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 July 30, 2026
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July 30, 2026

BY ELECTRONIC FILING**PUBLIC REDACTED VERSION**

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

Re: Finance Docket No. 36873, *Union Pac. Corp.* – *Control* – *Norfolk S. Corp.*

Dear Judge Soulikias:

CPKC has attempted to resolve its disputes with Applicants concerning CPKC's First Set of Discovery Requests (the "Requests"), which were the subject of CPKC's May 28 motion to compel (CPKC-24). Some points have been resolved, and discussion of others remains ongoing, but the parties have reached an impasse on three issues.

1. Applicants are using unduly narrow search terms. Applicants' terms do not capture responsive documents they have produced through their non-custodial searches. Applicants are using a TAR model to further review documents that hit on search terms. There is no serious burden associated with feeding the additional documents hitting on CPKC's terms into that model.

2. UP refuses to include pre-2022 documents in its custodial search for CPKC's Requests, even though UP has already agreed to collect and include pre-2022 documents in its custodial review for the 16 original custodians in response to other participants' discovery requests. There is no basis for treating CPKC's requests differently. UP also should be required to search the custodial file of Lance Fritz—UP's CEO before 2023—for the full 2019-2023 time period.

3. UP should be required to conduct a reasonable search for periodic reports concerning pricing and growth strategies, created in the ordinary course of business, that will not be captured by its custodial search process. NS has agreed to do it. UP should too.

BACKGROUND

Applicants have proposed a four-stage custodial search process. First, Applicants collected an undisclosed number of potentially responsive documents from the 66 document custodians that

Your Honor has ordered Applicants to include. *See* Decision No. 25, at 2-3. Second, Applicants intend to filter those materials using search terms. Third, Applicants intend to feed documents that hit on search terms into a TAR model that will filter non-responsive material. Fourth, Applicants intend to review the output of the TAR process manually.

This dispute principally concerns the second step of Applicants' process: the initial screening by date range and with search terms. After Applicants' initial refusal to engage lead to CPKC's May 28 motion to compel, CPKC sent a search term proposal on June 17. (Ex. A.) On July 7, Applicants sent a hit report concerning CPKC's proposed search terms, stated they would not agree to them, and offered no counterproposal. (*Id.*) On July 9, CPKC sent follow-up questions about the hit reports, including a request that Applicants provide the hit percentage for CPKC's proposed terms. (Exs. A, B.) On July 17, Applicants finally sent a counterproposal, but did not answer CPKC's other questions. (Ex. A.) On July 20, CPKC again requested answers to its July 9 questions. (*Id.*) On July 22, Applicants refused to provide the hit percentage for CPKC's proposed terms. (*Id.*) On July 24, CPKC sent a further counterproposal, along with detailed explanations of the deficiencies with Applicants' search terms. (Exs. C, D.) On July 30, about 2 hours before the filing deadline, Applicants responded, acknowledging there was agreement on a few undisputed terms, but declining to endorse CPKC's proposal for the rest. (Exs. E, F.)

DISCUSSION

Search Terms. The search terms Applicants have proposed are underinclusive. The narrowness of Applicants' proposed search terms is evidenced by the documents Applicants have produced to date through their non-custodial search process. Below are just a few examples of clearly responsive documents that do not hit on *any* of the search terms the respective Applicant has proposed:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The fact that Applicants' proposed search terms fail to capture previously produced responsive material makes clear that there are other responsive documents that Applicants' proposed search terms would fail to capture, such as emails, drafts and similar documents that fell outside of Applicants' limited non-custodial search. If Applicants are permitted to use their search

terms, large numbers of potentially responsive and important documents will be hidden, thwarting the “broad” discovery authorized by the Board’s regulations. Decision No. 20, at 3.

CPKC has proposed alternate search terms that Applicants have rejected. Applicants claim that CPKC’s search terms do not “produce a reasonable number of hits considering the discovery sought” and that the benefits of CPKC’s terms “are outweighed by the burdens of using them.” (Exs. A, B.) But Applicants have refused to substantiate these assertions, beyond simply citing the raw number of documents CPKC’s search terms hit on. Applicants cite the fact that CPKC’s search terms hit on more documents than the search terms agreed to by BNSF and CSX. (*See id.*) But Applicants have not explained why the BNSF/CSX search terms should be treated as the baseline. CPKC never agreed to those search terms, which were drafted to address a separate set of discovery requests. Nor have Applicants provided evidence that CPKC’s proposed terms would capture irrelevant documents by, for example, reviewing a sample and sharing the results, or even, at the bare minimum, substantiating that claim of overbreadth with hit count percentages. It is especially hard to see how CPKC’s terms could lead to the production of irrelevant material given the additional TAR and attorney-review screens Applicants are employing.

Even assuming CPKC’s terms did capture some non-responsive documents, that would not be grounds to reject CPKC’s terms. When search terms are used in conjunction with TAR their function is “not to identify documents for production” but “to narrow the universe of documents to which TAR will be applied.” *In re Diisocyanates Antitrust Litig.*, 2021 WL 4295729, at *10 (W.D. Pa. Aug. 23, 2021), *report and recommendation adopted*, 2021 WL 4295719 (W.D. Pa. Sept. 21, 2021). In this context, “precision” (i.e., avoiding overbreadth) is less important than “recall” (i.e., casting the net wide enough to ensure responsive documents are captured). *Id.* If CPKC’s search terms capture non-responsive documents, Applicants’ TAR program will screen out the non-responsive material. Applicants have not explained what, if any, undue burden this would impose. Indeed, for this reason, courts and the Antitrust Division of the U.S. Department of Justice often do not allow parties to apply *any* search terms to cull documents prior to putting them through a TAR model. *See In re Allergan Biocell Textured Breast Implant Prods. Liab. Litig.*, 2022 WL 16630821, at *3 (D.N.J. Oct. 25, 2022) (“Defendants fail to explain why they should be permitted to continue using search terms when TAR is generally recognized as more efficient.”); Tracy Greer, *Technology-Assisted Review and Other Discovery Initiatives at the Antitrust Division*, at 3, SEDONA CONFERENCE (Mar. 13, 2023) <https://bit.ly/3RDOIp8> (explaining the DOJ is “reluctant to permit a responding party to use search terms to collect documents that thereafter will be processed by a TAR platform” because this “has the potential to exclude many responsive documents from the collection and, thus, to render ineffective the TAR platform”).

