Keith Creel.

19. “Laredo Bridge” means the International Rail Bridge over the Rio Grande River at Laredo/Nuevo Laredo.

20. “Majure VS” means the Verified Statement of W. Robert Majure contained in the Application.

21. “Ottensmeyer VS” means the Verified Statement of Patrick J. Ottensmeyer contained in the Application.

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

23. “Proposed Transaction” means the series of agreements described in the Application, Volume 1, at pages 2–3.
24. “TM” means The Texas Mexican Railway Company.
25. “TFM” means TFM, S.A. de C.V.
26. “UP” means Union Pacific Railroad Company.
27. “U.S.” means the United States of America
28. “Wahba/Naatz VS” means the Verified Statement of Jonathan Wahba and Michael J. Naatz contained in the Application.

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, UP will treat them in accordance with the Protective Order entered in this proceeding in the Decision served April 2, 2021.

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

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

REQUESTS

1. Produce all information and documents that Applicants produce in response to discovery requests submitted by other participants in this proceeding.

2. Produce all workpapers for the Application.

3. For all workpapers containing data in .csv or .txt format, produce the information necessary to read and interpret the data (*e.g.*, record layout, field names and definitions, definitions of terms or abbreviations used in the fields).

4. Produce all documents that Applicants have provided third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.

5. Produce all documents that Applicants have provided the Mexican government and government officials, including but not limited to COFECE and IFT regarding the Proposed Transaction, including but not limited to pre-transactional guidance and opinion requests.

6. Describe in detail all communications between Applicants and the Mexican government or government officials regarding the Proposed Transaction, including but not limited to pre-transactional guidance and opinion requests, not reflected in documents being produced in response to Request No. 5.

7. Produce all documents that Applicants have provided the Canadian government and government officials, including but not limited to the Canadian Transportation Agency and Transport Canada, regarding the Proposed Transaction, including but not limited to pre-transactional guidance and opinion requests.

8. Describe in detail all communications between Applicants and the Canadian government or government officials regarding the Proposed Transaction, including but not limited to pre-transactional guidance and opinion requests, not reflected in documents being produced in response to Request No. 7.

9. Produce all documents that Applicants have provided to the United States government and government officials, including but not limited to the U.S. Department of Justice, the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission, regarding the Proposed Transaction, including but not limited to pre-transactional guidance and opinion requests and Hart-Scott-Rodino filings.

10. Describe in detail all communications between Applicants and the U.S. government or government officials regarding the Proposed Transaction, including but not limited to pre-transactional guidance and opinion requests, not reflected in documents being produced in response to Request No. 9.

11. Produce all documents that Applicants have provided to the White House Competition Council, including the Council's members and staff, regarding the Proposed Transaction.

12. Describe in detail all communications between Applicants and the White House Competition Council, including the Council's members and staff, regarding the

Proposed Transaction, not reflected in documents being produced in response to Request No. 11.

13. Describe in detail what Applicants mean by the phrase “efficient interline routes” as used in the Application, Volume 1, page 11.

14. Describe in detail how Applicants’ commitment to keep the Laredo gateway open “commercially” will be “backed up by the potential for enforcement under the auspices of Board oversight,” as stated in the Application, Volume 1, pages 11–12.

15. Describe in detail how Applicants intend to implement their commitment to keep the Laredo gateway open “commercially.” *See* Application, Volume 1, pages 11–12.

16. Produce all due diligence materials provided by KCS or KCSM to CP (whether directly or through intermediaries) pertaining to KCSM’s concession from the Mexican government. *See* Application, Volume 1, page 24.

17. Produce all documents regarding all investments in infrastructure and capacity that Applicants plan to make in Laredo, Nuevo Laredo, and other areas to accommodate Applicants’ projected increases in rail traffic moving via the Laredo gateway.

18. Produce all documents studying, analyzing, or discussing ownership or control of the Laredo Bridge, including ownership and control of the bridge structure, the rail, and the associated track materials, including but not limited to any communications regarding such issues.

19. Produce all documents studying, analyzing, or discussing the effect of the Proposed Transaction on operations over the Laredo Bridge, including but not limited to any communications regarding such effects.

20. Produce all documents regarding traffic interchanged between KCSM and UP via the Laredo gateway provided to CP by KCS or KCSM.

21. Produce all documents studying, analyzing, or discussing the need for additional railroad bridge capacity at the Laredo gateway.

22. Produce all documents provided to U.S. federal, state, and local governments and officials regarding the new international railway bridge that is subject to the Presidential permit granted to The Kansas City Southern Railway Company and issued on July 29, 2020.

23. Produce all documents provided to Mexican federal, state, and local governments and officials regarding the new international railway bridge that is subject to the Presidential permit granted to The Kansas City Southern Railway Company and issued on July 29, 2020.

24. Produce all documents regarding the new international railway bridge that is subject to the Presidential permit granted to The Kansas City Southern Railway Company and issued on July 29, 2020, provided to CP by KCS or KCSM.

25. Identify and describe in detail any changes expected to result from the Proposed Transaction that would increase KCSM's costs to provide service via the Laredo gateway for traffic interchanged with UP.

26. Identify and describe in detail any changes expected to result from the Proposed Transaction that would reduce KCSM's costs to provide service via the Laredo gateway for traffic interchanged with UP.

27. Identify and describe in detail any changes expected or projected in the next five years that would increase KCSM's costs to provide service via the Laredo gateway for traffic interchanged with UP.

28. Identify and describe in detail any changes expected or projected to result from the Proposed Transaction that would reduce KCSM's costs to provide service via the Laredo gateway for traffic interchanged with UP.

29. Produce all documents reflecting communications with Norfolk Southern Railway Company regarding operation or ownership of the Meridian Speedway after consummation of the Proposed Transaction.

30. Describe in detail all communications with Norfolk Southern Railway Company regarding operation or ownership of the Meridian Speedway after consummation of the Proposed Transaction not reflected in documents produced in response to Request No. 29.

31. Produce all studies, analyses, and reports regarding expected or potential impacts of the Proposed Transaction on rates for traffic moving via the Meridian Speedway.

32. Produce all studies, analyses, and reports that CP relied upon in making the offer to acquire KCS described on page 4 of the Creel VS.

33. Produce all documents provided to KCS by CP to "persuade[] KCS to join with" CP, as described on page 4 of the Creel VS.

34. Produce all studies, analyses, and reports created by CP “to re-assess the benefits that would flow from [CP’s] combination with KCS,” including CP’s “deeper analysis of the synergies,” as described on page 4 of the Creel VS.

35. Produce all studies, analyses, and reports created by CP prior to September 15, 2021, that evaluate the potential impacts of a CP/KCS combination on other rail carriers.

36. Produce all studies, analyses, and reports created by CP that evaluate the potential impacts of a CN/KCS combination on CP or other rail carriers.

37. Produce all documents provided to KCS by CP to persuade the KCS board of directors that “the CP proposal was and is a ‘superior proposal,’” as described on page 5 of the Creel VS.

38. Produce documents sufficient to show CP’s pre-acquisition “forecasts” of growth of traffic to/from Central Maine & Quebec Railway US Inc. as described on page 8 of the Creel VS.

39. Produce documents sufficient to show the post-acquisition growth of traffic to/from Central Maine & Quebec Railway US Inc.

40. Describe in detail the meaning of the phrase “commercially reasonable terms,” as the phrase is used on page 14 of the Creel VS.

41. Describe in detail the Applicants’ “detailed integration planning,” as described on page 16 of the Creel VS, in relation to operations via the Laredo gateway.

42. Describe in detail how Applicants would cooperate with other carriers in overcoming serious service disruptions on their lines during the transitional period and afterwards.

43. Describe in detail any conditions that Applicants are proposing to enhance competition to offset potential harms from transitional service disruptions.

44. Produce all documents studying, discussing, or analyzing whether sufficient capacity exists on KCS's line between Baton Rouge and New Orleans to accommodate Amtrak passenger service on that line. *See Creel VS*, page 20.

45. Produce all studies, analyses, and reports supporting the assertions on page 27 of the *Creel VS* that a CP-KCS combination will “dampen the likelihood” and “remove the incentives” for other Class I railroad combinations and “carries no realistic risk that other Class I railroads will be compelled to respond with their own consolidations.”

46. Produce all studies, analyses, and reports that KCS relied on in evaluating CP's initial offer to acquire KCS.

47. Produce all studies, analyses, and reports that KCS relied on in evaluating CN's offer to acquire KCS.

48. Produce all studies, analyses, and reports that KCS relied on in evaluating CP's enhanced offer to acquire KCS after the Surface Transportation Board denied approval of the voting trust proposed by CN.

49. Describe in detail the cost and operating efficiencies achieved (*e.g.*, lower costs, reduced cycle times, improved service reliability) for KCS/KCSM traffic moving via the Laredo gateway as a result of the KCS-TM-TFM Transaction.

50. Produce all documents studying, analyzing, or discussing the cost and operating efficiencies achieved (*e.g.*, lower costs, reduced cycle times, improved service

reliability) for KCS/KCSM traffic moving via the Laredo gateway as a result of the KCS-TM-TFM Transaction.

51. Produce all documents discussing any reduction in costs of handling traffic moving via the Laredo gateway as a result of the KCS-TM-TFM Transaction.

52. Describe in detail the impacts of the Proposed Transaction on traffic interchanged between KCSM and UP.

53. Produce all documents studying, analyzing, or discussing the impacts of the Proposed Transaction on traffic interchanged between KCSM and UP.

54. Identify and produce all documents created after 2014 containing or reflecting agreements or understandings between or among KCS, KCSM, and CP regarding marketing, pricing, or operation of U.S.-Mexico rail traffic.

55. Produce all communications relating to agreements or understandings identified in response to Request No. 54. Applicants may exclude documents of a routine transactional nature (*e.g.*, waybill or dispatching records), provided that Applicants identify the categories of documents so excluded.

56. Produce the “KCS/CN Alliance Agreement” discussed on page 12 of the Ottensmeyer VS.

57. Identify all investments that KCS and CN discussed in connection with the KCS/CN Alliance Agreement that CN and KCS “could not coordinate.” *See* Ottensmeyer VS, page 12.

58. Identify all operational changes that KCS and CN discussed in connection with the KCS/CN Alliance agreement that CN and KCS “could not coordinate.” *See* Ottensmeyer VS, page 12.

59. Identify and produce all “prior joint-marketing agreements between KCS and CP.” *See Ottensmeyer VS*, page 12.

60. Identify and produce all documents regarding the “certain infrastructure investments” that “CP and KCS were simply unable individually to financially justify.” *See Ottensmeyer VS*, page 12.

61. Describe in detail the meaning of the phrase “commercially reasonable terms” as used on page 17 of the Ottensmeyer VS.

62. Describe in detail how KCS has implemented the condition on the KCS-TM-TFM transaction requiring it to “keep the Laredo gateway open on commercially reasonable terms,” as described on page 21 of the Ottensmeyer VS.

63. Identify the “Mexican law” that purportedly “requires KCSM to give a rate to/from the Laredo gateway.” *See Ottensmeyer VS*, page 21, footnote 18.

64. Produce all documents studying, analyzing, or discussing the “Mexican law” identified in response to Request No. 63.

65. Identify the “remedies” that shippers will purportedly have “to ensure” KCSM provides commercially reasonable rates and terms to/from the Laredo gateway so shippers can “utilize KCSM/UP or KCSM/BNSF routings.” *See Ottensmeyer VS*, page 22.

66. Produce all documents supporting the statement on page 22 of the Ottensmeyer VS that “if the combined CP/KCS tried to raise rates on KCSM movements that are not rail dependent, the traffic would shift to motor or water carriage.”

67. Produce all documents supporting the statement on page 22 of the Ottensmeyer VS that “[w]ith respect to existing rail dependent movements, [KCSM] prices are already pushed to market levels.”
68. Produce all studies, analyses, and reports created by KCS before September 15, 2021, that evaluate the potential impacts of a CP/KCS combination on other rail carriers.
69. Produce all studies, analyses, and reports created by KCS before September 15, 2021, that evaluate the potential impacts of a CN/KCS combination on other rail carriers.
70. Produce all documents containing projections of the growth of rail traffic moving between the U.S. and Mexico via the Laredo gateway.
71. Describe in detail the meaning of the phrase “commercially reasonable terms,” as the phrased is used on page 3 of the Brooks VS.
72. Produce all “individualized strategic playbooks” referenced on page 9 of the Brooks VS that address traffic moving between the U.S. and Mexico.
73. Produce the “Memorandum of Understanding” discussed on page 16 of the Brooks VS.
74. Produce the “analysis” showing the “potential to attract many tens of thousands of carloads to CP-KCS joint-line routes” discussed on page 16 of the Brooks VS.
75. Produce all studies, reports, and analyses regarding the results of the CP-KCS initiative code named “Ice Pick.” *See* Brooks VS, page 16.

76. Identify the “ideas we had back then [that] mirror the growth opportunities we know that the CP/KCS combination can achieve.” *See Brooks VS*, page 17.

77. Describe in detail the “obstacles to capitalizing on these opportunities.” *See Brooks VS*, page 17, to the extent the obstacles were different from or in addition to the issues identified in Paragraph 34 of the Brooks VS.

78. Describe the meaning of the phrase “traffic that naturally flowed over our route network,” as the phrase is used on page 17 of the Brook VS.

79. Identify any shipper that has inquired about arbitrating a dispute under the agreement between KCS and The National Industrial Transportation League on page 20 of the Brooks VS, and produce all documents regarding any such inquiry.

80. Produce all documents studying, analyzing, or discussing the meaning of the phrase “commercially reasonable rates and terms,” as used on page 22 of the Brooks VS.

81. Describe in detail how and when Applicants intend to “work with shippers” to make their commitments more concrete and readily enforceable. *See Brooks VS*, page 22.

82. Describe in detail the “scrupulous operational planning that has already taken place,” as referenced on page 23 of the Brooks VS, to avoid integration-related service disruptions at the Laredo gateway.

83. Produce all documents reflecting “dialogue with our customers” that Messrs. Wahba and Naatz relied upon in assessing the opportunities described in the Wahba/Naatz VS. *See Wahba/Naatz VS* at 6.

84. Describe in detail why soybeans travelling to Mexico via UP/KCSM, BNSF/KCS/KCSM, UP/FXE, or BNSF/FXE routings that Applicants expect to divert to CPKC, as discussed on page 13 of the Wahba/Naatz VS, are not currently travelling to Mexico via CP/KCS/KCSM routings.

85. Describe in detail why DDGs travelling to Mexico from CP-served points that Applicants expect to divert to CPKC, as discussed on page 14 of the Wahba/Naatz VS and page 27 of the Brown/Zebrowski VS, are not currently travelling to Mexico via CP/KCS/KCSM routings.

86. Describe in detail why seed oils and legumes travelling to Mexico via CP/UP routings that Applicants expect to divert to CPKC, as discussed on pages 27–28 of the Brown/Zebrowski VS, are not currently travelling to Mexico via CP/KCS/KCSM routings.

87. Describe in detail why auto parts and finished vehicles travelling between CP-served points in the U.S. and KCSM-served points in Mexico via interline routings that Applicants expect to divert to CPKC, as discussed on pages 31–33 of the Wahba/Naatz VS and pages 33–39 of the Brown/Zebrowski VS, are not currently travelling via CP/KCS/KCSM routings.

88. Describe in detail why LPG travelling from CP-served origins in Canada to KCSM-served destinations in Mexico that Applicants expect to divert to CPKC, as discussed on pages 38–39 of the Wahba/Naatz VS and pages 41–42 of the Brown/Zebrowski VS, are not currently travelling via CP/KCS/KCSM routings.

89. Identify the “certain function[s]” for which “KCS’s Mexican operations use different IT systems . . . from those used on KCS’s U.S. network,” as referenced on

page 4 of the Clements VS, and identify which of those systems CPKC “may decide to leave in place.”

90. Produce all documents regarding KCSM or KCS rates for traffic moving to or from Mexico that could be originated or terminated in the U.S. by both KCS and UP. Applicants may exclude documents of a routine transactional nature (e.g., waybills), provided Applicants identify the categories of documents so excluded.

91. Produce complete KCS and KCSM traffic tape data for the years 2003, 2005, and 2010. For purposes of this request, “complete” traffic tape data has the same meaning as on page 11 of the Brown/Zebrowski VS.

92. Produce all documents created since 2004 regarding rail-to-rail traffic diversions (including both extended haul diversions and new single-line move diversions) resulting from the KCS-TM-TFM Transaction.

93. Produce all documents created since 2004 comparing actual, estimated, hypothetical or proposed KCSM-KCS rates with actual, estimated, hypothetical, or proposed KCSM-UP rates for traffic moving via the Laredo gateway.

94. Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding KCSM rates for traffic to be handled by UP via the Laredo gateway.

95. Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding KCS rates for traffic to be handled by UP via the Laredo gateway.

96. Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding UP rates for traffic to be handled by UP via the Laredo gateway.

97. Produce all studies, analyses, and reports created since 2004 regarding rail traffic moving to or from Mexico that could be originated or terminated in the U.S. by both KCS and UP.

98. Produce all documents created since 2004 discussing why shippers who could route traffic moving via the Laredo gateway on UP or KCS prefer to route their traffic on UP.

99. Produce all documents discussing whether KCS or KCSM is collecting “the full measure of returns associated with its existing market power.” *See* Majure VS at 15.

100. Produce all documents discussing whether KCS rates or KCSM rates are subject to “a regulatory constraint.” *See* Majure VS at 16.

101. Produce all documents discussing whether KCSM rates are constrained by “competitive pressure from other rail . . . options.” *See* Majure VS at 16.

102. Describe what the term “level of access” means, as the phrase is used on page 17 of the Brown/Zebrowski VS, and how various “levels of access” factored into the diversion analysis performed by Messrs. Brown and Zebrowski, and produce all workpapers addressing how “level of access” factored into the diversion analysis performed by Messrs. Brown and Zebrowski.