In an attempt to understand Applicants’ position, CPKC requested Applicants provide the total number of documents in the initial custodial collection Applicants searched and the hit percentage for CPKC’s proposed search terms (i.e., the fraction of the total documents in the universe of custodial documents captured by CPKC’s proposed terms). Contrary to the assertion of UP’s counsel at the July 24 discovery conference, this is basic information that courts routinely direct parties to provide with their hit reports. *UP itself* relies on hit percentages in proceedings before other Judges. *See* Joint Status Report, *Oxbow Carbon & Mins. LLC v. Union Pac. R.R. Co.*, 2017 WL 5508793, at *10 (D.D.C. Aug. 2, 2017) (citing to the hit percentage of UP’s search terms to argue UP’s terms were “incredibly effective in narrowing the universe of documents to be reviewed”) (attached as Exhibit G); *see also, e.g., Pashaie v. H77LA, LLC*, 2024 WL 4800698,

at *7 (C.D. Cal. Sept. 9, 2024) (ordering production of a “search term hit report showing the total number of documents searched”); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 2024 WL 1786293, at *4 (N.D. Cal. Feb. 20, 2024) (requiring disclosure of the “total number of documents in the de-duplicated collection against which the search terms were applied”); *cf. BCBSM, Inc. v. Walgreen Co.*, 2023 WL 6852533, at *3–4 (N.D. Ill. July 21, 2023) (ordering disclosure of the “deduplicated number of documents contained in the original . . . collection that [were and were not] subject to [TAR]”).

Hit percentage, and the total population searched, is information Applicants have at their fingertips and costs nothing to share. That information would provide an objective measure of whether Applicants’ characterization of CPKC’s proposed search terms as overly broad is supported by data. For example, if CPKC’s search terms capture a high portion of the universe of documents, it might support Applicants’ claim of overbreadth. By contrast, if CPKC’s search terms capture a low share of the initial population, that might undermine that claim.

As the party resisting production, it is Applicants’ burden to establish good cause exists to limit the scope of discovery. *See* 49 C.F.R. § 1114.21(c); *Lake Providence Port Comm’n—Application—Delta S. R.R.*, 2026 WL 846002, at *5 (Mar. 25, 2026) (noting that party resisting discovery on burden grounds must offer “facts to substantiate that claim”); *accord L–3 Commc’ns Corp. v. Sparton Corp.*, 313 F.R.D. 661, 670 (M.D. Fla. 2015) (“If confronted with a search term they believe is overly burdensome, Defendants have an obligation not just to assert their objection, but explain the grounds for the objection and to point to evidence supporting it.”). Applicants have failed to carry their burden and thus should be ordered to employ CPKC’s search terms.

Timeframe of UP’s Custodial Search. UP has agreed to search 36 document custodians—16 original proposed custodians, and an additional 20 custodians that were added following the June 26 discovery conference. Throughout the custodial search negotiation, it was CPKC’s understanding that UP’s collection for the 16 original custodians would cover 2019 to the present. UP stated during the June 26 discovery conference that it would produce documents for the 16 original custodians dating back to 2019, without excluding CPKC from that representation. The order following that conference granted the motion to compel joined by CPKC in its entirety with respect to the 16 original custodians, while declining to resolve the time-period issue only for “the 20 additional custodians.” Decision No. 25, at 3. The hit reports UP shared with CPKC on May 7 and July 7 both indicated they covered pre-2022. And UP explicitly stated on July 2, July 7 and July 9 that it was collecting 2019-2021 data that hit on CPKC’s search terms. (Exs. A, H, I.)

In an abrupt about-face, on July 17 UP stated for the first time that it no longer intended to produce any pre-2022 documents in response to CPKC’s requests for *any* custodian. (Ex. A.) UP’s temporal limitation is improper. There is no dispute that the 2019 to 2021 data is relevant, as evidenced by UP’s agreement to produce data from that period in response to requests from BNSF and CSX. UP has not explained why CPKC’s requests are different. The 16 original custodians include the leadership of the company, and the individuals who have submitted verified statements, meaning they possess some of the most relevant information. UP should not be permitted to renege, and should be ordered to produce responsive pre-2022 documents.

Lance Fritz. For the 20 additional custodians, CPKC is willing to agree to limit the time period to 2022 onward, except Lance Fritz. Mr. Fritz was UP’s CEO from 2015 until August 2023.

UP seeks to limit the time frame of Mr. Fritz's custodial documents to 2022 onward, meaning UP is refusing to produce documents from its CEO's custodial file from 2019 through 2021. *See* UP-77 / NS-75, Ex. A. This limitation is improper.

Any burden of searching Mr. Fritz's custodial file is outweighed by the relevance of the information sought. His file likely contains highly relevant, responsive material, as he had ultimate responsibility for UP's pricing and growth strategies as CEO. Obtaining Mr. Fritz's pre-2022 documents is particularly important because only *four* of UP's 16 original custodians were in their current positions prior to 2022. *See* UP-66 / NS-64, Attch. 1. Accordingly, Mr. Fritz is among the only sources of evidence from that time period. Further, during his tenure as UP's CEO Mr. Fritz (1) presided over a UP [REDACTED] and (2) publicly voiced opposition to further railroad consolidation.¹ To the extent Mr. Fritz's custodial documents reflect the basis for his opposition, that would be highly relevant. Any burden of searching Mr. Fritz's custodial file is outweighed by the relevance of the information sought.

Periodic Reports. Request 28 sought periodic reports, prepared in the ordinary course of business, concerning UP's growth plans and strategies. As part of the parties' non-custodial search negotiations, CPKC asked UP whether they have searched for responsive periodic reports that would not be captured by the custodial document collection (e.g., because the reports were not shared with executive-level personnel). (*See* Ex. K.) In response, UP simply cited their forthcoming custodial productions, while failing to confirm that they had undertaken *any* effort to ascertain whether responsive reports outside the scope of that search exist. (*Id.*) By contrast, NS agreed to "inquir[e] with [its] marketing department as to whether such documents exist" and produce them if they do. (Ex. L.) CPKC's request is reasonable and targeted, focusing on periodic reports that can be identified and produced in bulk. UP should, at a minimum, be required to conduct the same reasonable search for responsive documents with UP's marketing department that NS has agreed to undertake.

CONCLUSION

For the reasons above, CPKC respectfully requests that Your Honor issue an order (1) directing Applicants to use CPKC's proposed search terms, (2) directing UP to collect and search custodial material for the 16 original custodians and Lance Fritz dating back to 2019, and (3) order UP to search for responsive periodic reports not captured by its custodial review.

Respectfully submitted,

/s/ Joseph J. Matelis

Joseph J. Matelis

Attorney for CPKC

cc: All Parties of Record

¹ *See, e.g.,* Tony Hatch, *That's a Wrap: RailTrends 2018 recap*, PROGRESSIVE RAILROADING (December 2018), https://www.progressiverailroading.com/rail_industry_trends/article/Thats-a-Wrap-RailTrends-2018-recap-by-Tony-Hatch--56325 (describing public remarks in which Mr. Fritz stated he was "adamant[ly]" against further railroad consolidation).

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of July 2026, a true and correct copy of the foregoing was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer J. Soulikias.

/s/ Noah P.M. Stern
Noah P.M. Stern

EXHIBIT A

From: Laudone, Stephen S. <slaudone@sidley.com>
Sent: Wednesday, July 22, 2026 4:53 PM
To: Kelly, Kevin; Stern, Noah P. M.; Georges, Maria; Korman, Marc; Enson, Eric; Gridi, Avia; Thompson, McClain; Fanchiang, Eric; Rosenthal, Michael; Cc: Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Warren, Matthew J.; William Mullins; zzExt-dludwin; Harrison, Caroline; Atkins, Raymond; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly; Korman, Marc; OpalDisco
Cc: David Meyer; Matelis, Joseph J.; Hynes, Samantha F.; Aluise, Dylan M.
Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal
Categories: CPKC

Noah,

We disagree with the premise that the size of the proposed transaction justifies overbroad search terms that produce an unreasonable number of hits for just half of Norfolk Southern's custodians. The potential benefit of CPKC obtaining the material sought in these discovery requests is clearly outweighed by the burden of running the search terms proposed by CPKC on June 17. Moreover, the burden CPKC's search term counterproposal would impose is unreasonable in light of the collection and production of non-custodial materials Norfolk Southern is undertaking to respond to CPKC's requests.

We address your questions below:

Norfolk Southern's July 17 Proposal: We provided a set of updated terms that Norfolk Southern intends to run against all custodians for the relevant date ranges. Norfolk Southern intends to run CPKC's search terms without modification for Request 12. Norfolk Southern intends to run CPKC's search terms for Requests 11, 15, and 23, with modifications only to the structure of the terms. In the case of Request 23, Norfolk Southern will run several NS-specific terms beyond those proposed by CPKC.

Please let us know if CPKC has objections to some or all of the revised terms. To the extent CPKC objects to any of the revised terms, please identify which ones and the basis for those objections so Norfolk Southern can evaluate potential solutions.

Hit Data: We are working to see whether we can provide unique hit counts for the disjunctive parts of the terms CPKC proposed for Requests 11, 25, 27, and 29. We hope to have an answer on this tomorrow. Norfolk Southern is not providing the requested hit percentage for the CPKC discovery requests because there is no "correct" hit percentage for any given discovery request. Norfolk Southern has

proposed reasonable search terms tailored to the subject matter of CPKC's specific requests and the materials they seek and that reduce the burden of CPKC's overbroad terms proposed on June 17.

Overlap With Other Search Terms: We determined how many additional documents the CPKC counterproposal terms added to the review population by taking the difference between (1) the deduplicated total hits resulting from the search terms negotiated with BNSF and CSX and NS's original set of terms proposed for the CPKC requests and (2) the deduplicated total hits resulting from the search terms negotiated with BNSF and CSX and CPKC's counterproposal terms for the CPKC requests.

"Modern Attachments": Our review platform does not treat so-called "modern attachments" hyperlinked in emails as family members. For Teams messages, our review platform does treat hyperlinked documents as attachments to the message, but as noted in our July 17 communications, the hit counts provided for CPKC's counterproposal terms did not include Teams messages which we are still processing for review.

Best,
Stephen

STEPHEN S. LAUDONE
Senior Managing Associate

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From: Kelly, Kevin <Kkelly@cov.com>
Sent: Wednesday, July 22, 2026 3:20 PM
To: Stren, Noah (NON-SIDLEY @SULLCROM.COM) <sternnn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>;

Benov, Matthew <mbevov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

The search terms CPKC proposed were not reasonable because they were not tailored to return the discovery sought in your requests or to produce a reasonable number of hits considering the discovery sought. The potential benefits of using the terms proposed by CPKC to identify documents responsive to the specific requests at issue are outweighed by the burdens of using them. This is particularly true where CPKC has sought extensive non-custodial collections and productions regarding the same topics. The size of the proposed transaction does not justify the use of overbroad and unnecessary search terms that return an unreasonable number of hits.