103. Describe in detail how “length of haul” was quantified and factored into the diversion analysis performed by Messrs. Brown and Zebrowski and produce all related workpapers. *See Brown/Zebrowski VS, page 17.*

104. Describe in detail how “service levels” were quantified and factored into the diversion analysis performed by Messrs. Brown and Zebrowski and produce all related workpapers. *See Brown/Zebrowski VS, page 17.*

105. Describe in detail how “other railroads’ market position and franchise strength” were quantified and factored into the diversion analysis performed by Messrs. Brown and Zebrowski and produce all related workpapers. *See Brown/Zebrowski VS, page 17.*

106. Describe in detail how “the capability of CP/KCS facilities to support the service shippers demand” was quantified and factored into the diversion analysis performed by Messrs. Brown and Zebrowski and produce all related workpapers. *See Brown/Zebrowski VS, page 17.*

107. Describe in detail how “whether the opportunity would require new investments that were unlikely to be a good fit with the near-term priorities of the combined CP/KCS network” was quantified and factored into the diversion analysis performed by Messrs. Brown and Zebrowski and produce all related workpapers. *See Brown/Zebrowski VS, page 17.*

108. Describe in detail the “observations on market conditions” provided by Applicant personnel to Messrs. Brown and Zebrowski, and produce all documents reflecting such communications. *See Brown/Zebrowski VS, page 21.*

109. Describe in detail the “commercial experience related to the diversion opportunities” provided by Applicant personnel to Messrs. Brown and Zebrowski, and produce all documents reflecting such communications. *See Brown/Zebrowski VS*, page 21.

110. Describe in detail how Messrs. Brown and Zebrowski “gave weight to” the “observations on market conditions” and “commercial experience related to the diversion opportunities,” and produce all related workpapers. *See Brown/Zebrowski VS*, page 21.

111. Describe in detail how Messrs. Brown and Zebrowski concluded that “CP/KCS would be required to offer rate reductions averaging five percent in order to attract traffic away from existing single-line service to CP/KCS single-line service,” and produce all related workpapers, including but not limited to workpapers supporting the five-percent figure. *See Brown/Zebrowski VS*, page 21.

112. Describe in detail how Messrs. Brown and Zebrowski developed “estimated average Mexican review divisions from KCSM traffic tape data for similar commodities” in developing incremental revenues for new single-line moves when the existing movement is rebilled at the Mexican border, and produce all related workpapers. *See Brown/Zebrowski VS*, page 52.

113. Produce documents sufficient to show all plans, forecasts, and analyses regarding traffic interchanged or forecast to be interchanged between KCS and CP created before CP’s initial offer to acquire KCS.

114. Describe in detail the “changes in KCS’s train plan from 2019 to 2020, particularly within Mexico.” *See Operating Plan (Exhibit 13)*, page 27 note 4.

115. Produce the KCSR, KCSM, and CP “business planning” documents that formed the basis for the growth forecasts described on page 31 of the Operating Plan (Exhibit 13).

116. Produce the forecasts for “North American economic growth” used to develop CP traffic growth as described on page 31 of the Operating Plan (Exhibit 13).

117. Describe in detail why the “Operating Plan does not contemplate any changes to the CPKC train services to/from” the Laredo gateway, *see* Operating Plan (Exhibit 13), page 40, despite projecting an increase in the number of CP/KCS trains moving via the Laredo gateway, *see, e.g., id.* page 83.

118. Describe whether and how Applicants plan to modify their responsibilities for interchange with other railroads in Kansas City. *See* Operating Plan (Exhibit 13), pages 54–55.

119. Describe in detail why the Operating Plan says the “Transaction will not affect Laredo, except to the extent CP/KCS single-line routes attract traffic that would otherwise have moved across the border by truck,” *see* Operating Plan (Exhibit 13), page 59, despite projecting increases in the number of “intermodal/automotive/manifest” trains between Bensenville and Mexico, Chicago and Mexico, and St. Paul and Mexico, *see, e.g., id.* page 83.

120. Describe in detail KCS’s stated “goal” to “[e]volve the operational model at the border to allow UP and KCS access to the bridge upon the presentation of the train.” *See* Operating Plan (Exhibit 13), page 61.

121. Produce all documents regarding the effects on UP operations between Beaumont and Rosenberg of the projected increase in “KCS’s train volumes between

Beaumont and Rosenberg by 8.3 trains per day,” including but not limited to the combined impact of UP and KCS operations on Amtrak’s Sunset Limited. *See* Operating Plan (Exhibit 13), page 64.

122. Produce all studies, analyses, and reports regarding capacity on the UP lines over which TM obtained trackage rights in the Union Pacific/Southern Pacific merger.

123. Describe in detail why Applicants project that KCSM’s line between Monterrey and Nuevo Laredo will carry fewer gross tons per mile of road in Year 3 post merger than in 2019. *See* Density Charts, (Exhibit 14), pages 54 & 55.

Respectfully submitted,

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

Attorneys for Union Pacific Railroad Company

November 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2021, I caused a copy of Union Pacific Railroad Company's First Set of Discovery Requests to Applicants to be served by email or by first-class mail, postage prepaid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all other parties of record.

/s/ Michael L. Rosenthal

EXHIBIT 2

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36873
UNION PACIFIC CORPORATION, ET AL.
—CONTROL—
NORFOLK SOUTHERN CORPORATION, ET AL.

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

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, BNSF Railway Company (“BNSF”) hereby requests that UP and NS (as defined below, and together, the “Applicants”) respond to and produce documents responsive to the following discovery requests to Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, no later than October 16, 2025.

DEFINITIONS

1. “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.

2. “Concerning” means relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

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. The term “Identify”:

- a. When used in reference to an individual, shall require a statement of the individual’s full name; present and/or last known position, employment, job title and/or business affiliation; and present and/or last known business address and telephone number.
- b. When used in reference to businesses or corporations, shall mean to state the business or corporation’s legal name, the names under which it does business, its form (proprietorship, corporation, partnership, association or business trust, etc.), its present and/or last known address, and its relationship, if any, to each of NS and UP.
- c. When used in reference to Documents, shall require a statement of the date thereof, the type of Document, the author or speaker (and if different, the signer or signers, and the addressee), the substance thereof, its present or last known location or custodian, and all other means of identifying it.
- d. When used in reference to any Communication, meeting, act, occurrence, statement, or conduct (hereinafter collectively “act”) requires you to:

- i. Describe the substance of the event or events constituting such an act;
- ii. Identify each and every person participating in such act;
- iii. Identify all other persons present when such act occurred;
- iv. State whether any minutes, notes, memoranda, accounts, statement, agreements, Documents, or any other record relating to the act was made;
- v. State whether such record now exists; and
- vi. Identify the person presently having possession, custody, or control of such record.

5. “NS” means Norfolk Southern Corporation and Norfolk Southern Railway Company and their predecessors and successors in interest, as well as their 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 their behalf.

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

7. “STB” or “Board” means the Surface Transportation Board.

8. “UP” means Union Pacific Corporation and Union Pacific Railroad Company and their predecessors and successors in interest, as well as their 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 their behalf.

INSTRUCTIONS

1. Responsive Documents to all requests should be produced to the undersigned counsel, not later than fifteen days after the date of service of these Requests. Production of Documents may be accomplished through electronic means such as a data room or file transfer if NS and/or UP prefer.

2. If NS and/or UP objects to any portion of any Discovery Request, they should identify the portion to which they object, state the basis for the objection, and respond to the remainder. If NS and/or UP has objections, NS and/or UP’s counsel are requested to promptly confer with undersigned counsel for BNSF so that NS and/or UP’s objections can be promptly addressed and resolved.

3. If NS and/or UP asserts a claim of privilege as to Documents sought in these Requests, NS and/or UP should list, for each such Document, the Document’s date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the Document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit BNSF to assess the applicability of the privilege claimed.

4. If any of the requested Documents was but is no longer in NS and/or UP's possession or subject to their control, state what disposition was made of it and when, and explain the reasons for such disposition.

5. If a Document is provided in response to a Request, identify which Document(s) is (are) being provided to answer that Request, including any Bates numbers; if NS and/or UP is asked to identify Documents, provide a brief description of the Documents, including any Bates numbers. If NS and/or UP refers BNSF to workpapers to respond to a Request, please identify the Bates number(s) of the workpapers(s) responsive to the Request.

6. Each Discovery Request should be responded to upon NS and/or UP's entire knowledge from all sources and all information and Documents in NS and/or UP's possession or otherwise available to NS and/or UP, including information from agents, representatives, consultants, or attorneys, and information that is known to each of them.

7. Where a Discovery Request calls for information with respect to "each" one of a particular type of matter, event, Person, or entity, of which there is more than one, separately list, set forth or identify for each thereof all of the information called for in the Request.

8. These Requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or Documents become available.

9. Unless otherwise provided, there is no time period limitation on these Discovery Requests.

FIRST SET OF DISCOVERY REQUESTS

1. Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced in response to discovery requests submitted by other participants in this proceeding.

2. Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.

3. Produce Documents sufficient to show the conditions to STB approval to which NS and/or UP have agreed to accept, propose, or agree to if needed to secure regulatory approval for the Proposed Transaction.

4. Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

5. Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

6. Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the

Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

7. Produce all Documents and Communications with the individuals and/or entities identified in response to Request Nos. 5 and 6 and that concern or relate to the Proposed Transaction.

8. Produce Documents sufficient to show any discounts, contract extensions, or any other economic value or concession offered in connection with or related to any discussion with a customer or stakeholder related to its support or non-opposition the Proposed Transaction.

9. Produce system-wide car and, where applicable, container, movement event data for all NS and UP traffic for each year or partial year from 2019 to the present. Car event data should be sufficient to identify the sequence of cars within a train for each applicable event, and container event data should be sufficient to identify the car conveying the container for each applicable event.

10. Produce system-wide train event data for all NS and UP trains for each year or partial year from 2019 to the present.

11. Produce UP and NS intermodal train schedules from 1995 to present.

12. Produce Documents sufficient to show the density information described below for the entire NS and UP systems for each year or partial year from 2019 to the present in a computer readable database or electronic spreadsheet, including all record layouts, all field descriptions, data definitions, and data dictionaries/decoders required to

utilize the data. The density database should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment and by direction expressed in net ton-miles, or in the alternative, (ii) total density (both directions including empty and loaded trains) by segment and by direction expressed in gross ton-miles, including tare weight, locomotive weight, and non-revenue trains, plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that NS or UP utilize via trackage rights (or other joint facility or joint use agreements) on another railroad, (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over NS or UP

segments, and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

13. Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.

14. Produce Documents relating to any current or anticipated abandonments, leases, grants of trackage rights, or other transactions in which any current line segment of UP or NS would henceforth be operated by another railroad or non-carrier.

15. Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

16. Produce all Documents regarding changes in employee discipline standards or practices from January 1, 2024 to present.

17. Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

18. Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

19. Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

20. Produce all studies and analyses of the impact of the Proposed Transaction on potential future mergers involving any Class I carrier (including Applicants).

21. Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on:

- a. Applicants' current and future debt and debt service obligations.
- b. Applicants' financial metrics including revenue, earnings, EBITDA, leverage, and operating ratio;
- c. Applicants' costs and potential opportunities to reduce costs (synergies);
- d. Railroad intramodal, intermodal, product, and geographic competition;
- e. Potential traffic diversions from truck transportation to rail transportation;
- f. Rail service, including rail service provided by other rail carriers;

- g. Rail safety, including the safety of rail service provided by other rail carriers;
- h. Rail labor and employment, including labor forces at railroads other than Applicants;
- i. Passenger or commuter service;
- j. Rates for rail transportation;
- k. Competition, including corridor competition, source competition, and intermodal competition; and
- l. Applicants' proposed gateway commitment on Applicants' existing traffic and the revenues and profitability of that traffic.

22. Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.

23. Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

24. Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.

25. Produce data from 2019 through present for all reciprocal switches performed by or for UP or NS sufficient to identify:

- a. The date the reciprocal switch was requested;
- b. The date the reciprocal switch was completed;
- c. The switching and receiving carriers involved in the reciprocal switch;
- d. The price authority governing the reciprocal switch;
- e. Revenues paid for the reciprocal switch;
- f. The customer name and SPLC station location where switch was originated or terminated;
- g. The location, including latitude and longitude, where the shipment was physically transferred between switching and receiving carrier; and
- h. The car initial and car number of each rail car involved in the reciprocal switch.

26. Produce all Documents related to UP and NS's planned capital budgets and forecasts for the next five years (as prepared in the 2024 and 2025 period prior to the announcement of the Proposed Transaction).

27. Produce Documents sufficient to identify all issues or problems that UP and NS have had using rights or accessing services required by STB-ordered deal conditions.

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

Respectfully submitted,

/s/ Peter W. Denton

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

Matthew Reilly
Richard Cunningham
Daniel Donovan
Jeffrey Ayer
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 389-5000

Counsel for BNSF Railway Company

Dated: October 1, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2025, I have caused the foregoing *BNSF Railway Company's First 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*

EXHIBIT 3

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 BNSF RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS**

MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
PEGAH NABILI
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*

October 16, 2025

Union Pacific Railroad Company and Union Pacific Corporation (collectively, “Union Pacific”) respond to the first set of discovery requests of BNSF Railway Company (“BNSF”) served on October 1, 2025 (“BNSF’s Requests” or “Discovery Requests” or “Requests”), as follows.

GENERAL RESPONSES

The following General Responses apply to each of BNSF’s Requests:

1. Union Pacific is conducting a reasonable search for information and documents responsive to BNSF’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.

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 the BNSF'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 BNSF's Requests.

2. Union Pacific objects to each and every Discovery Request as unduly burdensome and premature, to the extent it seeks discovery of information, documents, or communications prior to Union Pacific submitting its application and accompanying workpapers and seeks discovery of information documents, or communications that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

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 BNSF; (b) publicly available or otherwise readily available or accessible to BNSF from other sources; (c) unreasonably cumulative or duplicative of documents already in BNSF’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 BNSF's Requests, Union Pacific will conduct a reasonable search of those accessible files in its possession in which information responsive to BNSF'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 BNSF.

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 to be entered in this case, to demand or require the return of all copies thereof and non-use by BNSF 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. 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 Definition No. 1, “Communication” to the extent this Definition seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific objects to Definition No. 1 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 seeks production of information on “telephone conversations” or “in-person conversations.” Union Pacific further objects to Definition No. 1 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 text messages, instant or direct messages on any platform and electronic communications other than emails, and to the extent that it purports to require production of material that was not reduced to writing. Union Pacific is not searching for and will not produce these categories of “Communications.”

14. Union Pacific objects to Definition No. 3, “Document” to the extent this Definition seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to Definition No. 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 to the extent addressed in General Objection 13. Union Pacific is not searching for and will not produce these categories of “Documents.”

15. Union Pacific objects to Definition No. 4, “Identify,” to the extent that it seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to Definition No. 4 as overly broad, unduly burdensome, and as seeking information that is neither relevant nor proportional to the needs of this proceeding. Union Pacific further objects Definition No. 4 to the extent that it would require Union Pacific to provide information that is not reasonably accessible to Union Pacific, or is publicly available or otherwise readily available or accessible to BNSF from other sources, or to provide information in a form not kept in the regular course of business or to undertake anything more than a reasonable search for responsive information.

16. Union Pacific objects to Definition No. 5, “NS” as overly broad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requires Union Pacific to respond to the Requests with respect to Norfolk Southern Corporation’s “predecessors and successors in interest, as well as their 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 their behalf.” Union Pacific will respond to the Requests only with respect to Norfolk Southern Corporation and Norfolk Southern Railway Company.

17. Union Pacific objects to Definition No. 8, “UP,” as overly broad, unduly burdensome, disproportionate to the needs of this case, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to require Union Pacific to respond to the Requests with respect to Union Pacific’s “Union Pacific Corporation and Union Pacific Railroad Company and their predecessors and successors in interest, as well as their 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 their behalf.” Union Pacific will respond to the Requests only with respect to Union Pacific Corporation and Union Pacific Railroad Company.

18. Union Pacific objects to each and every Instruction as unduly burdensome to the extent the Instruction seeks to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

19. Union Pacific objects to Instruction No. 1 to the extent it purports to require Union Pacific to complete its production of documents, if any, within fifteen days after service of the Requests. Union Pacific will produce any documents

identified in response to the Requests on a reasonable timeframe and on a rolling basis, and consistent with the procedural schedule for this proceeding.

20. Union Pacific objects to Instruction No. 2 to the extent it purports to impose obligations on Union Pacific to respond to the Requests in a manner not required by 49 C.F.R. Part 1114, Subpart B. Union Pacific will respond to the Requests as provided in the regulations.

21. Union Pacific objects to Instruction No. 3 to the extent it purports to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

22. Union Pacific objects to Instruction No. 4 to the extent it purports to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to this Instruction as overly broad, unduly burdensome, and as seeking information that is neither relevant nor proportional to the needs of this proceeding to the extent this Instruction, in conjunction with other Definitions and Instructions, purports to require Union Pacific to provide the history of Documents that “[were] but [are] no longer” in Union Pacific’s possession, custody, or control.

23. Union Pacific objects to Instruction No. 5 to the extent it would require Union Pacific to provide information not required by 49 C.F.R. Part 1114, Subpart B or information that would be unduly burdensome to provide.

24. Union Pacific objects to Instruction No. 6 as overly broad and unduly burdensome to the extent this Instruction purports to impose obligations on Union

Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B. For those Requests to which it is obliged to respond, Union Pacific will conduct a reasonable search for responsive, non-privileged documents or information subject to its specific and general objections to the Requests.

25. Union Pacific objects to Instruction No. 7 to the extent it purports to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B, and to the extent it would require Union Pacific to provide information not required by 49 C.F.R. Part 1114, Subpart B or information that would be unduly burdensome to provide.