Addressing the various bullets in your email:

- **Union Pacific's Terms.** We shared the updated terms that Union Pacific will be using in my July 17 email. Please let us know if CPKC is claiming that any of these terms are unreasonable, identify the specific terms to which CPCK objects, and the basis for those objections.
- **Additional Hit Statistics.** We do not intend to provide this information because there is no "correct" hit percentage for any of the discovery requests you have issued. As the producing party, UP is best positioned to know how to find potentially responsive documents. We have proposed reasonable searches considering the specific discovery requests and the benefits and burdens of using sprawling terms versus tailored terms.
- **Overlap with Agreed Search Terms.** We have confirmed with our vendor that the correct document count in the July 7th email should have been 312,730 hits (713,086, including families). Of those ~713,000 documents, 629,712 documents, including families, hit on CPKC's proposed original terms. In addition, CPKC's original proposed terms hit on an additional 1.4 million hits, 2.1 million hits with families that were not included in the ~713,000 documents.
- **Date Range.** We clarified the date ranges that we will be using in my July 17 email. For the July 7 hit report that we provided, the searches were not run across the 16 original custodians' 2019-2021 data on UP's legacy lotus notes system given the difficulties we've addressed in prior correspondence.

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Stern, Noah P. M. <sternn@sullcrom.com>

Sent: Monday, July 20, 2026 5:02 PM

To: Laudone, Stephen S. <slaudone@sidley.com>; Kelly, Kevin <Kkelly@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEenson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

[EXTERNAL]

Counsel,

Thank you for providing UP's and NS's search term counterproposals. While we review them, can you please address the remaining questions I sent on July 9 about the UP/NS hit reports—both for the prior hit reports and the ones concerning Applicants' counterproposals—as soon as possible?

Best,
Noah

From: Laudone, Stephen S. <slaudone@sidley.com>

Sent: Friday, July 17, 2026 9:24 PM

To: Kelly, Kevin <Kkelly@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEenson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mabenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

Please find attached Norfolk Southern's revisions to CPKC's search term proposal of June 17. The report provides hit counts for each request when the search terms are run across the custodial files (emails and OneDrive) of the original 16 NS custodians. The hit report also provides the deduplicated total number of hits for all CPKC requests combined. When the results of these revised search terms for CPKC requests are included with the results of the other parties' search terms, the revised CPKC terms add 99,472 hits (190,266 with families) to the review process for the initial 16 NS custodians.

Note that these hit counts do not reflect Teams materials for the initial 16 NS custodians to facilitate a one-to-one comparison against CPKC's June 17 proposal, but Norfolk Southern will run all search terms across custodial Teams materials as well.

Best,
Stephen

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From: Kelly, Kevin <Kkelly@cov.com>

Sent: Friday, July 17, 2026 11:50 PM

To: Stren, Noah (NON-SIDLEY @SULLCROM.COM) <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <flahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisi@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

Attached is a report showing an updated set of search terms that Union Pacific will use to identify custodial documents potentially responsive to CPKC's requests. We have also included hit counts showing the additional, de-duplicated documents returned by each search term when run across the original 16 custodians' 2022-2026 data. In other words, the hit report shows the additional documents pulled into the review process by these terms. Of course, these search terms also appear in documents returned by the previously agreed search terms, and it is our expectation that documents responsive to CPKC's requests will also be found in that set.

Please note that while we will use these search terms across all custodians, we will only be applying these terms to the custodians' data for 2022-2026 given the burden of exporting data from Union Pacific's legacy system. As we are still collecting and processing the data of the additional custodians, we reserve the right to make additional modifications if it turns out the overall volume across those custodians is unduly burdensome to review.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956

COVINGTON

From: Stern, Noah P. M. <sternn@sullcrom.com>

Sent: Friday, July 10, 2026 2:40 PM

To: Laudone, Stephen S. <slaudone@sidley.com>; Georges, Maria <mgeorges@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

[EXTERNAL]

Maria, Stephen,

In light of Judge Soulikias's guidance during today's discovery conference, please let us know which of CPKC's proposed search terms, sent on June 17, UP and NS want to change, why, and in what way, in the hopes of resolving this issue by early next week.

Best,
Noah

From: Stern, Noah P. M.

Sent: Thursday, July 9, 2026 4:17 PM

To: 'Laudone, Stephen S.' <slaudone@sidley.com>; Georges, Maria <mgeorges@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y.

<Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Stephen,

While we appreciate the hit counts you have provided, we disagree that the information NS has shared demonstrates CPKC's search terms are disproportionate or unreasonable. There is nothing facially unreasonable about an approximate hit count of 1.5 million documents for 16 custodians over a seven-year period given the breadth of the relevant issues. This is an \$85 billion transaction and the burden is minimal by comparison. This is particularly true if NS intends to use TAR to conduct responsiveness review and further cull the population.

To help us understand these issues, and to facilitate further discussions, please provide the following information and clarification.

- If you believe "CPKC's broad terms and complex syntax are likely capturing many non-responsive documents," NS should provide counterproposals for any such term. NS is in the best position to evaluate the source of any overbreadth, assuming there is any, and refine the terms to address the issue. Further, this will help us understand which portions of CPKC's search term proposal NS finds objectionable (for example, we assume NS does not object to our proposal for Request 12, which generated just 7,177 hits).
 - CPKC has consistently requested additional information about NS's internal operations and terminology to craft tailored search terms. NS has refused to provide that information. NS cannot now object that the terms CPKC has proposed are too broad, decline to provide the means to correct the alleged overbreadth, and also refuse to provide any counterproposal.
- Please provide the hit percentage for each term, and the denominator of the total documents included in the population searched. Without this information, we are unable to determine whether the terms are, in fact, too broad, or the hit counts are simply being driven by a large volume of responsive material that exists.

- The spreadsheet you shared does not provide unique hits for certain requests “[d]ue to character limitations.” What is the program’s character limit for searches? Can you at least provide unique hit counts for disjunctive parts of these terms?
 - Relatedly, you claim in your email that CPKC’s proposed search terms “account for more than two-thirds of all document hits.” How was NS able to determine this if it was unable to determine the unique hit count for certain of CPKC’s proposed terms?
- You have indicated that the hit counts include emails and OneDrive data. Did your search treat modern attachments (i.e. hyperlinked documents) as family members of emails that hit on search terms? Relatedly, does NS intend to link modern attachments in its subsequent productions? We have identified at least one instance in NS’s prior productions where a modern attachment was used but apparently not produced. See NS_00095608.

Best,
Noah

Noah P. M. Stern
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sternn@sullcrom.com | www.sullcrom.com

From: Laudone, Stephen S. <slaudone@sidley.com>

Sent: Tuesday, July 7, 2026 1:46 PM

To: Georges, Maria <mgeorges@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Counsel:

Please find attached an updated hit report for the custodial searches Norfolk Southern has agreed to undertake in response to certain discovery requests served in this proceeding. The updated hit report consists of two tabs.

The “Agreed To Search Parameters” tab reflects hit counts for search terms and date ranges that Norfolk Southern previously agreed to for various discovery requests and merger-related topics identified by non-applicant parties. These hit counts have been updated to reflect the application of those search parameters to the custodial files of all 16 original custodians whereas Norfolk Southern had previously agreed to run non-application related search terms against only five of those 16 original custodians. With the expansion of all searches to the 16 original custodians, there are now **564,138 hits and 962,654 hits with families**. These hit counts include emails and OneDrive data, but do not yet reflect Teams materials for these 16 custodians which we are still processing for review.

The “Parameters with CPKC Terms” tab is identical to the “Agreed To Search Parameters” tab except that it contains hit counts for CPKC’s search term counterproposal from June 17 rather than Norfolk Southern’s original set of proposed search terms for the CPKC discovery requests. Substituting in CPKC’s search terms results in **1,545,199 hits and 2,281,542 hits with families**. Again, these hit counts include emails and OneDrive data, but do not yet reflect Teams materials for these 16 custodians.

The hit counts provided in these two tabs do not include hits across the custodial materials for the 14 additional custodians requested by non-applicant parties that Norfolk Southern previously agreed to collect and search.

CPKC’s proposed search terms triple the number of document hits across the 16 original custodians and more than double the total universe of documents subject to review and production. And CPKC’s proposed terms, which represent less than 15% of the total number of searches requested by non-applicant parties, account for more than two-thirds of all document hits. As counsel for UP noted, CPKC’s broad terms and complex syntax are likely capturing many non-responsive documents and are therefore unreasonable, disproportionate to the needs of this proceeding, and are unlikely to lead to the discovery of relevant information. While Norfolk Southern cannot agree to these terms as currently presented, Norfolk Southern remains willing to work with CPKC to identify material responsive to its discovery requests. Norfolk Southern also stands ready to evaluate any reasonable modifications CPKC is willing to propose to its requested search terms.

Best,
Stephen

STEPHEN S. LAUDONE

Senior Managing Associate

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slaudone@sidley.com

From: Georges, Maria <mgeorges@cov.com>

Sent: Tuesday, July 7, 2026 9:55 AM

To: Kelly, Kevin <Kkelly@cov.com>; Stren, Noah (NON-SIDLEY @SULLCROM.COM) <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Dear Counsel,

Attached please find an updated hit report for the previously agreed-upon search terms for the 16 original custodians across custodial data from 2019–2026.

Please note that the numbers have increased since the last hit report was circulated because UP has continued processing custodial data, including Teams and OneDrive data. In addition, UP is now running all search terms across all 16 custodians. This population of 312,726 hits (713,082 hits with families) now represents the documents hitting on the agreed-upon search terms for the 16 custodians using the referenced time periods across the custodians' 2019-2026 data. These numbers do not include hits across the data of the 20 additional custodians that UP is collecting and processing consistent with the ALJ's recent decision, but assuming similar hit rates across the other custodians, UP estimates a search term hit population of ~1.2 million documents.

Additionally, attached is a hit report for CPKC's proposed additional search terms, which shows hits across the 16 original custodians' data from 2021–2026. While collection and processing of additional custodial data remain ongoing, specifically the 16 original custodians' 2019-2021 Lotus Notes data hitting on the CPKC terms, this population of 1,453,011 documents (2,183,240 with families) represents documents above and beyond the 713,082 hits with families returned by the agreed-upon search terms. In other words, CPKC's additional terms more than triple the volume of documents (just across the 16 original custodians). Assuming similar hit rates across the other 20 custodians, UP estimates that CPKC's terms would result in ~5.4 million documents on top of the ~1.2 million documents from the agreed terms referenced above for the 36 custodians. The disproportional number of hits appears to be driven by CPKC's selection of broad terms likely to appear in many non-responsive documents, instead of using terms tailored to the specific requests CPKC has served. While UP remains committed to working with CPKC to conduct a reasonable search for responsive documents, whether using custodial searches or other targeted collections, CPKC's proposed terms are neither reasonable nor proportional to the needs of this proceeding.

UP can also confirm that there is already significant overlap between CPKC's proposed terms and the agreed-upon terms, with 629,712 overlapping hits between the two sets. As a result, UP believes the agreed-upon terms are already reasonably tailored to provide CPKC with the documents it needs and that additional CPKC search terms are unnecessary. Nonetheless, to the extent you provide modified search terms that you would like us to test, we are willing to address reasonable requests.

All the best,
Maria

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COVINGTON

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, June 25, 2026 9:10 PM

To: Stern, Noah P. M. <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T.

<ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y.

<Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham,

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Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

Union Pacific is continuing to analyze CPKC's proposed search terms, including comparing CPKC's terms against the terms proposed by the other railroads and previously accepted by Applicants, and expects to provide an update on whether it can agree to these new terms next week. To the extent certain terms return a disproportionate number of additional unique documents and Union Pacific cannot agree to one or more of CPKC's new terms, Union Pacific will provide CPKC with updated hit reports, including unique hit counts.