26. Union Pacific objects to Instruction No. 9 to the extent it purports to require Union Pacific to collect documents or information for an unduly burdensome period of time and “until present.” Except as more specifically objected to below, where Union Pacific agrees to produce responsive documents or information, Union Pacific will only search for and provide documents or information from January 1, 2019 up to July 29, 2025.

27. 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.

DISCOVERY REQUESTS AND RESPONSES

REQUEST NO. 1

Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced in response to discovery requests submitted by other participants in this proceeding.

Union Pacific Response

Union Pacific objects to this Request's use of the terms "Documents" and "Communications" for the reasons set forth in its General Objection, and its use of the terms "produce" and "produced" as vague.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will provide BNSF with a copy of or access to Union Pacific's responses to discovery requests in this proceeding that are served by other participants in this proceeding.

REQUEST NO. 2

Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.

Union Pacific Response

Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials that Union Pacific previously filed with the Surface Transportation Board and which are accessible to BNSF through the proceeding, subject to the

existing Protective Order. Union Pacific further objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to the terms “Documents” and “Communications” for the reasons set forth in its General Objection, and the terms “produce” and “produced” as vague.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged materials in its possession that it made available to a federal government agency, state attorneys general, or any other state government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction in response to the request of such entity or in response to Union Pacific’s legal obligations to provide such information, to the extent such information can be collected and produced without undue burden and can be located after a reasonable search. Union Pacific has not identified any such materials in its possession, other than the materials accessible to BNSF through this proceeding.

REQUEST NO. 3

Produce Documents sufficient to show the conditions to STB approval to which NS and/or UP have agreed to accept, propose, or agree to if needed to secure regulatory approval for the Proposed Transaction.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected

from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “Produce Documents sufficient to show” information “to secure regulatory approval” prior to Union Pacific submitting its application and accompanying workpapers.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific responds that its proposals regarding conditions it would accept, propose, or agree to if needed to secure regulatory approval for the Proposed Transaction will be addressed in its application and accompanying workpapers.

REQUEST NO. 4

Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

Union Pacific Response

Union Pacific objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to the undefined phrases “counter-party,” “designed to facilitate service,” and “between the existing UP ... networks” as vague and ambiguous

when read together. Union Pacific further objects to this Request as unduly burdensome to the extent it seeks production of “all” historical versions of the referenced agreements and for an unspecified period of time. Union Pacific further objects to this Request because it seeks information not in Union Pacific’s possession, custody or control. Union Pacific further objects to the term “Documents” for the reasons set forth in its General Objection, and the terms “produce” and “produced” as vague. Union Pacific understands this as a request for agreements between Union Pacific and a counter-party that are designed to facilitate freight rail service operations between the existing Union Pacific and existing Norfolk Southern networks.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce current versions (in effect) of written terminal agreements, operating agreements, and routing protocol agreements between Union Pacific and a counter-party that are designed to facilitate freight rail service operations between the existing Union Pacific and existing Norfolk Southern networks, to the extent such agreements can be collected and produced without undue burden and can be located after a reasonable search.

REQUEST NO. 5

Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected

from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including to the extent it asks Union Pacific to identify “all individuals and/or entities ... from whom ... UP .. has sought, solicited, or discussed a potential letter or statement of support.” Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “Identify” information prior to Union Pacific submitting its application and accompanying workpapers. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed with the Surface Transportation Board and which are accessible to BNSF through the proceeding.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific responds that it has engaged in widespread outreach to customers, labor unions, suppliers, community leaders, public officials, and other stakeholders about the benefits of the Proposed Transaction, including making information regarding the Proposed Transaction available to the public at <https://www.up-nstranscontinental.com>. When individuals or

entities have indicated support, Union Pacific has invited the submission of letters of support to the STB. Union Pacific will provide these letters of support with the application.

REQUEST NO. 6

Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as overly broad and unduly burdensome, to the extent it purports to request Union Pacific “Identify” *all* individuals or entities that “have expressed or communicated concern about the Proposed Transaction” to anyone in any form at any time. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed with the Surface Transportation Board and which are accessible to BNSF through the

proceeding.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific responds that information regarding individuals or entities that submit comments, protests, requests for conditions, or any other evidence and argument in opposition to the Proposed Transaction will be accessible to BNSF through the proceeding.

REQUEST NO. 7

Produce all Documents and Communications with the individuals and/or entities identified in response to Request Nos. 5 and 6 and that concern or relate to the Proposed Transaction.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad, to the extent it purports to request *all* “Documents” or “Communications” that “concern or relate” for an undefined time period, undefined scope, and undefined subjects. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed with the Surface

Transportation Board and which are accessible to BNSF through the proceeding.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged information, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search. Union Pacific directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>.

REQUEST NO. 8

Produce Documents sufficient to show any discounts, contract extensions, or any other economic value or concession offered in connection with or related to any discussion with a customer or stakeholder related to its support or non-opposition the Proposed Transaction.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to the phrase “other economic value or concession” as vague and overly broad. Union Pacific objects to the phrase “offered in connection with or related to” *any* discussion as vague, overly broad, and ambiguous. Union Pacific further objects to the term “stakeholder” as vague, overly broad, and ambiguous.

Subject to and without waiving the foregoing objections and its General

Objections, Union Pacific will produce nonprivileged information, to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers. Union Pacific has not identified any such materials.

REQUEST NO. 9

Produce system-wide car and, where applicable, container, movement event data for all NS and UP traffic for each year or partial year from 2019 to the present. Car event data should be sufficient to identify the sequence of cars within a train for each applicable event, and container event data should be sufficient to identify the car conveying the container for each applicable event.

Union Pacific Response

Union Pacific objects to the undefined term “movement event data” as vague and ambiguous. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request *all* data “sufficient to identify the sequence of cars within a train for each applicable event” or “sufficient to identify the car conveying the container for each applicable event” for every shipment in which Union Pacific participated as a rail carrier for nearly seven years, which includes *billions* of data line items of commercially sensitive information. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding. Union Pacific further objects to this Request as unduly burdensome 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. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged car-level event data from January 1, 2019 to December 31, 2024, in forms or formats kept in the normal course of business, to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

REQUEST NO. 10

Produce system-wide train event data for all NS and UP trains for each year or partial year from 2019 to the present.

Union Pacific Response

Union Pacific objects to the undefined term “train event data” as vague and ambiguous. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request undefined data for *all* trains for nearly seven years. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding.

Union Pacific further objects to this Request as unduly burdensome 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. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged train cycle summary data from January 1, 2019 to December 31, 2024, in forms or formats kept in the normal course of business, to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

REQUEST NO. 11

Produce UP and NS intermodal train schedules from 1995 to present.

Union Pacific Response

Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request all “intermodal train schedules” over the course of thirty years. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in

this proceeding. Union Pacific further objects to this Request as unduly burdensome 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. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged intermodal train schedules information from January 1, 2019 to July 29, 2025, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

REQUEST NO. 12

Produce Documents sufficient to show the density information described below for the entire NS and UP systems for each year or partial year from 2019 to the present in a computer readable database or electronic spreadsheet, including all record layouts, all field descriptions, data definitions, and data dictionaries/decoders required to utilize the data. The density database should include, at a minimum, the following data.

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment and by direction expressed in net ton- miles, or in the alternative, (ii) total density (both directions including empty and loaded trains) by

- segment and by direction expressed in gross ton-miles, including tare weight, locomotive weight, and non-revenue trains, plus appropriate factors that can be used to convert gross ton- miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that NS or UP utilize via trackage rights (or other joint facility or joint use agreements) on another railroad, (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over NS or UP segments, and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

Union Pacific Response

Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to request “density 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. Union Pacific further objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to provide a subset of information which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged density information from January 1, 2019 to December 31, 2024, in forms or formats kept by Union Pacific in the normal course of business, to the extent such materials can be

collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

REQUEST NO. 13

Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 14

Produce Documents relating to any current or anticipated abandonments, leases, grants of trackage rights, or other transactions in which any current line segment of UP or NS would henceforth be operated by another railroad or non-carrier.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of Documents relating to “any current or anticipated”

transactions over an unlimited time period, undefined locations, and for undefined purposes. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed by Union Pacific with the Surface Transportation Board.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will provide responsive information about merger-related transactions with the application & workpapers, to the extent any such transactions exist.

REQUEST NO. 15

Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports

to request *all* “Communications” between Union Pacific and Norfolk Southern since an undefined date. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this request as overly broad and unduly burdensome, to the extent it purports to require Union Pacific to search for “all Communications” between interline carriers in the ordinary course of business. Union Pacific objects to the undefined term “merger announcement” as vague and ambiguous. For the purposes of responding to this Request, Union Pacific interprets “merger announcement” to refer to the July 29, 2025 announcement of the merger agreement.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to its forthcoming application for information on operational integration and the future operation of jointly-owned companies.

REQUEST NO. 16

Produce all Documents regarding changes in employee discipline standards or practices from January 1, 2024 to present.

Union Pacific Response

Union Pacific objects to this request as overly broad, vague, and ambiguous, to the extent it purports to request *all* documents “regarding changes.” Union Pacific objects to the undefined phrase “employee discipline standards or practices” as vague and ambiguous. Union Pacific further objects to this Request because it seeks information that is neither relevant nor

reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged documents responsive to this request to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

REQUEST NO. 17

Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome, to the extent it purports to require Union Pacific to produce *all* “Documents” and *all* “Communications” between the carriers for over ten years. Union Pacific objects to the undefined terms “joint ventures,” “marketing alliances,” and “other forms of cooperative agreements” as vague and ambiguous. Union Pacific objects to this Request as vague, ambiguous, and unduly burdensome, to the extent it purports to require Union Pacific to search for Documents and

Communications related to “potential” unspecified non-merger related business relationships “whether or not such agreements were implemented.”

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will provide documents sufficient to show current interline business relationship service products between Union Pacific and Norfolk Southern, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

REQUEST NO. 18

Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

Union Pacific Response

Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “[d]escribe in detail” information prior to Union Pacific submitting its application and accompanying workpapers, or that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific. Union Pacific further objects to the extent this Request seeks discovery of information documents, or communications that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to information available to the public

at <https://www.up-nstranscontinental.com> and to its forthcoming application.

REQUEST NO. 19

Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

Union Pacific Response

Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to “[d]escribe in detail” information prior to Union Pacific submitting its application and accompanying workpapers, or that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific. Union Pacific further objects to the extent this Request seeks discovery of information documents, or communications that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>. Union Pacific further responds that provisions it would propose to enhance competition in connection with the Proposed Transaction will be addressed in its forthcoming application.

REQUEST NO. 20

Produce all studies and analyses of the impact of the Proposed Transaction on potential future mergers involving any Class I carrier (including Applicants).

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to produce information prior to Union Pacific submitting its application and accompanying workpapers. Union Pacific objects to this Request to the extent it seeks discovery of information or documents that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed. Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged documents responsive to this request to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

REQUEST NO. 21

Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on:

- a. Applicants' current and future debt and debt service obligations.
- b. Applicants' financial metrics including revenue, earnings, EBITDA,

- leverage, and operating ratio;
- c. Applicants' costs and potential opportunities to reduce costs (synergies);
 - d. Railroad intramodal, intermodal, product, and geographic competition;
 - e. Potential traffic diversions from truck transportation to rail transportation;
 - f. Rail service, including rail service provided by other rail carriers;
 - g. Rail safety, including the safety of rail service provided by other rail carriers;
 - h. Rail labor and employment, including labor forces at railroads other than Applicants;
 - i. Passenger or commuter service;
 - j. Rates for rail transportation;
 - k. Competition, including corridor competition, source competition, and intermodal competition; and
 - l. Applicants' proposed gateway commitment on Applicants' existing traffic and the revenues and profitability of that traffic.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request as unduly burdensome and premature, to the extent it purports to require Union Pacific to produce information prior to Union Pacific submitting its application and accompanying workpapers. Union Pacific objects to this Request to the extent it seeks discovery of information or documents that are or will be available or accessible to BNSF as an interested party through the application and accompanying workpapers to be submitted in this proceeding, once filed.

Subject to and without waiving the foregoing objections and its General

Objections, Union Pacific directs BNSF to its filings with the Securities and Exchange Commission, available at <https://www.sec.gov/Archives/edgar/data/100885/000119312525224307/d908896ds4a.htm> and <https://www.sec.gov/Archives/edgar/data/100885/000119312525226560/d908896d424b3.htm>, and information available to the public at <https://www.up-nstranscontinental.com/> and <https://investor.unionpacific.com/>. Union Pacific also directs BNSF to its forthcoming application and accompanying workpapers.

REQUEST NO. 22

Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of *all* “studies, analyses, and reports” for undefined time periods. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to its filings with the Securities and Exchange Commission, available at <https://www.sec.gov/Archives/edgar/data/100885/000119312525224307/d908896ds4a.htm> and <https://www.sec.gov/Archives/edgar/data/100885/000119312525226560/d908896d424b3.htm>.

REQUEST NO. 23

Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific further objects to this Request because it seeks information not in Union Pacific's possession, custody or control.

REQUEST NO. 24

Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.

Union Pacific Response

Union Pacific objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding. Union Pacific objects to this request as overly broad, vague, and ambiguous, to the extent it purports to request *all* documents "provided to third parties... regarding the Proposed Transaction." Union Pacific objects to Union Pacific further objects to the term "Documents" for the reasons set forth in its General Objection, and

the terms “provided” as vague. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials that Union Pacific previously filed with the Surface Transportation Board and which are accessible to BNSF through the proceeding, subject to the existing Protective Order.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>.

REQUEST NO. 25

Produce data from 2019 through present for all reciprocal switches performed by or for UP or NS sufficient to identify:

- a. The date the reciprocal switch was requested;
- b. The date the reciprocal switch was completed;
- c. The switching and receiving carriers involved in the reciprocal switch;
- d. The price authority governing the reciprocal switch;
- e. Revenues paid for the reciprocal switch;
- f. The customer name and SPLC station location where switch was originated or terminated;
- g. The location, including latitude and longitude, where the shipment was physically transferred between switching and receiving carrier; and
- h. The car initial and car number of each rail car involved in the reciprocal switch.

Union Pacific Response

Union Pacific objects to this Request to the extent it seeks materials protected from disclosure by the attorney-client privilege, the attorney work-

product doctrine, or any other applicable privileges or immunities. Union Pacific further objections to the undefined terms “requested,” “completed,” and “reciprocal switches” as vague and ambiguous. Union Pacific further objects to this Request as unduly burdensome 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. Union Pacific further objects to this Request to the extent it seeks *all* data for *all* “reciprocal switching” from January 1, 2019 through December 31, 2024. Union Pacific further objects to this Request as unduly burdensome, to the extent it purports to require Union Pacific to provide a subset of information or data which could be ascertained by BNSF’s review of the data or documents that are or will be readily available or accessible to BNSF through Union Pacific’s submissions in this proceeding. Union Pacific further objects to this request to the extent it asks Union Pacific to organize, manipulate, or modify data or documents in a manner that does not reflect how they are kept or were created in the ordinary course of business.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged data regarding reciprocal switch movements in its possession and responsive to this Request for the period January 1, 2019 to December 31, 2024, to the extent such materials can be collected and produced without undue burden, and can be located after a reasonable search.

REQUEST NO. 26

Produce all Documents related to UP and NS's planned capital budgets and forecasts for the next five years (as prepared in the 2024 and 2025 period prior to the announcement of the Proposed Transaction).

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of *all* "Documents related to ... capital budgets and forecasts." Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific further objects to this Request because it seeks information regarding Norfolk Southern that is not in Union Pacific's possession, custody or control.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific directs BNSF to its Form 10-K filing with the Security Exchange Commission and information available to the public at <https://investor.unionpacific.com/>.

REQUEST NO. 27

Produce Documents sufficient to identify all issues or problems that UP and NS have had using rights or accessing services required by STB- ordered deal conditions.

Union Pacific Response

Union Pacific objects to this Request to as seeking materials protected

from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities. Union Pacific objects to this Request as overly broad and unduly burdensome in that it requests production of Documents “sufficient to identify all issues or problems” over an unlimited time period and for undefined purposes. Union Pacific further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Union Pacific objects to this Request to the extent it seeks materials that are publicly available or otherwise readily available or accessible to BNSF from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the materials filed by Union Pacific with the Surface Transportation Board.

Subject to and without waiving the foregoing objections and its General Objections, Union Pacific will produce nonprivileged documents responsive to this request to the extent such materials can be collected and produced without undue burden, can be located after a reasonable search, and are not otherwise provided with the application & workpapers.

Respectfully submitted,

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
PEGAH NABILI
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*

October 16, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2025, I have caused the foregoing Union Pacific's Responses and Objections to BNSF Railway Company's First Set of Discovery Requests to be served electronically on all parties of record in this proceeding.

/s/ Kevin Kelly

EXHIBIT 4

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36873

**UNION PACIFIC CORPORATION, ET AL. – CONTROL – NORFOLK
SOUTHERN CORPORATION, ET AL.**

**NS'S RESPONSES AND OBJECTIONS TO BNSF RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Norfolk Southern and its U.S. rail operating subsidiaries (collectively, "NS"), through undersigned counsel, responds as follows to BNSF Railway Company's First Set of Discovery Requests ("Requests"). NS's responses and objections to these Requests are based on NS's present knowledge, information, and belief. NS reserves the right to supplement or amend these Responses and Objections at any time as circumstances may require.

GENERAL RESPONSES AND OBJECTIONS

NS's General Objections, as set forth herein, are to be considered objections to each of the specific discovery requests (including subparts) that follow. NS's objections shall not waive or prejudice any objections that it may later assert.

1. NS objects to the Requests as untimely and premature, because they ask for sweeping discovery before any application has been filed with the STB in the above-referenced proceeding. NS further objects to BNSF's demand that NS complete its discovery production within 15 days. In the spirit of compromise and efficiency, NS nevertheless is providing written responses and objections today, and may produce certain materials in advance of the filing of the forthcoming application in this proceeding ("Control Application"). NS's decision to do so does

not waive its objections to BNSF's premature discovery requests and patently unreasonable demand for immediate production of all responsive materials.