Best,

Kevin

Kevin Kelly

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Washington, DC 20001-4956
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From: Stern, Noah P. M. <sternn@sullcrom.com>

Sent: Wednesday, June 17, 2026 6:01 PM

To: Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C.

<Lindsey.Bohl@stblaw.com>; pdenton@step toe.com; tstratford@step toe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; Kelly, Kevin <Kkelly@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

[EXTERNAL]

Counsel,

Below, please find CPKC's counterproposal regarding search terms concerning CPKC's First Set of Discovery Requests to Applicants. We'll follow up separately regarding the remaining points discussed yesterday.

Best,
Noah

Request No.	Request Text	Search Term Counterproposal
10/11	Produce all UP/NS Executive Level Documents since January 1, 2000 studying, analyzing, or discussing potential railroad combinations involving UP, BNSF, CSX, or NS, or discussing Transcontinental Rail Mergers generally.	(((BNSF or Basalt or "Union Pacific" or UP or Ruby OR UNP OR UPRR) AND (CSX or Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* or transaction or comb* or acqui* OR control or consolid* OR "single-line" OR "end-to-end" OR "coast-to-coast" OR "east-west")) OR (("transcon*" OR (east* w/10 west*) OR "end-to-end" OR

		"duopoly" OR "coast-to-coast" OR "first-mover" OR "downstream") w/30 (merg* or transaction or comb* or acqui* or control or consolid* OR "single-line"))
12	Produce all NS Executive Level Documents relating to the lane rationalization referenced in the NS Press Release dated April 4, 2024, entitled Norfolk Southern Announces new initiatives to drive further productivity and accountability."	("lane rationalization" OR (lane w/5 ration*)) OR ((("Intermodal" OR "OD pair*") w/10 (review OR optimiz*)) OR ((("OD pair*" OR lane* OR corridor* OR route* OR market*) w/10 (eliminat* OR remov* OR discontinu* OR exit* OR consolidat* OR rationaliz* OR optimiz* OR suspend*)) OR ((low-volume OR "low volume" OR density OR "limited growth" OR "growth prospects" OR profit* OR complex*) w/10 ("OD pair*" OR lane* OR corridor* OR route*))

13	Produce all UP Executive Level Documents relating to the initiative described in the UP Press Release dated September 12, 2023, entitled “Union Pacific’s Newest Offering Removes Full Day of Transit Between the U.S., Mexico and Canada, Creating Unmatched Service for Customers.”	(falcon OR eagle OR "Mexico-US-Canada" OR "Mexico U.S. Canada") OR (("CN" OR "Canadian National" OR CNR OR CNI) AND ("UP" OR "Union Pacific" OR UNP OR UPRR) AND (GMXT OR "Grupo Mexico" OR "Grupo México" OR Ferromex OR FXE) AND (intermodal OR "rail service" OR "joint service" OR "new service" OR "service connection" OR "seamless connection" OR interchange OR interline OR "commercial product" OR "new product"))
14/15	Produce all UP/NS Executive Level Documents relating to the initiative described in the UP Press Release dated September 15, 2025, entitled “New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access.”	[For UP] (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC) AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR "truck-competitive" OR "market access") AND ("Norfolk Southern" OR NS OR NSC OR norfolksouthern) ***** [For NS] (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC)

		AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR "truck-competitive" OR "market access") AND ("Union Pacific" OR UP OR UNP OR UPRR)
16/17	Produce all UP/NS Executive Level Documents relating to strategies for growing UP's rail traffic.	(plan* OR strateg* OR project* OR initiative* OR playbook OR develop* OR roadmap OR campaign* OR AOP) w/20 (grow* OR increas* OR retain* OR enhanc* OR boost* or driv* OR expan* OR conver* OR captur*) w/15 (volume OR traffic OR revenue* OR shipper* OR customer* OR account* OR carload* OR intermodal OR share OR truck* OR modal OR price)

18/19	Produce all UP/NS Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP/NS rail network.	(traffic OR volume* OR capacity OR network OR carload* OR demand) w/20 (forecast* OR project* OR outlook OR plan* OR budget OR expect* OR anticipat* OR future OR playbook)
20/21	Produce all UP/NS Executive Level Documents relating to policies of strategies for the pricing or UP's/NS's rail transportation services, including without limitation the level of returns that UP/NS requires when pricing rail traffic	(pric* OR profit* OR margin* OR tariff* OR contract* OR yield* OR rate* OR "ROR" OR "PI" OR hurdle OR return* OR contrib* OR AOP) w/50 (formula OR model* OR polic* OR strateg* OR playbook OR system* OR commodity OR region* OR customer* OR account* OR campaign*)

22/23	Produce all UP/NS Executive Level Documents relating to UP's/NS's changes (including without limitation reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroading.	[For UP] (PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "Unified Plan 2020" OR "UP 2020" OR "UP2020") AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity) ***** [For NS] (PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "TOP21" OR "TOP 21" OR "TOP 2021" OR "TOP2021" OR "Thoroughbred Operat*") AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity OR TPM)
24/25	Produce all UP/NS Executive Level Documents discussing, analyzing, studying, or referring to UP's/NS's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for UP/NS transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that UP/NS is uniquely or advantageously situated to perform (including without limitation where UP/NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route).	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric* OR profit* OR margin* OR rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook OR AOP OR campaign*) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive) AND (facilit* OR plant* OR site* OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)

26/27	Produce all Documents prepared by personnel in the marketing department and presented to managers recommending, reviewing, or discussing strategies for contracting with customers that have multiple facilities served by UP/NS, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form.	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric* OR profit* OR margin* OR rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive OR multiple) AND (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)
28/29	Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss UP's/NS's plans or strategies for retaining or increasing the revenues obtained by UP/NS from rail customers (whether by growing traffic, increasing prices, or otherwise).	(negotiat* OR strateg* OR formula OR model* OR contract* OR pric* OR profit* OR margin* or rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook OR report) AND (retain* OR increas* OR grow* OR win* OR expand* OR renew* OR capture*) w/20 (revenue* OR traffic OR volume* OR pric* OR rate* OR contract* OR customer* OR shipper* OR account* OR facilit*)

EXHIBIT B

From: Stern, Noah P. M.
Sent: Thursday, July 9, 2026 7:15 PM
To: 'Georges, Maria'; Kelly, Kevin; Laudone, Stephen S.; Korman, Marc; Enson, Eric; Gridi, Avia; Thompson, McClain; Fanchiang, Eric; Rosenthal, Michael; Cc: Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Warren, Matthew J.; William Mullins; zzExt-dludwin; Harrison, Caroline; ratkins; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly; Korman, Marc; OpalDisco
Cc: David Meyer; Matelis, Joseph J.; Hynes, Samantha F.; Aluise, Dylan M.
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Maria,

While we appreciate the hit counts you have provided, we disagree that the information UP has shared demonstrates CPKC's search terms are disproportionate or unreasonable. There is nothing facially unreasonable about an approximate family hit count of 5.4 million documents for 36 custodians over a seven-year period given the breadth of the relevant issues. This is an \$85 billion transaction and the burden is minimal by comparison. This is particularly true if UP intends to use TAR to conduct responsiveness review and further cull the population.

To help us understand these issues, and to facilitate further discussions, please provide the following information and clarification.

- If you believe CPKC has used "broad terms likely to appear in many non-responsive documents," UP should provide counterproposals for any such term. UP is in the best position to evaluate the source of any overbreadth, assuming there is any, and refine the terms to address the issue. Further, this will help us understand which portions of CPKC's search term proposal UP finds objectionable (for example, we assume UP does not object to our proposal for Requests 14/15, which generated just 92 hits).
 - CPKC has consistently requested additional information about UP's internal operations and terminology to craft tailored search terms. UP has refused to provide that information. UP cannot now object that the terms CPKC has proposed are too broad, decline to provide the means to correct the alleged overbreadth, and also refuse to provide any counterproposal.
- Please provide the hit percentage for each term, and the denominator of the total documents included in the search. Without this information, we are unable to determine whether the terms are, in fact, too broad, or the hit counts are simply being driven by a large volume of responsive material that exists.

- You claim that “this population of 1,453,011 documents (2,183,240 with families) represents documents above and beyond the 713,082 hits with families returned by” UP’s narrower terms. But later, you claim there were “629,712 overlapping hits between the two sets.” These two statements appear contradictory, so we would appreciate if you could clarify.
 - Relatedly, the hit counts on UP’s narrower search terms (312,726 hits, 713,082 hits with families) do not line up with the total hits listed in the top row of the corresponding spreadsheet (313,153 hits, 713,620 hits with families). Please clarify which is correct.
- Your email suggests UP ran CPKC’s search terms exclusively for the period 2021–2026, but the hit count spreadsheet you shared states the terms were run for 2019-2026. Further, we do not understand why CPKC’s terms were run on a different date range than UP’s narrower terms. Please clarify the date range used for CPKC’s terms and the reasoning behind that decision.

Best,
Noah

Noah P. M. Stern
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sternn@sullcrom.com | www.sullcrom.com

From: Georges, Maria <mgeorges@cov.com>
Sent: Tuesday, July 7, 2026 6:55 AM
To: Kelly, Kevin <Kkelly@cov.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Dear Counsel,

Attached please find an updated hit report for the previously agreed-upon search terms for the 16 original custodians across custodial data from 2019–2026.

Please note that the numbers have increased since the last hit report was circulated because UP has continued processing custodial data, including Teams and OneDrive data. In addition, UP is now running all search terms across all 16 custodians. This population of 312,726 hits (713,082 hits with families) now represents the documents hitting on the agreed-upon search terms for the 16 custodians using the referenced time periods across the custodians' 2019-2026 data. These numbers do not include hits across the data of the 20 additional custodians that UP is collecting and processing consistent with the ALJ's recent decision, but assuming similar hit rates across the other custodians, UP estimates a search term hit population of ~1.2 million documents.

Additionally, attached is a hit report for CPKC's proposed additional search terms, which shows hits across the 16 original custodians' data from 2021–2026. While collection and processing of additional custodial data remain ongoing, specifically the 16 original custodians' 2019-2021 Lotus Notes data hitting on the CPKC terms, this population of 1,453,011 documents (2,183,240 with families) represents documents above and beyond the 713,082 hits with families returned by the agreed-upon search terms. In other words, CPKC's additional terms more than triple the volume of documents (just across the 16 original custodians). Assuming similar hit rates across the other 20 custodians, UP estimates that CPKC's terms would result in ~5.4 million documents on top of the ~1.2 million documents from the agreed terms referenced above for the 36 custodians. The disproportional number of hits appears to be driven by CPKC's selection of broad terms likely to appear in many non-responsive documents, instead of using terms tailored to the specific requests CPKC has served. While UP remains committed to working with CPKC to conduct a reasonable search for responsive documents, whether using custodial searches or other targeted collections, CPKC's proposed terms are neither reasonable nor proportional to the needs of this proceeding.

UP can also confirm that there is already significant overlap between CPKC's proposed terms and the agreed-upon terms, with 629,712 overlapping hits between the two sets. As a result, UP believes the agreed-upon terms are already reasonably tailored to provide CPKC with the documents it needs and that additional CPKC search terms are unnecessary. Nonetheless, to the extent you provide modified search terms that you would like us to test, we are willing to address reasonable requests.

All the best,
Maria

Maria Georges

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One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5421 | mgeorges@cov.com
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COVINGTON

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, June 25, 2026 9:10 PM

To: Stern, Noah P. M. <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

Union Pacific is continuing to analyze CPKC's proposed search terms, including comparing CPKC's terms against the terms proposed by the other railroads and previously accepted by Applicants, and expects to provide an update on whether it can agree to these new terms next week. To the extent certain terms return a disproportionate number of additional unique documents and Union Pacific cannot agree to one or more of CPKC's new terms, Union Pacific will provide CPKC with updated hit reports, including unique hit counts.