2. NS objects to each and every of BNSF's Definitions, Instructions, and Requests to the extent that they seek to impose obligations on NS that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B, are not proportional to the needs of this proceeding, or impose an undue burden on NS.

3. NS objects to the Requests, including the Definitions and Instructions, to the extent they seek information that is cumulative or duplicative, already in the Applicants' possession, custody, or control, or that is or will be obtainable from publicly available sources, such as the Control Application, or from another source that is more convenient, less burdensome, or less expensive.

4. NS objects to each and every Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, exemption, or protection from discovery or disclosure. In the event that any such information is inadvertently produced or provided, and such information is the proper subject of the attorney-client privilege, the attorney work-product doctrine, the joint defense and common interest privilege, and/or other applicable privilege, exemption, or protection, such disclosure is not to be construed as a waiver of any of these privileges, exemptions, or protections. NS reserves the right to require that such inadvertently produced privileged information be returned to it and that all copies in BNSF's possession, and that of its counsel, consultants, subsidiaries, or other agents, be destroyed.

5. NS objects to the Requests to the extent they seek information or documents in a form not maintained by NS in the regular course of business or to the extent they would require

NS to perform a special study. Where requested documents or information could be developed only through the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, NS will not prepare or produce any special studies.

6. NS 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.

7. NS does not concede the relevance, materiality, competency, or admissibility as evidence of documents or information requested in the Requests. NS reserves its right to object on any ground to the use of the responses herein in this proceeding or in any subsequent appeal, proceeding, action or trial.

8. NS objects to each and every Definition, Instruction, and Request contained therein as unduly burdensome to the extent they seek production from the files of all current and former NS 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, NS states that it will produce documents from files most likely to contain materials responsive to the Request without undue burden.

9. NS objects to each and every Discovery Request to the extent they seek information that might reveal NS's commercially sensitive or long-term corporate strategies and are not relevant to this proceeding. NS reserves the right to redact any non-responsive information relating to NS's corporate strategies that may be found in otherwise responsive documents produced to BNSF.

10. NS objects to the Requests, Instructions, and Definitions, to the extent they seek information or documents that contain confidential, proprietary, or commercially sensitive information. NS will only produce such information subject to the Board's Protective Order issued on August 5, 2025 (Decision No. 1). NS will designate information, if not otherwise objectionable, as "Confidential" or "Highly Confidential," subject to the terms of the Protective Order entered in this case. NS reserves the right to seek additional protections as needed.

11. NS objects to BNSF's Definition No. 1 defining "Communication" to the extent it is overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 CFR Part 1114. NS specifically objects to Definition No. 1 as unduly burdensome to the extent that it seeks production of information on "telephone conversations" or "in-person conversations" and to the extent that it would require production of text messages, instant or direct messages on any platform and electronic communications other than emails, and to the extent that it purports to require production of material that was not reduced to writing. NS is not searching for and will not produce these categories of "Communications."

12. NS objects to BNSF's Definition No. 4 defining "identify" to the extent it is overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 CFR Part 1114. For requests that NS identify individuals, NS will provide name and affiliation. For requests that NS identify Documents, NS may respond with either a description or by producing the document itself. For requests that NS identify Communications, NS may respond with either a description or by producing documents from which the Communication can be identified.

13. NS objects to the definition of "NS" as overly broad, unduly burdensome, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence to the

extent that BNSF seeks to include any present and former directors; officers; employees; agents; managing agents; representatives; attorneys; parent companies; subsidiaries; predecessors; affiliates; divisions; area offices; and regional offices. NS will produce information within its possession, custody, and control that can be located after a reasonable search, and NS will respond only with respect to the applicants Norfolk Southern Corporation and Norfolk Southern Railway Company.

14. NS objects to the proposed definition of “UP” as overly broad, unduly burdensome, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence to the extent that BNSF seeks to include any present and former directors; officers; employees; agents; managing agents; representatives; attorneys; parent companies; subsidiaries; affiliates; divisions; area offices; and regional offices. NS will only respond to these Requests with respect to the applicants Union Pacific Corporation and Union Pacific Railroad Company, and will only produce information with respect to those entities that is within NS’s possession, custody, and control.

15. NS specifically objects to Instruction No. 1, which seeks responsive Documents to all requests not later than fifteen days after the date of service of these Requests on the basis that the request is unduly burdensome and fails to allow for a reasonable time for compliance. Relevant documents will be produced on a rolling basis as they become available and consistent with the procedural schedule.

16. NS specifically objects to Instruction No. 3 to the extent it is unduly burdensome and seeks to impose obligations broader than those imposed by 49 CFR Part 1114.

17. NS specifically objects to Instruction No. 4 to the extent it is unduly burdensome and seeks to impose obligations broader than those imposed by 49 CFR Part 1114, and would

require NS to explain the history of hypothetical documents that are no longer in NS's possession.

18. NS specifically objects to Instruction No. 5 to the extent it is unduly burdensome and seeks to impose obligations broader than those imposed by 49 CFR Part 1114. NS will produce documents as kept in NS's regular course of business.

19. NS specifically objects to Instruction No. 6's request for production of "entire knowledge" from "all sources" including "agents, representatives, consultants, and attorneys" to the extent it is unduly burdensome and overly broad. NS similarly objects to Requests that seek production of "all" conceivable documents as unduly burdensome and disproportionate to any legitimate need of BNSF for information to prepare its filings in this proceeding. NS will conduct a reasonable search and produce non-privileged documents that are responsive to these Requests.

20. NS objects to BNSF's Instruction No. 9 and failure to put a reasonable time limitation on its discovery requests as disproportionate and unduly burdensome. NS further objects to BNSF's requests for documents and data through "the present" as vague and ambiguous, since "the present" is an ever-moving target. Except as otherwise noted, the time frame for NS's document search is January 1, 2019 through July 29, 2025.

21. NS reserves all rights to supplement, amend, revise, correct, or clarify these objections and/or responses, and NS reserves its rights to assert any applicable objection, privilege, or other protection in connection with such supplement or amendment.

22. NS does not concede the relevance, materiality, competency, or admissibility as evidence of documents or information requested in the Requests or the Responses or productions thereto provided by NS. NS reserves its right to object on any ground to the use of the Responses

herein, or its related productions, in this proceeding or in any subsequent appeal, proceeding, action, or trial.

23. Consistent with the baseline confidentiality protections of the STB's Protective Order, no documents, data or information produced by NS may be input into any public internet search engine or into any public, non-compartmentalized generative artificial intelligence (e.g. ChatGPT, Google Bard, etc.).

24. Consistent with the baseline confidentiality protections of the STB's Protective Order, documents and information produced by NS in this proceeding shall be maintained in a distinct database, separate from any other documents, including those produced by NS or any other party in a separate proceeding. BNSF may not co-mingle Confidential or Highly Confidential information received in discovery in this proceeding with materials from any other litigation or matter, and may not submit any of the information received in discovery to any open generative artificial intelligence ("AI") tool (e.g., ChatGPT) or any substantially similar tool that is available to the public. BNSF may only submit information to an internal closed generative AI tool if it ensures that the tool is not accessible to the public; is not accessible to individuals who have not executed the appropriate confidentiality undertakings to the STB protective order; is used in a secure, controlled environment where information can only be used for purposes of this proceeding and could not be used to respond to any other inquiry; and gives BNSF the capability to delete all discovery material from the tool at the close of the proceeding. Under no circumstances should any information provided by NS to BNSF be used to train any AI or language model, or submitted to an internal AI tool in a way that such training be possible.

SPECIFIC RESPONSES AND OBJECTIONS

In addition to its General Objections (which apply in full to each and every Request without further enumeration), NS sets forth Specific Objections and Responses to each Request below. NS preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive its General Objections. Nor shall any of NS's Specific Objections limit the scope, breadth, generality, or applicability of those General Objections.

REQUEST NO. 1

Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced in response to discovery requests submitted by other participants in this proceeding.

Response:

Subject to and without waiving the General Objections, NS will produce to BNSF documents it produces in discovery to other parties in this proceeding. As of the date these responses were served, there are no such documents.

REQUEST NO. 2

Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.

Response:

NS objects to this Request to the extent it seeks production of publicly available information that BNSF could obtain through less intrusive means, including by reviewing documents that are publicly available on the STB's docket and/or with which BNSF has been served. NS further objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or other applicable privilege, including material related to settlement discussions. Subject to and without waiving

that objection and the General Objections, NS will produce to BNSF documents it produces to other federal or state agencies relating to the Proposed Transaction in response to the requests of those agencies or NS's legal obligations to provide such information, to the extent that such documents are not publicly available. As of the date these responses were served, there are no such documents.

REQUEST NO. 3

Produce Documents sufficient to show the conditions to STB approval to which NS and/or UP have agreed to accept, propose, or agree to if needed to secure regulatory approval for the Proposed Transaction.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or other applicable privilege, including material related to settlement discussions. NS further objects to this Request because it seeks information that is readily available from other sources, and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving that objection or the General Objections, NS refers BNSF to the Control Application that will be filed in this docket.

REQUEST NO. 4

Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

Response:

NS objects to this Request because it is vague, in part because it does not define "counterparty" or agreements that are "designed to facilitate service between the existing UP or NS networks." NS will interpret the vague phrasing to mean agreements involving NS and another party that are designed to facilitate freight rail service operations between the UP and NS

networks. Subject to and without waiving that Objection and the General Objections, NS will conduct a reasonable search and produce currently effective versions of written terminal agreements, operating agreements, and routing protocol agreements between NS and a counterparty that are designed to facilitate freight rail service operations between the existing UP and existing NS networks.

REQUEST NO. 5

Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Response:

NS objects to this Request to the extent that it seeks discovery of work product, materials protected from disclosure by the attorney-client privilege, and other privileged information. NS further objects because the Request is not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. Finally, NS objects to this Request because it seeks information that is readily available from other sources, including materials filed with the Board. Subject to and without waiving these Objections and the General Objections, NS states that it has conducted wide-ranging outreach to customers, labor unions, suppliers, community leaders, public officials, and other stakeholders about the benefits of the Proposed Transaction. When individuals or entities have indicated support, NS has invited the submission of letters of support to the Board. Some letters of support have been submitted already, and additional letters of support will be filed as part of the forthcoming Control Application.

REQUEST NO. 6

Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Response:

NS objects to this Request to the extent that it seeks discovery of work product, materials protected from disclosure by the attorney-client privilege, and other privileged information. NS further objects because the Request is overly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. NS objects to this Request because it seeks information that is readily available from other sources, such as the Control Application. Subject to and without waiving the foregoing objections, NS states that information regarding individuals or entities that submit comments, protests, requests for conditions, or any other evidence and argument in opposition to the Proposed Transaction will be available to BNSF through service of pleadings in this proceeding and review of the STB's public docket, which provides broad opportunities for any party to express their views on the Proposed Transaction.

REQUEST NO. 7

Produce all Documents and Communications with the individuals and/or entities identified in response to Request Nos. 5 and 6 and that concern or relate to the Proposed Transaction.

Response:

NS objects to this Request to the extent that it seeks discovery of work product, materials protected from disclosure by the attorney-client privilege, and other privileged information. NS further objects because the Request is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in

preparation of its filings in this proceeding. NS also objects to this Request because it seeks information that is readily available from other sources, such as the Control Application and the STB's public docket. Subject to and without waiving the foregoing objections, NS will conduct a reasonable search and produce non-privileged information responsive to this request.

REQUEST NO. 8

Produce Documents sufficient to show any discounts, contract extensions, or any other economic value or concession offered in connection with or related to any discussion with a customer or stakeholder related to its support or non-opposition the Proposed Transaction.

Response:

NS objects to this Request to the extent that it seeks discovery of work product, materials protected from disclosure by the attorney-client privilege, and other privileged information. NS further objects because the Request is overly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. NS objects because "any" "economic value[s] or concession[s]" is vague and overly broad. Subject to and without waiving the foregoing objections, NS will conduct a reasonable search and produce non-privileged information responsive to this request that cannot be found in the forthcoming Control Application and workpapers for that application. To date, NS has not identified any such materials.

REQUEST NO. 9

Produce system-wide car and, where applicable, container, movement event data for all NS and UP traffic for each year or partial year from 2019 to the present. Car event data should be sufficient to identify the sequence of cars within a train for each applicable event, and container

event data should be sufficient to identify the car conveying the container for each applicable event.

Response:

NS objects to this Request as unduly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. The request for over six years of complete car event data is extraordinarily broad, and this request is unnecessary in a regulatory process where NS will already be providing detailed information on current operations in the Control Application. NS further objects to the extent that the Request calls for a special study by producing information in a form not kept in the ordinary course of business. Subject to and without waiving these objections or the General Objections, NS will produce car and container event data for January 1, 2019 through December 31, 2024. NS notes that it only has full visibility for traffic moving on NS and not traffic moving on UP. NS also notes that its event data may not include full information on local or yard movements.

REQUEST NO. 10

Produce system-wide train event data for all NS and UP trains for each year or partial year from 2019 to the present.

Response:

NS objects to this Request as unduly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. The request for over six years of complete train event data is extraordinarily broad, and this request is unnecessary in a regulatory process where NS will already be providing detailed information on current operations in the Control Application. NS further objects to the extent that the Request calls for a special study by producing information in a form not kept in

the ordinary course of business. Subject to and without waiving these objections or the General Objections, NS will produce train event data for January 1, 2019 through December 31, 2024. NS notes that it only has full visibility for traffic moving on NS and not traffic moving on UP. NS also notes that its event data may not include full information on local or yard train movements.

REQUEST NO. 11

Produce UP and NS intermodal train schedules from 1995 to present.

Response:

NS objects to BNSF's request for thirty years of intermodal train schedules as unduly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. NS further objects to this Request as premature because it seeks information that will be readily available in the Control Application and in a form not kept in the ordinary course of business. Subject to and without waiving the General Objections, NS will produce intermodal train schedules that were in effect between January 1, 2019 and July 29, 2025.

REQUEST NO. 12

Produce Documents sufficient to show the density information described below for the entire NS and UP systems for each year or partial year from 2019 to the present in a computer readable database or electronic spreadsheet, including all record layouts, all field descriptions, data definitions, and data dictionaries/decoders required to utilize the data. The density database should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment and by direction expressed in net ton-miles, or in the alternative, (ii) total density (both directions

including empty and loaded trains) by segment and by direction expressed in gross ton-miles, including tare weight, locomotive weight, and non-revenue trains, plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and f. Density information (i) for segments that NS or UP utilize via trackage rights (or other joint facility or joint use agreements) on another railroad, (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over NS or UP segments, and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

Response:

NS objects to this Request as overbroad and unduly burdensome to the extent it seeks information that would duplicate the density data that will be part of the Control Application. NS further objects to this Request to the extent it requests documents and information NS does not keep in the regular course of business and would require NS to conduct a special study to produce the requested “density database.” Subject to and without waiving this objection and the General Objections, NS will produce information from which the answer to this request can be derived, to the extent it exists. NS will produce available data and information from January 1, 2019 to December 31, 2024, but will not conduct a special study to create a “density database” that meets BNSF’s specifications. NS further notes that its information may be limited on certain segments, such as segments over which NS operates via trackage rights.

REQUEST NO. 13

Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege. NS

further objects to this Request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence

REQUEST NO. 14

Produce Documents relating to any current or anticipated abandonments, leases, grants of trackage rights, or other transactions in which any current line segment of UP or NS would henceforth be operated by another railroad or non-carrier.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege. NS further objects to this Request as premature as it seeks information that will be readily available in the Control Application and in a form not kept in the ordinary course of business. Finally, NS objects to this Request as unduly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding, to the extent BNSF seeks documents related to “any current or anticipated” transactions over an undefined time period. Subject to these objections and General Objections, NS refers BNSF to the forthcoming Control Application, which will include responsive information about any merger-related transactions.

REQUEST NO. 15

Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

Response:

To the extent that this Request seeks Documents relating to plans for future post-merger operations, NS objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest

privilege. To the extent it seeks Documents related to current pre-merger operations, NS objects to this Request as unduly burdensome and not reasonably calculated to lead to the discovery of relevant, admissible evidence that could aid BNSF in preparation of its filings in this proceeding. Finally, NS notes it understands “the merger announcement” to refer to the July 29, 2025 announcement of the merger agreement. Subject to these Objections and the General Objections, NS refers BNSF to its forthcoming Control Application and workpapers for that application for information on operational integration and the future operation of jointly-owned companies.

REQUEST NO. 16

Produce all Documents regarding changes in employee discipline standards or practices from January 1, 2024 to present.

Response:

NS objects to this request as overly broad, vague, and ambiguous, to the extent it purports to request *all* documents “regarding changes” to “employee discipline standards or practices.” Subject to and without waiving the General Objections, NS will conduct a reasonable search and produce non-privileged information related to any written changes in policy over the requested period.

REQUEST NO. 17

Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

Response:

NS objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege. NS further objects to this Request because it seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence. Further, NS objects to this Request as unduly burdensome, to the extent it purports to require the production of *all* “Documents” and “Communications” between the carriers for over ten years. NS also objects to the undefined terms “joint ventures,” “marketing alliances,” and “other forms of cooperative agreements” as vague and ambiguous. Lastly, NS objects to this Request as vague, ambiguous, and unduly burdensome, to the extent it requires a search for information related to “potential” unspecified non-merger related business relationships “whether or not such agreements were implemented.” Subject to and without waiving this Objection and the General Objections, NS will conduct a reasonable search and produce non-privileged documents that are sufficient to show current interline business relationship service products between UP and NS.

REQUEST NO. 18

Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

Response:

NS objects the Request as premature and unduly burdensome insofar as it requires NS to “[d]escribe in detail” information that is readily available from other sources including the Control Application. Subject to and without waiving the General Objections, NS refers BNSF to its forthcoming Control Application and workpapers for that application.

REQUEST NO. 19

Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

Response:

NS objects the Request as premature and unduly burdensome insofar as it requires NS to “[d]escribe in detail” information that is readily available from other sources including the

Control Application. Subject to and without waiving the General Objections, NS refers BNSF to its forthcoming Control Application and workpapers for that application.

REQUEST NO. 20

Produce all studies and analyses of the impact of the Proposed Transaction on potential future mergers involving any Class I carrier (including Applicants).

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege. NS objects to this Request to the extent it seeks production of publicly available information that BNSF could obtain through less intrusive means, such as the forthcoming Control Application. Subject to and without waiving the General Objections, NS will conduct a reasonable search and produce non-privileged documents that are responsive to this Request. NS also refers BNSF to the forthcoming Control Application and workpapers for that application.

REQUEST NO. 21

Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on:

- a. Applicants' current and future debt and debt service obligations.
- b. Applicants' financial metrics including revenue, earnings, EBITDA, leverage, and operating ratio;
- c. Applicants' costs and potential opportunities to reduce costs (synergies);
- d. Railroad intramodal, intermodal, product, and geographic competition;
- e. Potential traffic diversions from truck transportation to rail transportation;
- f. Rail service, including rail service provided by other rail carriers;
- g. Rail safety, including the safety of rail service provided by other rail carriers;
- h. Rail labor and employment, including labor forces at railroads other than Applicants;
- i. Passenger or commuter service;
- j. Rates for rail transportation;
- k. Competition, including corridor competition, source competition, and intermodal competition; and
- l. Applicants' proposed gateway commitment on Applicants' existing traffic and the revenues and profitability of that traffic.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. NS objects to this Request as unduly burdensome and premature to the extent it seeks production of publicly available information that BNSF could obtain through less intrusive means, such as the forthcoming Control Application. Subject to and without waiving this Objection or the General Objections, NS refers BNSF to the forthcoming Control Application and workpapers to that Application, as well as NS's filings with the Securities and Exchange Commission, and information available to the public at <https://www.up-nstranscontinental.com/>.

REQUEST NO. 22

Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. NS also objects to this Request because it requests information held by Union Pacific. Subject to and without waiving this objection or the General Objections, NS refers BNSF to any documents produced by UP in response to this request.

REQUEST NO. 23

Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. NS objects to this Request as overly broad and unduly burdensome in that it requests production of all "studies, analyses, and reports" for undefined time periods. NS further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection or the General Objections, NS directs BNSF to its filings with the Securities and Exchange Commission.

REQUEST NO. 24

Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. NS also objects to this request as overly broad, vague, and ambiguous, to the extent it purports to request *all* documents “provided to third parties... regarding the Proposed Transaction.” Finally, this Request seeks materials that are publicly available to BNSF from other sources, including material previously filed with the Board. Subject to and without waiving the General Objections, NS directs BNSF to information available to the public at <https://www.up-nstranscontinental.com/>.

REQUEST NO. 25

Produce data from 2019 through present for all reciprocal switches performed by or for UP or NS sufficient to identify:

- a. The date the reciprocal switch was requested;
- b. The date the reciprocal switch was completed;
- c. The switching and receiving carriers involved in the reciprocal switch;
- d. The price authority governing the reciprocal switch;
- e. Revenues paid for the reciprocal switch;
- f. The customer name and SPLC station location where switch was originated or terminated;
- g. The location, including latitude and longitude, where the shipment was physically transferred between switching and receiving carrier; and
- h. The car initial and car number of each rail car involved in the reciprocal switch.

Response:

NS objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the proceeding to the extent it seeks *all* data and documents reflecting reciprocal switching arrangements from 2019 to present. The Request includes terms like “requested,”

“completed,” and “reciprocal switches,” which are vague and ambiguous, and would require NS to produce information in a form not kept in the regular course of business. NS further objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. Subject to and without waiving these Objections and the General Objections, NS will provide documents sufficient to determine the information requested in subparts (a)-(h) of this Request for the period January 1, 2019, to December 31, 2024, to the extent that such documents exist and can be located after a reasonable search. NS will produce data that it is available, but will not conduct any special study.

REQUEST NO. 26

Produce all Documents related to UP and NS’s planned capital budgets and forecasts for the next five years (as prepared in the 2024 and 2025 period prior to the announcement of the Proposed Transaction).

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. NS objects to this Request as overly broad and unduly burdensome in that it requests production of *all* “Documents related to ... capital budgets and forecasts.” NS further objects to this Request because it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Finally, NS objects to this Request because it seeks information about UP that is not in NS’s possession, custody or control. Subject to and without waiving the General Objections, NS directs BNSF to its filings with the Securities and Exchange Commission.

REQUEST NO. 27

Produce Documents sufficient to identify all issues or problems that UP and NS have had using rights or accessing services required by STB-ordered deal conditions.

Response:

NS objects to this Request to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest privilege, or information contained in workpapers. NS also objects to this request as overly broad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. And, this Request seeks materials that are publicly available to BNSF from other sources, including material previously filed with the Board. NS further objects to this Request on the basis it is vague and does not define “issues or problems.” NS will interpret this Request to mean situations where NS was precluded from using rights that the STB had ordered as a condition to a transaction. Subject to and without waiving the General Objections and Specific Objections articulated herein, NS will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

/s/ Matthew J. Warren

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

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

*Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

Date: October 16, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2025, a copy of the foregoing “NS’s Response to BNSF Railway Company’s First Set of Discovery Requests” was served by email or first class mail on the service list for Finance Docket No. 36873.

/s/ Matthew J. Warren _____
Matthew J. Warren

EXHIBIT 5

KIRKLAND & ELLIS LLP

1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
United States

+1 202 389 5000

www.kirkland.com

McClain Thompson
To Call Writer Directly:
+1 202 389 5292

mcclain.thompson@kirkland.com

Facsimile:
+1 202 389 5200

November 12, 2025

Via E-Mail

Michael L. Rosenthal
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001-4956

Re: *STB Finance Docket No. 36873 – UP’s Initial Discovery Responses*

Dear Counsel:

We write for BNSF regarding UP’s responses to BNSF’s First Set of Discovery Requests, as well as the pace of discovery to date.

The UP-NS merger proposal is a pivotal moment for the railroad industry and, in turn, the American manufacturers, workers, and consumers who depend on competitive rail service. No railroad merger of this scale has ever been proposed. And UP has embraced its significance: UP contends the proposed UP-NS merger is “unprecedented” and will “transform the U.S. supply chain[.]”¹ Given the stakes, the Board and all stakeholders need discovery to study how this merger would shape the U.S. economy and American railroads for generations.

To date, UP has slow-walked discovery and blocked our ability to access that necessary information. More than 100 days after announcing the transaction, UP has produced just 331 documents (and the majority of that production was lease agreements and waiver conditions). UP has produced no emails, board materials, or internal analyses of the merger and its expected impacts on the rail industry and customers. And based on its initial written discovery responses, it appears that UP intends to not provide timely discovery into case-relevant information. UP declined to conduct any searches for 13 of BNSF’s initial requests,² and for others, UP is not providing responsive materials or otherwise declining to respond until UP files its Application.³

¹ Applicants’ Notice of Intent, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 at 2 (Jul. 30, 2025).

² UP’s Responses and Objections to BNSF’s First Set of Discovery Requests, at Nos. 3, 5-6, 13-15, 18-19, 21-24, and 26.

³ *See id.* at Nos. 3, 5, 8-10, 12, 14-15, 18-21, and 27.

KIRKLAND & ELLIS LLP

Michael L. Rosenthal

November 12, 2025

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In light of UP's approach to discovery to date and limited productions, we were disappointed to see UP attempt to use its engagement in the discovery process as a basis to *shorten* the procedural schedule.⁴ We will be sure to point out these short comings when we file our response to the procedural schedule.

Below, we write regarding some of our initial concerns about UP's participation in the discovery process to date.

UP's General Responses and Objections

Objections relating to UP's upcoming applications. UP objected to BNSF's requests to the extent that BNSF sought discovery that "will be available or accessible . . . through the application and accompanying workpapers to be submitted in this proceeding, once filed." UP Responses ¶ 2. Although there may be overlap between UP's Application and some of BNSF's discovery requests, UP cannot defer answering BNSF's requests until it files its Application—particularly when UP is telling the Board that it is actively responding to stakeholders' pre-Application discovery requests. Please confirm UP will withdraw this objection and address the discovery that we have served.

Communications and documents other than emails. UP objects to searching any communications or documents other than emails as unduly burdensome and not proportional. *Id.* at ¶ 13-14. UP's refusal to search non-email communications—including texts, meeting invitations, instant messages, or chat logs from electronic platforms—is unsupported by 49 C.F.R. Part 1114 and denies BNSF and other stakeholders access to responsive information. Although BNSF is willing to meet and confer to negotiate parameters around searches for non-email communications, please confirm UP will withdraw its front-end objection to even searching from those sources.

Please also identify the custodians that UP proposes to search, so that we can consider further and begin those conversations.

Relevant time period. UP generally objects to responding to BNSF's discovery requests to the extent they require UP "to collect documents or information for an unduly burdensome period of time and 'until the present.'" *Id.* at ¶ 26. UP asserts that it will "only search for and provide documents or information from January 1, 2019 up to July 29, 2025." *Id.* While BNSF appreciates there could be some valid undue burden concerns related to some pre-2019 materials,

⁴ See Applicants' Comments on the Proposed Procedural Schedule, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 (Oct. 20, 2025).

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a sharp cut-off is inappropriate. Pre-2019 materials—such as intermodal train schedules and joint ventures between the applicants—could be relevant and should be searched. Similarly, a July 29, 2025 cut-off would improperly exclude relevant materials—including communications with shippers and governmental agencies about the merger and its effects on the industry and customers; integration planning materials; and internal discussions within UP about the transaction and its implementation. Although BNSF is willing to negotiate parameters for those searches, please confirm UP will withdraw those front-end date objections.

UP's Specific Responses and Objections

While BNSF intends to follow up with UP regarding other of BNSF's initial requests as discovery unfolds, we write in this first instance regarding aspects of 12 requests where it appears we may have near-term disputes. We reserve our rights to follow up about other aspects—and the other requests—at the appropriate time.

***BNSF Request No. 2:** Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.*

UP responded that it would produce “nonprivileged materials” that it made available to government agencies “in response to the request of such entity or in response to UP’s legal obligations to provide such information, to the extent such information can be collected and produced without undue burden and can be located after a reasonable search.” *Id.* at 12-13.

We have several concerns with this response. **First**, please identify what privileges—if any—UP is using or might use to withhold responsive materials that were shared with federal or state government agencies. We are not aware of any such valid privilege assertions.

Second, UP improperly limits its search and production to materials “in response to the request of such entity or in response to [UP’s] legal obligations to provide such information[.]” *Id.* at 13. BNSF is entitled to relevant information provided by UP to federal and state government agencies whether or not UP had a *legal* obligation to disclose such. UP must produce all relevant documents and communications previously produced to the Board, DOJ, or any other federal or state government agency relating to the Proposed Transaction or BNSF’s requests. Please confirm that UP will withdraw this limitation.

Third, UP responds that it would produce materials “to the extent such information can be collected and produced without undue burden and can be located after a reasonable search.” *Id.*

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That limitation is unacceptable, since all of the materials requested by BNSF have already been—or will be—produced to third parties and should be identifiable with minimal burden to UP. Please confirm that UP will withdraw this limitation.

***BNSF Request No. 4:** Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.*

Although UP agreed to produce materials responsive to this request, UP improperly limited that production to agreements “between Union Pacific and a counter-party that are designed to facilitate freight rail service operations between the existing Union Pacific and existing Norfolk Southern networks[.]” *Id.* at 15 (emphasis added). UP’s response improperly re-writes our request and purports to limit UP’s response. We seek agreements between UP and counter-parties that “facilitate service between the existing UP or NS networks.” Please confirm that UP will search for agreements facilitating service between existing UP or NS networks. That information is relevant to understanding the operational efficiency of UP and NS’s rail networks and potential for service disruptions, among other things.

Please confirm that UP’s productions will include any agreements for “rubber wheel interchanges” where containers are interchanged between UP or NS via truck or drayage. Those short-haul trucking movements can add substantial time, cost, and congestion to intermodal operations, and are directly relevant to the operational efficiency, competitive effects, and environmental impact of the proposed merger, among other things.

***BNSF Request No. 5:** Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.*

Although UP states that it “has engaged in widespread outreach” to various entities and that it “will provide these letters of support with the application,” that is not responsive to BNSF’s request. BNSF is seeking the identities of all individuals or entities for whom UP has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction—not merely those providing letters of support to UP. Such information is relevant to this proceeding because, among other things, UP has cited customer support as a basis for Board

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approval of the Proposed Transaction.⁵ Please confirm that UP will amend its response to identify all individuals or entities responsive to this request (which would include those who have chosen not to provide letters of support).

***BNSF Request No. 6:** Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.*

UP also fails to adequately respond to BNSF's Request No. 6, which seeks the identity of all individuals or entities that expressed or communicated concern about the Proposed Transaction. Although some of those individuals or entities may choose to file materials with the Board, others that expressed or communicated concerns to UP may not—particularly those who may have concerns about taking a public stance against what would be the only transcontinental railroad. Because UP is touting customer support as a basis for approval, the identities of individuals or entities who have expressed concern are relevant to these proceedings and should be identified by UP. Please confirm that UP will amend its response to identify all individuals or entities responsive to this request.

***BNSF Request No. 13:** Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.*

UP made two objections to this request: (1) that it seeks “materials protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities, including materials relating to the potential settlement of this proceeding;” and (2) “it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” These objections are improper.

First, UP's privilege-based objections are meritless. There is nothing privileged about the terms of a contract signed by two parties negotiating at arms-length. Please confirm whether UP is withholding responsive documents based on privilege, and if so, please specifically identify the

⁵ See Statements of Support, <https://www.up-nstranscontinental.com/>.

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privilege on which UP is relying and how that privilege could shield the Materially Burdensome Regulatory Conditions from discovery.

Second, UP's relevance-related objections are similarly meritless. The UP-NS merger agreement includes multiple references to Materially Burdensome Regulatory Conditions, which would allow UP to walk away from the Proposed Transaction without paying NS a termination fee, among other things. Those conditions are relevant to the Proposed Transaction because they may show, among other things, the Applicants' internal assessment of competitive risk and Applicants' willingness to accept conditions necessary to protect shippers and enhance competition. Please confirm that UP will withdraw its relevance objection.

BNSF Request No. 15: Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

UP's response "directs BNSF to its forthcoming application for information on operational integration and the future operation of jointly-owned companies." Stakeholders like BNSF need not wait months for UP to produce data that it currently possesses, particularly when that information is directly relevant to this proceeding. Among other things, those communications bear directly on (a) the impact on the deal on interlining pricing, (b) the likelihood of the purported efficiencies claimed by the Applicants, (c) the probability of network breakdowns caused by the merger, and (d) how the Applicants are planning to change the operations of jointly-owned companies relied on by others in the industry. Please confirm whether UP will produce communications responsive to Request No. 15 prior to filing its Application, and when BNSF can anticipate that production being made.

BNSF Request No. 17: Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

UP responded that it "will provide documents *sufficient* to show current interline business relationship service products between [UP] and [NS]," but that response falls far short of BNSF's request for *all* documents and communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger. That information is relevant because, among other things, it demonstrates the ability of UP and NS to obtain operational efficiencies without a formal merger—which bears directly on a factor that the Board must evaluate as part of its assessments.

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Additionally, UP's proposal that it would "provide documents sufficient to show *current* interline business service products" is insufficient. Discussions about agreements that were not implemented may demonstrate the feasibility of UP/NS coordination without a merger, among other things. Please confirm if UP will respond to BNSF's request as BNSF made it.

BNSF Request No. 18: Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

UP directs BNSF to its public website "and to its forthcoming application" concerning how UP would cooperate with other carriers to address or resolve service disruptions on UP-NS lines during the transitional period and afterwards. That response is insufficient. UP cannot withhold responsive information merely because it may overlap with UP's public statements or pending Application. UP surely contemplated how it would address service disruptions that are common with railroad mergers, and those plans are relevant to the Proposed Transaction and how it would affect the public interest, among other things. Please confirm that UP will amend its response to Request No. 18 before filing its Application, so stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 19: Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

Similar to its response to Request No. 18, UP directs BNSF to its public website "and to its forthcoming application" concerning how the Proposed Transaction would enhance competition. Again, UP cannot withhold responsive information merely because it may overlap with UP's public statements or forthcoming Application, particularly on a core issue like competition. Please confirm that UP will amend its response to Request No. 19 before filing its Application, so stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 21: Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on: [12 information subsets concerning the Applicants' businesses].

BNSF Request No. 22: Produce all studies, analyses, and reports that UP relied upon in making a merger proposal to NS and in assessing whether to execute the Merger Agreement.

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UP directs BNSF to its public website and SEC filings in response Request Nos. 21-22, in addition to referring BNSF to UP's forthcoming Application. UP cannot withhold responsive information merely because it may overlap with UP's public statements or forthcoming Application. The materials sought by BNSF concern business and financial information that UP possessed and considered prior to initiating the Proposed Transaction, and while there may be some modest overlap with UP's SEC filings, those public filings do not excuse UP from conducting a reasonable search and producing the relevant materials requested by BNSF. Please confirm that UP will amend its response to Request Nos. 21 and 22 before filing its Application, including so that stakeholders can serve and tailor other aspects of the discovery process.

***BNSF Request No. 24:** Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.*

UP again directs BNSF to its public website for information responsive to Request No. 24, which does not address BNSF's request. While UP objects that the request is overly broad because it requests "all" documents provided to third parties concerning the Proposed Transaction, that is no basis for producing *zero* documents that are responsive to this request. BNSF will meet-and-confer to negotiate search parameters for this request. Those materials are relevant because they may reveal how the Proposed Transaction may impact stakeholders, including effects on the public interest and competition, among other things. Please confirm whether UP will amend its response to Request No. 24.

* * * * *

Please advise by November 17 whether UP intends to amend its Responses to address the issues and deficiencies identified above, and that UP will provide those amendments by November 24. We are available to discuss at your convenience.

Sincerely,

/s/ McClain Thompson

McClain Thompson

EXHIBIT 6

KIRKLAND & ELLIS LLP

1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
United States

+1 202 389 5000

www.kirkland.com

McClain Thompson
To Call Writer Directly:
+1 202 389 5292
mcclain.thompson@kirkland.com

Facsimile:
+1 202 389 5200

November 12, 2025

Via E-Mail

Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Re: *STB Finance Docket No. 36873 – NS’s Initial Discovery Responses*

Dear Counsel:

We write for BNSF regarding NS’s responses to BNSF’s First Set of Discovery Requests, as well as the pace of discovery to date.

The UP-NS merger proposal is a pivotal moment for the railroad industry and, in turn, the American manufacturers, workers, and consumers who depend on competitive rail service. No railroad merger of this scale has ever been proposed. And NS has embraced its significance: NS contends the proposed UP-NS merger is “unprecedented” and will “transform the U.S. supply chain[.]”¹ Given the stakes, the Board and all stakeholders need discovery to study how this merger would shape the U.S. economy and American railroads for generations.

To date, NS has slow-walked discovery and blocked our ability to access that necessary information. More than 100 days after announcing the transaction, NS has produced just 36 documents (and the majority of that production was lease agreements). NS has produced no email, board materials, or internal analyses of the merger and its expected impacts on the rail industry and customers. And based on its initial written discovery responses, it appears that NS intends to not provide timely discovery into case-relevant information. NS declined to conduct any searches for 13 of BNSF’s initial requests,² and for others, NS is not providing responsive materials or otherwise declining to respond until NS files its Application.³ In light of NS’s approach to

¹ Applicants’ Notice of Intent, *Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co.* FD 36872 at 2 (Jul. 30, 2025).

² NS’s Responses and Objections to BNSF’s First Set of Discovery Requests, at Nos. 3, 5-6, 13-15, 18-19, 21-24, and 26.

³ *See id.* at Nos. 3, 5-12, 14-15, 18-21 (objecting or responding that NS will produce those materials in its “Control Application”).

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discovery to date and limited productions, we were disappointed to see NS attempt to use its engagement in the discovery process as a basis to *shorten* the procedural schedule.⁴ We will be sure to point out these short comings when we file our response to the procedural schedule.

Below, we write regarding some of our initial concerns about NS's participation in the discovery process to date.

NS's General Responses and Objections

Objections relating to NS's upcoming applications. NS objected to BNSF's First Set of Discovery Requests as "untimely and premature" to the extent that BNSF sought "sweeping discovery before any application has been filed." NS Responses ¶ 1; *see also id.* ¶ 3 ("NS objects . . . to the extent they seek information that is . . . obtainable from publicly available sources, such as the Control Application"). Although there may be overlap between NS's Application and some of BNSF's discovery requests, NS cannot defer answering BNSF's requests until it files its Application—particularly when NS is telling the Board that it is actively responding to stakeholders' pre-Application discovery requests. Please confirm NS will withdraw this objection and address the discovery that we have served.

Communications and documents other than emails. NS objects to searching any communications or documents other than emails as unduly burdensome and not proportional. *Id.* at ¶ 11. NS's refusal to search non-email communications—including texts, meeting invitations, instant messages, or chat logs from electronic platforms—is unsupported by 49 C.F.R. Part 1114 and denies BNSF and other stakeholders access to responsive information. Although BNSF is willing to meet and confer to negotiate parameters around searches for non-email communications, please confirm NS will withdraw its front-end objection to even searching from those sources.

Please also identify the custodians that NS proposes to search, so that we can consider further and begin those conversations.

Relevant time period. NS generally objects to responding to BNSF's discovery requests to the extent they require NS to search for "documents and data through 'the present' as vague and ambiguous[.]" *Id.* at ¶ 20. NS asserts that "the time frame for NS's document search is January 1, 2019 through July 29, 2025." *Id.* While BNSF appreciates there could be some valid undue burden concerns related to some pre-2019 materials, a sharp cut-off is inappropriate. Pre-2019 materials—such as intermodal train schedules and joint ventures between the applicants—could

⁴ *See Applicants' Comments on the Proposed Procedural Schedule, Union Pac. Corp. and Union Pac. R.R. Co. – Control – Norfolk Southern Corp. and Norfolk Southern Ry. Co. FD 36872 (Oct. 20, 2025).*

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be relevant and should be searched. Similarly, a July 29, 2025 cut-off would improperly exclude relevant materials—including communications with shippers and governmental agencies about the merger and its effects on the industry and customers; integration planning materials; and internal discussions within NS about the transaction and its implementation. Although BNSF is willing to negotiate parameters for those searches, please confirm NS will withdraw those front-end date objections.

NS's Specific Responses and Objections

While BNSF intends to follow up with NS regarding other of BNSF's initial requests as discovery unfolds, we write in this first instance regarding aspects of 12 requests where it appears we may have near-term disputes. We reserve our rights to follow up about other aspects—and the other requests—at the appropriate time.

***BNSF Request No. 2:** Produce copies of all Documents or Communications that NS and/or UP produce or have previously produced to the Surface Transportation Board, the United States Department of Justice, or any other federal government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction.*

NS objected to this request “to the extent it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or other applicable privilege, including material related to settlement discussions.” *Id.* at 8. NS then responded that it would “produce to BNSF documents it produces to other federal or state agencies relating to the Proposed Transaction in response to the requests of those agencies or NS’s legal obligations to provide such information, to the extent that such documents are not publicly available.” *Id.* at 9. NS further responded that, as of the date the responses were served, “there are no such documents.” *Id.*

We have several concerns with this response. **First**, please identify what privileges—if any—NS is using or might use to withhold responsive materials that were shared with federal or state government agencies. We are not aware of any such valid privilege assertions.

Second, NS improperly limits its search and production to materials “in response to the requests of those agencies or NS’s legal obligations to provide such information” *Id.* at 9. BNSF is entitled to relevant information provided by NS to federal and state government agencies whether or not NS had a *legal* obligation to disclose such. NS must produce all relevant documents and communications previously produced to the Board, DOJ, or any other federal or state government agency relating to the Proposed Transaction or BNSF’s requests. Please confirm that NS will withdraw this limitation.

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Third, NS responds that it would produce materials “to the extent that such documents are not publicly available.” *Id.* That limitation is unacceptable, since all of the materials requested by BNSF have already been—or will be—produced to third parties and should be identifiable with minimal burden to NS, regardless whether those documents may have been or will be produced in public filings. Please confirm that NS will withdraw this limitation.

BNSF Request No. 4: Produce Documents sufficient to show all agreements between UP or NS and a counter-party that is designed to facilitate service between the existing UP or NS networks.

Although NS agreed to produce materials responsive to this request, NS improperly limited that production to agreements “between NS and a counterparty that are designed to facilitate freight rail service operations between the existing UP ***and*** existing NS networks.” *Id.* at 10 (emphasis added). NS’s response improperly re-writes our request and purports to limit NS’s response to it. BNSF’s Request No. 4 seeks agreements between NS and counter-parties that “facilitate service between the existing UP ***or*** NS networks.” Please confirm that NS will search for agreements facilitating service between existing UP ***or*** NS networks. That information is relevant to understanding the operational efficiency of UP and NS’s rail networks and potential for service disruptions, among other things.

Please confirm that NS’s productions will include any agreements for “rubber wheel interchanges” where containers are interchanged between UP or NS via truck or drayage. Those short-haul trucking movements can add substantial time, cost, and congestion to intermodal operations, and are directly relevant to the operational efficiency, competitive effects, and environmental impact of the proposed merger, among other things.

BNSF Request No. 5: Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) from whom either UP or NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.

Although NS states that it “has conducted wide-ranging outreach” to various entities and that “[s]ome letters of support have been submitted already, and additional letters of support will be filed as part of the forthcoming Control Application,” that is not responsive to BNSF’s request. BNSF is seeking the identities of ***all*** individuals or entities for whom NS has sought, solicited, or discussed a potential letter or statement of support relating to the Proposed Transaction—not merely those providing letters of support to NS. Such information is relevant to this proceeding because, among other thing, NS has cited customer support as a basis for Board approval of the

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Proposed Transaction.⁵ Please confirm that NS will amend its response to identify all individuals or entities responsive to this request (which would include those who have chosen not to provide letters of support).

***BNSF Request No. 6:** Identify all individuals and/or entities (customers, labor organizations, labor officials, government agencies or officials, other stakeholders, etc.) that have expressed or communicated concern about the Proposed Transaction. This request seeks the identity of responsive individuals and entities in the United States, Canada, and Mexico.*

NS also fails to adequately respond to BNSF's Request No. 6, which seeks the identity of all individuals or entities that expressed or communicated concern about the Proposed Transaction. Although some of those individuals or entities may choose to file materials with the Board, others that expressed or communicated concerns to NS may not—particularly those who may have concerns about taking a public stance against what would be the only transcontinental railroad. Because NS is touting customer support as a basis for approval, the identities of individuals or entities who have expressed concern are relevant to these proceedings and should be identified by NS. Please confirm that NS will amend its response to identify all individuals or entities responsive to this request.

***BNSF Request No. 13:** Produce Documents sufficient to show what constitutes a Materially Burdensome Regulatory Condition (as defined in the Merger Agreement). To the extent each Materially Burdensome Regulatory Condition is not memorialized in a Document, describe in detail what constitutes or could constitute a Materially Burdensome Regulatory Condition.*

NS made two objections to this request: (1) that “it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege;” and (2) “it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence[.]” These objections are improper.

First, NS's privilege-based objections are meritless. There is nothing privileged about the terms of a contract signed by two parties negotiating at arms-length. Please confirm whether NS is withholding responsive documents based on privilege, and if so, please specifically identify the privilege on which NS is relying and how that privilege could shield the Materially Burdensome Regulatory Conditions from discovery.

⁵ See Statements of Support, <https://www.up-nstranscontinental.com/>.

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Second, NS's relevance-related objections are similarly meritless. The UP-NS merger agreement includes multiple references to Materially Burdensome Regulatory Conditions, which would allow UP to walk away from the Proposed Transaction without paying NS a termination fee, among other things. Those conditions are relevant to the Proposed Transaction because they may show, among other things, the Applicants' internal assessment of competitive risk and Applicants' willingness to accept conditions necessary to protect shippers and enhance competition. Please confirm that NS will withdraw its relevance objection.

BNSF Request No. 15: Produce all Communications between UP and NS since the merger announcement regarding (a) the quoting of interline UP-NS rates, (b) operational integration, and (c) the operation of jointly-owned companies.

NS's response "refers BNSF to its forthcoming Control Application and workpapers for that application for information on operational integration and the future operation of jointly-owned companies." Stakeholders like BNSF need not wait months for NS to produce data that it currently possesses, particularly when that information is directly relevant to this proceeding. Among other things, those communications bear directly on (a) the impact on the deal on interlining pricing, (b) the likelihood of the purported efficiencies claimed by the Applicants, (c) the probability of network breakdowns caused by the merger, and (d) how the Applicants are planning to change the operations of jointly-owned companies relied on by others in the industry. Please confirm whether NS will produce communications responsive to Request No. 15 prior to filing its Application, and when BNSF can anticipate that production being made.

BNSF Request No. 17: Produce all Documents and Communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger, whether or not such agreements were implemented. The time period for this request is January 1, 2015 to present.

NS responded that it "will conduct a reasonable search and produce non-privileged documents that are *sufficient* to show current interline business relationship service products between UP and NS," but that response falls far short of BNSF's request for *all* documents and communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger. That information is relevant because, among other reasons, it demonstrates the ability of UP and NS to obtain operational efficiencies without a formal merger, which bears directly on a factor that the Board must evaluate as part of its assessments.

Additionally, NS's proposal that it would provide documents "sufficient to show *current* interline business relationship service products" is insufficient. Discussions about agreements that

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were not implemented may demonstrate the feasibility of UP/NS coordination without a merger, among other things. Please confirm that NS will respond to BNSF's request as BNSF made it.

BNSF Request No. 18: Describe in detail how Applicants would cooperate with other carriers in addressing or resolving service disruptions on their lines during the transitional period and afterwards.

NS directs BNSF to "its forthcoming Control Application and workpapers for that application" concerning how NS would cooperate with other carriers to address or resolve service disruptions on UP-NS lines during the transitional period and afterwards. That response is insufficient. NS cannot withhold responsive information merely because it may overlap with NS's public statements or forthcoming Application. NS surely contemplated how it would address service disruptions that are common with railroad mergers, and those plans are relevant to the Proposed Transaction and how it would affect the public interest, among other reasons. Please confirm that NS will amend its response to Request No. 18 before filing the Application, including so that stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 19: Describe in detail any conditions or provisions that Applicants are proposing to enhance competition in connection with the Proposed Transaction.

Similar to Request No. 18, NS directs BNSF to "its forthcoming Control Application and workpapers for that application" concerning how the Proposed Transaction would enhance competition. Again, NS cannot withhold responsive information merely because it may overlap with NS's public statements or forthcoming Application, particularly on a core issue like competition. Please confirm that NS will amend its response to Request No. 19 before filing its Application, so stakeholders can serve and tailor other aspects of the discovery process.

BNSF Request No. 21: Produce all Documents in Applicants' possession, custody, or control (including any strategy plans or competitive assessments) that show or concern the impact of the Proposed Transaction on: [12 information subsets concerning the Applicants' businesses].

BNSF Request No. 23: Produce all studies, analyses, and reports that NS relied upon in evaluating UP's merger proposal and in assessing whether to execute the Merger Agreement.

NS directs BNSF to its public website and SEC filings in response Request Nos. 21 and 23, in addition to referring BNSF to NS's forthcoming Application. NS cannot withhold responsive information merely because it may overlap with NS's public statements or forthcoming

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Application. The materials sought by BNSF concern business and financial information that NS possessed and considered prior to initiating the Proposed Transaction, and while there may be modest overlap with NS's SEC filings, those public filings do not excuse NS from conducting a reasonable search and producing the relevant materials requested by BNSF. Please confirm that NS will amend its response to Request Nos. 21 and 23 before filing its Application, including so that stakeholders can serve and tailor other aspects of the discovery process.

***BNSF Request No. 24:** Produce all Documents that Applicants have provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed Transaction.*

NS again directs BNSF to its public website for information responsive to Request No. 24, which does not address BNSF's request. While NS objects that the request is overly broad because it requests "all" documents provided to third parties concerning the Proposed Transaction, that is no basis for producing *zero* documents that are responsive to this request. BNSF will meet-and-confer to negotiate search parameters for this request. Those requested materials are relevant because they may reveal how the Proposed Transaction may impact stakeholders, including effects on the public interest and competition, among other things. Please confirm that NS will amend its response to Request No. 24.

* * * * *

Please advise by November 17 whether NS intends to amend its Responses to address the issues and deficiencies identified above, and that NS will provide those amendments by November 24. We are available to discuss at your convenience.

Sincerely,

/s/ McClain Thompson

McClain Thompson

EXHIBIT 7

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

By Email

December 5, 2025

McClain Thompson
Kirkland & Ellis LLP
1301 Pennsylvania Avenue NW
Washington, DC 20004
Mcclain.thomson@kirkland.com

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

Dear Counsel:

We write on behalf of Union Pacific Railroad Company and Union Pacific Corporation (collectively, “Union Pacific”) in response to BNSF’s November 12, 2025, letter regarding Union Pacific’s responses to BNSF’s Discovery Requests, which were served on October 16, 2025.

In your letter, you selectively—and at times misleadingly—quote from Applicants’ Notice of Intent to characterize the proposed Union Pacific/Norfolk Southern combination. As described in the full text of the Notice of Intent, the proposed combination “represents an unprecedented opportunity to create America’s first transcontinental railroad, which will transform the U.S. supply chain, unleash the industrial strength of American manufacturing, and create new sources of economic growth and workforce opportunity.”¹ It will “creat[e] a more accessible, sustainable, and lower-cost supply chain for manufacturers and consumers,” “drive additional employment opportunities in towns and cities across the combined rail network and generate economic growth in communities across the United States,” and “the combined company will compete more effectively with Canadian railroads to win back U.S. freight volume and American jobs.”² Union Pacific looks forward to providing additional information regarding the proposed combination in Applicants’ forthcoming application to the Board.

Your letter also mischaracterizes Union Pacific’s discovery efforts and the scope of information that has already been provided to BNSF in this proceeding. Union Pacific provided its 100% traffic tapes for the period January 1, 2019, through December 31, 2024, to BNSF on September 11, 2025, in exchange for BNSF’s agreement that it would produce its own traffic tapes

¹ Applicants’ Notice of Intent (UP-1/NS-1) at 2.

² *Id.* at 2-3.

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for the same time period.³ With the exception of a single year, BNSF did not produce its own traffic tapes to Union Pacific until two months later on November 12, 2025. In addition to providing its traffic tapes to BNSF, Union Pacific has undertaken diligent efforts to collect and produce a very large volume of data and information responsive to discovery requests. Union Pacific has produced more than 10 gigabytes of responsive documents and data, including expansive reciprocal switching and interchange volume data, agreements containing interchange commitments, and schedules to its merger agreement; and its collection efforts are ongoing. Union Pacific's efforts to respond to pre-application discovery requests in this proceeding are not only reasonable, but go above and beyond what is required by the merger rules.⁴

Although Union Pacific remains committed to diligently responding to discovery requests and working constructively with BNSF to narrow discovery disputes and reach reasonable resolutions, we have serious concerns with the incredibly broad and unduly burdensome scope of discovery that BNSF is seeking on topics that have little relationship to the needs of this proceeding. We address these concerns below in the context of the specific issues raised in your November 12, 2025, letter.

I. UNION PACIFIC'S GENERAL RESPONSES AND OBJECTIONS

A. Objections relating to Applicants' Forthcoming Application

Union Pacific has responded to each of BNSF's discovery requests with appropriate objections and a response identifying the scope of material that it will collect and produce to address the request. In some cases, BNSF's pre-application discovery requests seek information that Union Pacific expects to provide as part of its forthcoming application. For these requests, Union Pacific has explained that the requested information overlaps with information that it is collecting and intends to provide with its application. BNSF's demand that Union Pacific engage in a duplicative collection of such information and that Union Pacific produce such information in advance of finalizing and submitting its application to the Board is not reasonable. If the Board accepted BNSF's argument on this point, it would mean that any party could force applicants to preview the content of their application prior to submission by issuing discovery requests that cover topics to be addressed in the application. To allow such an outcome would grossly impede the prospective applicants in the preparation of their application and create unnecessary inefficiencies in the application process. Union Pacific maintains its objection.

³ As explained in the preamble to the Board's merger rules, "[i]f the party seeking the applicants' 100% traffic tapes is itself a railroad, it must provide applicants' counsel or consultants with reciprocal access to its own 100% traffic tapes, subject to an appropriate protective order." *Major Rail Consol. Procs.*, 5 S.T.B. 539, 591 (2001).

⁴ See *Major Rail Consol. Procs.*, 5 S.T.B. 539, 591 (2001) (explaining that the Board was "not proposing" that applicants be subject to "broad pre-application discovery," which would "impede the prospective applicants in the preparation of their application").

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B. Communications and Documents other than Emails

As stated in Union Pacific's objection, BNSF's definition of "Communication" as that term is used in its requests is unduly burdensome and seeks information that is not proportional to the probative value of the information sought. BNSF's definition includes a laundry list of mediums, from "telegrams" to "telecopies" to "electronic mail" to "other computer linkups." BNSF's insistence that Union Pacific collect individual's personal text messages and chat logs without demonstrating that the such collection is necessary or reasonable to address a specific discovery request demonstrates the overbroad and unduly burdensome nature of BNSF's position.

In responding to BNSF's specific discovery requests, Union Pacific has identified the scope of responsive material that it will collect through reasonable searches. Union Pacific has also clarified that where it has agreed to produce documents responsive to a request, it "will produce documents from files most likely to contain materials responsive to the request without undue burden."⁵ Targeted collection of documents from the files most likely to contain the responsive material is the most appropriate way to address BNSF's discovery requests. To require widespread email, text message, and chat collection is not proportional to the needs of this proceeding and would be unduly burdensome. This proceeding is centered on the Board's evaluation of Applicants' forthcoming application. The application will contain extensive detail regarding the proposed transaction and analysis of its potential effect. Against this backdrop, BNSF is permitted to conduct reasonable discovery into the proposed transaction as an interested party, but it is not entitled to nearly limitless discovery of internal Union Pacific communications untethered from the contents of the application itself.

With respect to your November 18, 2025, email seeking a "list of executive and management team members who were involved in developing and negotiating the merger proposal, as well as those also involved in post-signing shipper outreach and integration planning" and "third-party consultants and bankers involved in those activities," Union Pacific disagrees that identification of the requested individuals is reasonable or necessary for Union Pacific to comply with its discovery obligations in the context of this proceeding.

C. Relevant Time Period

Union Pacific maintains that a default date period is necessary to ensure BNSF's discovery requests are not unduly burdensome and remain proportional to the needs of this case. To the extent BNSF can identify specific requests that it believes should have a different date range than the time period set forth in Union Pacific's objections, Union Pacific is willing to confer with BNSF on those requests.

⁵ Union Pacific's Responses at General Objection 7.

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II. UNION PACIFIC'S SPECIFIC RESPONSES AND OBJECTIONS

A. BNSF Request 2

You have raised three concerns with regard to Union Pacific's response to BNSF Request No. 2, which we address below.

First, you ask Union Pacific to identify any privileges Union Pacific is using or *might* use to withhold responsive materials. Union Pacific's response to this request explains that for the scope of materials it has agreed to produce, Union Pacific "has not identified any such materials in its possession, other than the materials accessible to BNSF through this proceeding." To further clarify the response, Union Pacific is not withholding as privileged materials in its possession that it made available to a federal government agency, state attorneys general, or any other state government agency, state attorneys general, or any other state government agency relating to the Proposed Transaction in response to the request of such entity or in response to Union Pacific's legal obligations to provide such information.

Second, you assert that Union Pacific's response should not be limited to materials produced in response to Union Pacific's legal obligations to provide such information. This assertion rests on a misreading of Union Pacific's response. In response to your request for materials that were previously produced to the Board or other government entities regarding the proposed transaction, Union Pacific has agreed to produce materials that it made available to those entities "in response to the request of such entity *or* in response to Union Pacific's legal obligations to provide such information." It is not limiting its response solely to materials provided pursuant to a legal obligation.

Third, you take issue with Union Pacific's objection to the burden of producing the requested material. Consistent with Union Pacific's response to your first concern above, for the scope of materials it has agreed to produce, Union Pacific has not identified any responsive materials in its possession beyond the materials accessible to BNSF through this proceeding.

B. BNSF Request 4

Union Pacific objected to Request 4 as vague and ambiguous because it is incoherent as written. The request seeks "agreements ... that is [sic] designed to facilitate service *between* the existing UP *or* NS networks" (emphasis added). Although the request refers to agreements that facilitate service "between" two things, the only two things the request references are "the existing UP or NS networks." Union Pacific reasonably interpreted the request to be seeking agreements that facilitate service between the Union Pacific *and* Norfolk Southern networks, and agreed to produce certain materials responsive to that request.

You now claim that Union Pacific's attempt to resolve the flaws in BNSF's request "improperly re-writes [the] request and purports to limit UP's response," but your letter does nothing to clarify what the request is seeking beyond the agreements designed to facilitate service between the Union Pacific and Norfolk Southern networks that Union Pacific had already agreed to collect. To the extent BNSF has appropriately targeted requests for additional documents or

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information, that do not impose an undue burden on Union Pacific, we are willing to consider those requests and work constructively with BNSF to narrow the scope of this dispute.

C. BNSF Requests 5 and 6

Requests 5 and 6 ask Union Pacific to identify all individuals and/or entities with whom Union Pacific sought, solicited, or discussed a potential letter of support or who expressed concern about the proposed transaction. Union Pacific has asserted valid objections to the requests, including that the requests are overly broad, unduly burdensome, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Individuals or entities that wish to express support or concern regarding the proposed transaction are permitted to contribute comments to the Board as part of the proceeding. Union Pacific has also confirmed in its response to Request 5 that it has engaged in widespread outreach to customers, labor unions, suppliers, community leaders, public officials, and other stakeholders about the benefits of the proposed transaction. These outreach efforts include making information widely available to any individual or entity who wishes to access it on a public website (<https://www.up-nstranscontinental.com>). Moreover, Union Pacific will make available to the Board and BNSF letters of support that it has obtained from individuals and/or entities as part of the forthcoming application.

Individuals or entities that wish to have their concerns considered by the Board can submit comments, protests, requests for conditions, or any other evidence and argument in the proceeding.

The marginal relevance of the identity of individuals and/or entities that received information regarding the proposed transaction (including from public websites) and have chosen not to participate in the proceeding is extremely low and does not justify the burden that would be placed on Union Pacific to identify every individual that directly or passively received a solicitation for support and to identify every instance in which any individual or entity anywhere in the world has expressed any concern to any Union Pacific employee regarding the proposed transaction. The unreasonable burden of these requests is further exacerbated by Request 7, which seeks any communication regarding the proposed transaction with any individual and/or entity identified in response to Requests 5 and 6. Union Pacific remains willing to confer with BNSF on this topic, but would appreciate an explanation of why the additional discovery (above and beyond what Union Pacific has provided) is necessary or proportional to the needs of this proceeding.

D. BNSF Request 13

Request 13 seeks information regarding the meaning of term, Materially Burdensome Regulatory Condition, which is defined in the publicly available Merger Agreement. *See* Merger Agreement Section 5.8(b)-(c). Materially Burdensome Regulatory Conditions include Voting Trust Restrictions, Prior Transaction Restrictions, and Non-Required Restrictions. *Id.* Voting Trust Restrictions and Prior Transaction Restrictions are defined in the Merger Agreement. *Id.* Non-Required Restrictions are defined in Section 5.8(c) of the Company Disclosure Schedules. *Id.* Although Union Pacific has previously produced a copy of the Company Disclosure Schedules,

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it has redacted portions of the schedule that contain descriptions of the terms and conditions that Union Pacific and Norfolk Southern would potentially be willing to accept to settle or otherwise resolve anticipated legal challenges to the proposed transaction. The redacted content reflects the legal advice of counsel and attorney work product regarding potential settlement strategy, which were shared between Union Pacific and Norfolk Southern pursuant to a common legal interest, and are further protected from discovery by the settlement privilege. Union Pacific has shared the non-privileged material that is responsive to Request 13 consistent with its stated objections.

E. BNSF Requests 15, 18, 19

BNSF asserts that it is entitled to a preview of the portions of Applicants' forthcoming application that will contain information regarding operational integration and the future operation of jointly-owned companies (Request 15); potential cooperation with other carriers to address service disruptions on Union Pacific-Norfolk Southern lines during the transition period and afterwards (Request 18); and how the proposed transaction will enhance competition (Request 19). As addressed in Section I.A of this letter, such discovery is inefficient, unnecessary, and impedes Applicants' preparation of their forthcoming application. Discovery regarding these topics should proceed after the filing of Applicants' forthcoming application, and should be appropriately tailored to avoid undue burden and to target material that is proportional to the needs of the proceedings in the context of the filed application.

F. BNSF Request 17

Request 17 seeks *all* documents and communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements between UP and NS other than a merger. Union Pacific objected to significant defects in this request, including that the request is unduly burdensome, the terms used in the request are vague and ambiguous, and that the request is not appropriately targeted to information that is relevant or reasonably calculated to lead to the discovery of relevant information. Nonetheless, despite these defects, Union Pacific has agreed to conduct a reasonable search to identify document sufficient to show the current interline business relationship service products between Union Pacific and Norfolk Southern. To the extent BNSF has appropriately targeted requests for additional documents or information, that do not impose an undue burden on Union Pacific, we are willing to consider those requests and work constructively with BNSF to narrow the scope of this dispute.

G. BNSF Request 21

Request 21 seeks documents regarding the impact of the proposed transaction in a dozen different contexts, which largely—if not entirely—track the supporting information that Applicants are required to submit as part of their forthcoming application or reference information that Union Pacific has provided in its public SEC filings. As discussed above, there is no basis to permit BNSF to obtain a preview of these sections of the application simply because it served broad pre-application discovery. Consistent with Union Pacific's position on other similar requests, discovery regarding these topics should proceed after the filing of Applicants' forthcoming application, and should be appropriately tailored to avoid undue burden and to target material that is proportional to the needs of the proceedings in the context of the filed application.

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H. BNSF Request 22

Request 22 seeks studies, analyses, and reports that Union Pacific relied upon in making a merger proposal to Norfolk Southern and whether to execute the Merger Agreement. Union Pacific objected that the request was overly broad, unduly burdensome, and sought irrelevant information. Nonetheless, Union Pacific also explained that responsive information was already available to BNSF in its public SEC filings, which addresses Union Pacific's reasons for pursuing the proposed transaction. Union Pacific disagrees that the documents it considered in making the merger proposal are relevant to the Board's evaluation of Applicants' forthcoming application, let alone that broad discovery into those materials would be proportional to the needs of the proceeding.

I. BNSF Request 24

Request 24 seeks *all* documents that have been provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers regarding the proposed transaction. Union Pacific objected to this request as overly broad and vague and ambiguous, and directed BNSF to the publicly available materials regarding the proposed transaction that Union Pacific and Norfolk Southern have provided at <https://www.up-nstranscontinental.com>. BNSF's assertion that Union Pacific has provided zero documents in response to this request is misleading at best. The website provides significant information regarding the proposed transaction, including pages that are directed to various categories of third parties. Union Pacific is willing to confer with BNSF regarding the scope of its request, but Union Pacific has serious concerns regarding the breadth of the request as drafted.

* * *

Please let me know if you have any questions. Union Pacific remains willing to meet and confer regarding any remaining disputes.

Sincerely,

/s/ Kevin M. Kelly

Kevin M. Kelly

EXHIBIT 8



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, DISTRICT OF COLUMBIA 20005
+1 202 736 8000
+1 202 736 8711 FAX

+1 202 736 8996
MJWARREN@SIDLEY.COM

December 5, 2025

McClain Thompson
Kirkland & Ellis LLP
1301 Pennsylvania Avenue NW
Washington, DC 20004

Re: FD 36873, *Union Pacific Corp., et al. - Control - Norfolk Southern Corp., et al.*

Dear Mr. Thompson:

I am writing on behalf of Norfolk Southern and its U.S. rail operating subsidiaries (collectively, “NS”) in response to BNSF’s inquiries regarding NS’s response to BNSF’s Discovery Requests in the above-referenced proceeding.

As you know, NS has produced substantial volumes of material to BNSF thus far in this proceeding, even before any application has been filed. While BNSF expresses impatience with the pace of NS’s productions, the fact that NS is producing materials at all is extraordinary, since the STB’s major merger rules do not contemplate pre-application discovery. (Only one other party has served pre-application discovery, and that party’s requests were far more limited than BNSF’s.) Moreover, BNSF is throwing stones from a glass house, since it waited two months before it produced reciprocal waybill files as required by STB regulations. NS produced its waybill files to BNSF on September 11, 2025; under 49 C.F.R. § 1180.4(b)(4)(iii), BNSF was required to produce its waybill files to NS “when it receive[d] access to applicants’ tapes.” Yet BNSF did not comply with that STB regulation until November 12, 2025. Under these circumstances, it is surprising that BNSF is accusing anyone else of “slow-walking” responses.

In any event, NS has produced and continues to produce documents and data, and we are available to meet and confer regarding those responses and our written objections. In an effort to streamline resolution of any disputes, we have provided written responses below.

I. NS’S GENERAL RESPONSES AND OBJECTIONS

A. Pre-Application Discovery

BNSF first demands that NS “withdraw its objection” to BNSF’s sweeping pre-application discovery requests. This demand has little apparent purpose. NS

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has provided responses and begun its production in advance of filing the Application. BNSF thus has the sort of discovery head start that virtually no other party to an STB merger proceeding has ever received. Moreover, NS's objection remains well founded, as BNSF admits when it concedes that "there may be overlap between NS's Application and some of BNSF's discovery requests." The application itself will have extraordinary detail and supporting workpapers that will moot many of BNSF's requests. BNSF would be well advised to review the application before deciding whether any additional discovery is necessary.

B. Communications

BNSF next asks NS to reconsider its objection to BNSF's expansive definition of "Communication" and for NS to agree to search "nonemail communications." But BNSF does not explain what responsive information could possibly be contained in chat logs or instant messages or meeting invitations or why searching such materials would not be disproportionate and unduly burdensome in the context of this proceeding. Indeed, BNSF does not even identify which of its requests it believes calls for information that could be discovered by searching meeting invitations or chat logs or text messages. In a proceeding that will be focused on whether the proposed transaction is in the public interest (and not on the details of any particular set of communications), reflexive across-the-board demands for searches of text messages or chat logs are not reasonably calculated to lead to the discovery of relevant information.

In the same vein, BNSF's request that NS provide a list of custodians for BNSF's approval is not reasonable or normal STB discovery practice. The majority of BNSF's requests are requests for data or for particular categories of documents (or are questions that will be answered by the Application itself), and BNSF's demand to see a list of custodians is not necessary or proportionate.

As NS explained in its General Objection 8, it will "produce documents from files most likely to contain materials responsive to the Request without undue burden." That will and has included substantial data production, extensive production of agreements, and targeted collection of documents from the files most likely to contain the responsive material.

C. Relevant Time Period

NS stands by its objection to BNSF's assertion that "there is no time period limitation on these Discovery Requests," and NS's designation of a default date range from 2019 through the signing of the agreement for the proposed transaction is reasonable. If BNSF has specific requests that it believes should have a different date range than the time period set forth in NS's objections, NS is willing to confer with BNSF on those requests.

II. NS'S SPECIFIC RESPONSES AND OBJECTIONS

A. BNSF Request 2

NS made clear that it would respond to the substance of this request for materials provided to government entities, subject to normal limitations that it would not produce documents that are privileged or that are otherwise publicly available to BNSF. Nonetheless, BNSF raised three issues with NS's response. First, BNSF asks NS to identify any privileges that it might use to withhold documents. But NS's objection already identified them: "the attorney-client privilege, attorney work product doctrine, or other applicable privilege, including material related to settlement discussions." NS has not withheld any documents responsive to Request 2 due to a privilege, and recognizes that such documents are unlikely to fall within the attorney client privilege or work product doctrine. But NS reserves the right to assert an appropriate privilege if one is applicable to a future responsive document (for example, material related to a hypothetical settlement discussion).

Second, your implication that NS's response is limited to materials produced in response to its legal obligations is incorrect. NS will produce materials that it made available to government entities "in response to the request of those agencies *or* NS's legal obligations to provide such information, to the extent such documents are not publicly available."

Third, NS's limitation that it will not produce materials that are publicly available is eminently reasonable. For example, it would serve no purpose for BNSF to receive a discovery copy of material provided to the Surface Transportation Board that BNSF is already receiving as a party of record, or to provide BNSF with a discovery copy of public SEC filings that relate to the proposed transaction. In short, NS is responding to Request 2, except that it is not agreeing to preemptively waive potentially applicable privileges and it is not agreeing to re-produce in discovery public filings to which BNSF already has access.

B. BNSF Request 4

It is not at all clear what distinction BNSF is trying to draw between agreements "designed to facilitate service between the existing UP *and* NS networks" and agreements "designed to facilitate service between the existing UP *or* NS networks." Regardless, NS has confirmed that it will search for agreements between NS and counterparties facilitating service between the UP and NS networks. This search will encompass any NS agreements with counterparties that facilitate rubber tire interchanges. NS will produce these agreements to the extent they exist.

C. BNSF Requests 5 and 6

Requests 5 and 6 ask NS to provide a list identifying all individuals and/or entities with whom NS sought, solicited, or discussed a potential letter of support or who expressed concern about the proposed transaction.

NS confirmed in its response to Request 5 that it has engaged in widespread outreach to customers, labor unions, suppliers, community leaders, public officials, and other stakeholders about the benefits of the proposed transaction. But NS objected to BNSF's unusual and possibly unprecedented request that NS produce a list identifying all those that NS has talked to, which has no relevant purpose. For this reason, NS objected to this request as being overly broad, unduly burdensome, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

BNSF's response confirms that it has no relevant basis for this request. The fact that "NS has cited customer support" is not grounds for demanding a list of customers with whom NS has spoken. The customer support that will be relied upon as evidence that the transaction is in the public interest will be publicly available. Some support letters have been filed with the STB, many will be submitted with the Application, and more may be filed in the future. The same is true for a hypothetical entity who expressed concern. Such an entity similarly can submit comments with the STB, and BNSF and all parties of record would be aware of that public position.

Even if there were some marginal relevance to BNSF knowing the identity of all individuals and/or entities that discussed the transaction with NS but who did not take a public position, such relevance is extremely low and does not justify the burden that would be placed on NS to identify all such individuals. If BNSF wishes to articulate some theory of relevance or some reasonable scope limitation, NS would be willing to confer further on this topic.

D. BNSF Request 13

For Request 13, BNSF requests information on the nature of NS's privilege objection and asks NS to opine on the meaning of the contractual term "Materially Burdensome Regulatory Condition."

A redacted copy of the Company Disclosure Schedules to the Merger Agreement has been produced to BNSF by UP. The redacted portions of the schedule contain descriptions of the terms and conditions that NS and UP would potentially be willing to accept to settle or otherwise resolve anticipated legal challenges to the proposed transaction and reflects the legal advice of counsel and attorney work product regarding potential settlement strategy, which were shared between NS and Union Pacific pursuant to a common legal interest. These portions are protected from discovery by the attorney-client and settlement privileges.

Moreover, the interpretation of terms in the Merger Agreement that would be defined as Materially Burdensome Regulatory Conditions has no conceivable relevance to the STB's determination of whether the proposed transaction is in the public interest.

E. BNSF Requests 15, 18, 19

Each of these requests relates to information that will be addressed in Applicants' forthcoming Application, whether that be operational integration and the future operation of jointly-owned companies (Request 15); potential cooperation with other carriers to address service disruptions on UP/NS lines during the transition period (Request 18); or how the proposed transaction will enhance competition (Request 19). NS's objection to premature pre-application discovery of topics that are required to be addressed in the Application under STB rules was well-founded. BNSF should review the forthcoming application and determine it wishes to pursue any additional discovery into these topics.

F. BNSF Request 17

NS has agreed to conduct a reasonable search to identify documents sufficient to show the current interline service products between NS and Union Pacific, but NS objects to the overbroad and vague request for *all* documents and communications relating to potential joint ventures, marketing alliances, or other forms of cooperative agreements. NS is willing to confer with BNSF if it wishes to consider more targeted requests for additional documents or information that do not impose an undue burden on NS.

G. BNSF Request 21

Request 21 seeks documents regarding the impact of the proposed transaction, which in large part reflect information that will be included in the STB application or reference information that NS has provided in its public SEC filings. Discovery intended to obtain a preview of the Application is inappropriate. If BNSF believes that additional discovery is needed after it reviews the application, NS will consider appropriately tailored requests that do not pose an undue burden and are proportional to the needs of the proceeding.

H. BNSF Request 23

Request 23 seek information that NS relied upon in evaluating the proposed merger and any associated concerns. NS objected that the request was overly broad, unduly burdensome, sought irrelevant information, and implicated privileged documents. Nonetheless, NS explained that responsive information was already available to BNSF in its public SEC filings. NS disagrees that the documents it considered during the merger proposal are relevant to the Board's evaluation of Applicants' forthcoming application, let alone that broad discovery into those materials would be proportional to the needs of the proceeding.

I. BNSF Request 24

Request 24 seeks *all* documents that have been provided to third parties, including but not limited to shippers, smaller railroads, public officials, ports, and

rail industry suppliers regarding the proposed transaction. NS objected to this request as overly broad and vague and ambiguous, and directed BNSF to the publicly available materials regarding the proposed transaction that NS and Union Pacific have provided at <https://www.up-nstranscontinental.com>. If BNSF is willing to consider ways to narrow the scope of its request, NS will confer about them.

* * *

Please let me know if you have any questions. NS is continuing its rolling production and remains willing to meet and confer regarding any remaining disputes.

Sincerely,

/s/ Matthew J. Warren

Matthew J. Warren

EXHIBIT 9

From: Thompson, McClain
Sent: Friday, January 9, 2026 12:45 PM
To: Kelly, Kevin; Rosenthal, Michael; *dludwin@cov.com; Harrison, Caroline; Korman, Marc; Atkins, Raymond; Warren, Matthew J.
Cc: Donovan, Daniel T.; McCarrick, T.J.; Fanchiang, Eric; van Houwelingen, Luke; Enson, Eric; *AEllis@stblaw.com2; Razi, Sara Y.; Bohl, Lindsey C.; David Meyer; Joseph J. Matelis; Dylan M. Aluise; *pdenton@steptoe.com; *tstrafford@steptoe.com; Reilly, Matt; Cunningham, Rich
Subject: RE: FD 36873 - Request for Discovery Meet and Confer

Counsel –

While we appreciate the response and additional information, Applicants' response confirms that UP and NS have not and do not intend to engage in the type and extent of discovery that is necessary for this proceeding, the transaction UP and NS have proposed, and what is at stake.

UP and NS have not agreed to provide basic materials relevant to any merger proceeding, including board and committee/subcommittee minutes, agendas, and presentations that concern the proposed transaction, its consequences, and alternatives to it. Nor have UP and NS committed to engaging in any custodial collections and email searches for a single request. There is a substantial amount of discovery that remains outstanding.

UP and NS's production of "hundreds of gigabytes" of data, such as traffic tapes, switching data, etc., misses the point. Virtually all of that data is required for production under the Board's rules in a case like this, and it is not tied to (or responsive to) many of BNSF's request for additional materials. Nor have UP and NS's discovery efforts been "exemplary," as the Board's orders and various clean-up efforts have made clear. For example, even though the Application was filed three weeks ago, UP and NS have still failed to produce 92 work papers and intermediate data sets. More to the point, preparing required data submissions does not in any way compensate for UP and NS's failure to move forward on other forms of discovery that are necessary for stakeholders to develop a full record and for the Board to make a fully informed decision about the proposed merger.

We respond to the specific points in your email below and intend to seek relief, including in light of the realities of the schedule Applicants have sought.

Board of Director Materials and Banker/Financial/Advisor Documents. Internal assessments of a merger, including relevant board materials, banker materials, and email communications, are regularly produced in merger proceedings. *See, e.g., FTC v. Whole Foods Market, Inc.*, 548 F.3d 1028, 1032 (D.C. Cir. 2008) (discussing emails regarding purpose of merger); *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 25-26 (D.D.C. 2017) (noting internal assessments about competition were "ubiquitous" at trial). To help explain why, we noted that some of the requested materials are information that applicants are required to submit – as a baseline and without being asked – in a Hart-Scott-Rodino merger review to facilitate FTC and DOJ assessments. UP and NS's response—that "this proceeding is not governed by HSR review regulations"—misses the point. The reason board of director and third-party advisor materials must be disclosed in the HSR review process is because they are likely to show a merger's effect on competition, integration-related issues, and the achievability (or not) of proposed benefits. These are all issues that the Board must consider in this proceeding. The Board should not receive less than what other antitrust enforcers receive as part of their deal clearance review. Finally, UP and NS's suggestion that board and advisor materials are somehow not responsive to BNSF's First Set of Discovery Requests is meritless. Multiple requests plainly call for board and advisor materials. *See, e.g.,* BNSF First Set of Discovery Requests at Nos. 20-23. UP and NS's generic proposal of "considering appropriately narrowed requests" does not move the ball forward and fails to even offer a specific list of materials. We are at an impasse on this issue.

Emails. We do not agree that undefined “targeted collections” will result in complete or higher quality productions of information relevant to this proceeding. Consistent with other major merger matters, Applicants should have already collected and made a proposal, so the parties could negotiate a set of custodians and search terms—a conversation BNSF has been trying to start for months. UP and NS once again flip the burden to BNSF, stating “[t]o the extent BNSF contends that wholesale email collections are necessary to respond to a specific request for production,” UP and NS “would like to understand BNSF’s basis for that contention and discuss whether alternative collections would address BNSF’s concerns.” But UP and NS have not disclosed the details of their search or collection parameters to date or made any proposal. In any event, our requests clearly call for email correspondence. *See, e.g.*, BNSF First Set of Discovery Requests at Nos. 7, 8, 15, 17. More fundamentally, the parties’ dispute on this issue is not about specific requests: UP and NS have refused to agree to search *any* custodial files for *any* request. In fact, UP and NS have not even begun email collection and review (or if they have, they’ve refused to say so). Given UP and NS’s failure to meaningfully engage, we are at an impasse on this issue.

Custodial and Non-Custodial Sources. If UP and NS are “willing to provide additional information regarding the sources from which they have collected materials,” it is unclear why they waited months to do so. Please provide a description of the custodial and non-custodial sources used to respond to our requests, including BNSF’s Second Set of Requests. Can you please get us that information on Monday?

Thanks,

McClain

McClain Thompson

KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
T +1 202 389 5292
M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Tuesday, January 6, 2026 9:11 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEnson@crowell.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Joseph J. Matelis <Matelisj@sullcrom.com>; Dylan M. Aluise <alused@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>
Subject: RE: FD 36873 - Request for Discovery Meet and Confer

This message is from an EXTERNAL SENDER

Be cautious, particularly with links and attachments.

McClain,

I write to memorialize Applicants’ positions with respect to the items you raised in your December 28 email and that we discussed on our December 30 call. Please let me know if you have any questions or would like to discuss further.

Before addressing the specific issues raised in your email, I will reiterate two overarching points:

- First, contrary to BNSF’s assertions, Applicants’ discovery efforts at this early stage in the proceeding are both significant and unprecedented in STB merger proceedings. Although Applicants submitted their Application to the STB less than three weeks ago, they have already produced or otherwise made available **hundreds of gigabytes** of expansive data sets, agreements, workpapers, and other documents that are at the core of STB proceedings. These materials include, but are not limited to:
 - 100% Traffic Tapes
 - System-Wide Car and Train Event Data
 - Reciprocal Switch Data
 - Interchange Volume Data
 - Intermodal Train Schedules
 - Agreements containing Interchange Commitments
 - Trackage Rights and Haulage Rights Agreements
 - Workpapers supporting the Application

On our call, you repeatedly asserted that Applicants’ efforts were insufficient because they fell short of what you would expect an applicant to disclose in a Hart-Scott-Rodino (“HSR”) merger review. But this proceeding is not governed by HSR review regulations. BNSF’s role in this proceeding (as a competing railroad) is not analogous to the role that the FTC and DOJ play in HSR reviews. And any evaluation of Applicants’ discovery efforts must be made in reference to STB regulations and based on an understanding of the discovery materials that are core to STB proceedings. Judged by this standard, Applicants’ discovery efforts have been exemplary.

- Second, any discussion of the scope of discovery needs to be tied to BNSF’s specific discovery requests and Applicants’ responses and objections to those requests. Applicants’ discovery obligations are born from specific requests and limited by Applicants’ responses and valid objections to those requests. BNSF’s effort to manufacture disputes regarding the overall scope of email collections unmoored from its actual requests is counterproductive, especially at this point in the proceedings, when most of BNSF’s requests were served so recently that Applicants’ responses were not due until a week after our December 30 call. Nonetheless, as we have previously offered, if there are specific requests and responses or objections that BNSF would like to discuss, including Applicants’ forthcoming responses and objections, we remain willing to engage with you on the appropriateness of the requested discovery and the reasonable scope of materials that Applicants are required to produce in response.

As for the specific issues raised in your email and discussed on our call:

- **Emails.** Applicants timely responded and objected to BNSF’s 1st Set of Discovery Requests. Consistent with their responses and objections, Applicants have been conducting reasonable searches to collect responsive materials and make rolling productions. It is Applicants’ position that wholesale collections of custodial emails are not necessary to conduct a reasonable search for the responsive materials that Applicants have agreed to produce. Instead, targeted collections of responsive materials are both more efficient for Applicants to conduct and result in higher quality productions of materials that are relevant to this proceeding. To the extent that BNSF contends that wholesale email collections are necessary to respond to a specific request for production, Applicants would like to understand BNSF’s basis for that contention and discuss whether alternative collections would address BNSF’s concerns.
- **Custodial and Non-Custodial Sources.** Applicants are willing to provide additional information regarding the sources from which they have collected responsive materials. As we noted on our call, the source of some of the produced materials is self-evident. To the extent BNSF has questions about other materials, Applicants are willing to provide additional information on sourcing.
- **Board of Director Materials and Banker/Financial Documents.** I asked you to clarify which of BNSF’s requests seek these materials (observing that the deadline for Applicants to respond to the requests that appeared to seek

these materials had not yet passed) and to explain why these materials are relevant to the Board's evaluation of the Application. You did not identify which specific requests were seeking these materials and explained generally that BNSF believed the materials were relevant to evaluating whether the merger will be in the public interest, enhance competition, or is necessary to achieve benefits. Based on the limited explanation provided, Applicants remain skeptical that the requested board of director materials and banker/financial documents are necessary for the Surface Transportation Board's evaluation of the Proposed Transaction, especially considering the information provided in the Application and publicly available in Applicants' SEC filings regarding the merger. Nonetheless, Applicants remain open to considering appropriately narrowed requests that are directly tied to the factors the Board must consider in evaluating the Proposed Transaction.

- **Substantial Completion.** As I explained on our call, Applicants are not in a position to forecast when they will be substantially complete with document productions in this proceeding because Applicants are still receiving and responding to discovery requests, including BNSF's 2nd Set of Discovery Requests, and no procedural schedule has been set by the Board. Nonetheless, Applicants have been working diligently to produce responsive materials including prioritizing the production of key data sets requested by the parties.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
www.cov.com

COVINGTON

From: Thompson, McClain <mcclain.thompson@kirkland.com>

Sent: Tuesday, December 30, 2025 6:11 AM

To: Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>

Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEenson@crowell.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Joseph J. Matelis <Matelisj@sullcrom.com>; Dylan M. Aluisse <aluisse@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>

Subject: RE: FD 36873 - Request for Discovery Meet and Confer

[EXTERNAL]

Thank you. I sent a Zoom for 3 PM ET to everyone on this thread, but defer on who plans to join.

McClain Thompson

KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
T +1 202 389 5292
M +1 917 545 6401

mcclain.thompson@kirkland.com

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Monday, December 29, 2025 10:13 PM
To: Thompson, McClain <mcclain.thompson@kirkland.com>; Rosenthal, Michael <mrosenthal@cov.com>; *dludwin@cov.com <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEenson@crowell.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Joseph J. Matelis <Matelisi@sullcrom.com>; Dylan M. Aluise <aluised@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>
Subject: RE: FD 36873 - Request for Discovery Meet and Confer

Hi McClain,

We're available to discuss at 3 PM ET tomorrow. Let me know if that time works for you.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
www.cov.com

COVINGTON

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Sunday, December 28, 2025 4:22 PM
To: Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Warren, Matthew J. <mjwarren@sidley.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Enson, Eric <EEenson@crowell.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; Joseph J. Matelis <Matelisi@sullcrom.com>; Dylan M. Aluise <aluised@sullcrom.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Reilly, Matt <matt.reilly@kirkland.com>; Cunningham, Rich <rich.cunningham@kirkland.com>
Subject: FD 36873 - Request for Discovery Meet and Confer

[EXTERNAL]

Covington and Sidley Teams –

Can you please let us know your availability tomorrow or Tuesday to meet-and-confer regarding the discovery issues identified below? While we will write separately about the status of productions in response to certain of our pending requests, we need near-term clarity on the following issues to help frame the discovery process.

1. **Emails.** Are UP and NS searching – and do UP and NS plan to produce – email in this proceeding? If yes, then we can negotiate parameters. If not, then we’ll need to address with the ALJ.
2. **Custodial and Non-Custodial Sources.** Are UP and NS willing to identify and disclose the custodians, custodial sources, and non-custodial sources that UP and NS are searching to identify case-relevant information?
3. **Board Materials.** Are UP and NS willing to search and produce board materials (agendas, presentations, minutes) 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. **Banker / Financial Decks.** Are UP and NS willing to search and produce information and analyses from their bankers, economists, and financial advisors 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? This would include the studies, analyses, and reports that UP and NS considered and/or relied upon in developing and evaluating the merger proposal and alternatives to it.
5. **Substantial Completion.** Although UP and NS announced the transaction more than 150 days ago, they have produced just 1,653 documents. Much of the productions to date concern lease agreements and contracts with regional or short line railroads – not the core materials that we will need to test the contentions in the Application. Substantial productions remain. We need those productions before depositions can begin, and we need to complete depositions before our comments are due. Let’s please discuss what Applicants have in mind to complete their rolling productions. We are open to a phased approach where productions relevant to particular witnesses are complete before others (allowing for those witnesses’ depositions to proceed before others).

Thanks,

McClain

McClain Thompson

KIRKLAND & ELLIS LLP

1301 Pennsylvania Ave., N.W.

Washington, D.C. 20004

T +1 202 389 5292

M +1 917 545 6401

mcclain.thompson@kirkland.com

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF's Motion to Compel* 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 K. Williams

Onika K. Williams

Attorney for BNSF Railway Company

January 9, 2026