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 [cov.com]

COVINGTON

From: Stern, Noah P. M. <sternn@sullcrom.com>
Sent: Wednesday, June 17, 2026 6:01 PM
To: Laudone, Stephen S. <slaudone@sidley.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Ludwin, Derek <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Georges, Maria <mgeorges@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; Kelly, Kevin <Kkelly@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

[EXTERNAL]

Counsel,

Below, please find CPKC's counterproposal regarding search terms concerning CPKC's First Set of Discovery Requests to Applicants. We'll follow up separately regarding the remaining points discussed yesterday.

Best,
Noah

Request No.	Request Text	Search Term Counterproposal
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10/11	Produce all UP/NS Executive Level Documents since January 1, 2000 studying, analyzing, or discussing potential railroad combinations involving UP, BNSF, CSX, or NS, or discussing Transcontinental Rail Mergers generally.	((BNSF or Basalt or "Union Pacific" or UP or Ruby OR UNP OR UPRR) AND (CSX or Cobalt OR "Norfolk Southern" OR NS OR Nickel OR norfolksouthern)) w/30 (merg* or transaction or comb* or acqui* OR control or consolid* OR "single-line" OR "end-to-end" OR "coast-to-coast" OR "east-west")) OR ((("transcon*" OR (east* w/10 west*) OR "end-to-end" OR "duopoly" OR "coast-to-coast" OR "first-mover" OR "downstream")) w/30 (merg* or transaction or comb* or acqui* or control or consolid* OR "single-line"))
-------	---	---

12	Produce all NS Executive Level Documents relating to the lane rationalization referenced in the NS Press Release dated April 4, 2024, entitled Norfolk Southern Announces new initiatives to drive further productivity and accountability.”	("lane rationalization" OR (lane w/5 ration*)) OR (("Intermodal" OR "OD pair*") w/10 (review OR optimiz*)) OR (("OD pair*" OR lane* OR corridor* OR route* OR market*) w/10 (eliminat* OR remov* OR discontinu* OR exit* OR consolidat* OR rationaliz* OR optimiz* OR suspend*)) OR ((low-volume OR "low volume" OR density OR "limited growth" OR "growth prospects" OR profit* OR complex*) w/10 ("OD pair*" OR lane* OR corridor* OR route*))
13	Produce all UP Executive Level Documents relating to the initiative described in the UP Press Release dated September 12, 2023, entitled “Union Pacific’s Newest Offering Removes Full Day of Transit Between the U.S., Mexico and Canada, Creating Unmatched Service for Customers.”	(falcon OR eagle OR "Mexico-US-Canada" OR "Mexico U.S. Canada") OR (("CN" OR "Canadian National" OR CNR OR CNI) AND ("UP" OR "Union Pacific" OR UNP OR UPRR) AND (GMXT OR "Grupo Mexico" OR "Grupo México" OR Ferromex OR FXE) AND (intermodal OR "rail service" OR "joint service" OR "new service" OR "service connection" OR "seamless connection"

		OR interchange OR interline OR "commercial product" OR "new product"))
14/15	Produce all UP/NS Executive Level Documents relating to the initiative described in the UP Press Release dated September 15, 2025, entitled “New Union Pacific and Norfolk Southern Intermodal Gateway Expands Market Access.”	[For UP] (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC) AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR "truck-competitive" OR "market access") AND ("Norfolk Southern" OR NS OR NSC OR norfolksouthern) ***** [For NS] (Louisville OR "Kansas City" OR KCIT OR "Kansas City Intermodal Terminal" OR KC) AND (intermodal OR gateway OR interchange OR interline OR "joint service" OR "new service" OR "domestic intermodal" OR "truck-competitive" OR "market access") AND

		("Union Pacific" OR UP OR UNP OR UPRR)
16/17	Produce all UP/NS Executive Level Documents relating to strategies for growing UP's rail traffic.	(plan* OR strateg* OR project* OR initiative* OR playbook OR develop* OR roadmap OR campaign* OR AOP) w/20 (grow* OR increas* OR retain* OR enhanc* OR boost* or driv* OR expan* OR conver* OR captur*) w/15 (volume OR traffic OR revenue* OR shipper* OR customer* OR account* OR carload* OR intermodal OR share OR truck* OR modal OR price)

18/19	Produce all UP/NS Executive Level Documents relating to forecasts prepared in the ordinary course of future traffic levels on the UP/NS rail network.	(traffic OR volume* OR capacity OR network OR carload* OR demand) w/20 (forecast* OR project* OR outlook OR plan* OR budget OR expect* OR anticipat* OR future OR playbook)
20/21	Produce all UP/NS Executive Level Documents relating to policies of strategies for the pricing or UP's/NS's rail transportation services, including without limitation the level of returns that UP/NS requires when pricing rail traffic	(pric* OR profit* OR margin* OR tariff* OR contract* OR yield* OR rate* OR "ROR" OR "PI" OR hurdle OR return* OR contrib* OR AOP) w/50 (formula OR model* OR polic* OR strateg* OR playbook OR system* OR commodity OR region* OR customer* OR account* OR campaign*)

22/23	Produce all UP/NS Executive Level Documents relating to UP's/NS's changes (including without limitation reductions) in service or service frequency occasioned by implementation of Precision Scheduled Railroading.	[For UP] (PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "Unified Plan 2020" OR "UP 2020" OR "UP2020") AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity) ***** [For NS] (PSR OR (Precision w/2 Schedul* w/2 Rail*) OR "TOP21" OR "TOP 21" OR "TOP 2021" OR "TOP2021" OR "Thoroughbred Operat*") AND (service OR frequency OR schedul* OR delay* OR interrupt* OR reduc* OR capacity OR TPM)
24/25	Produce all UP/NS Executive Level Documents discussing, analyzing, studying, or referring to UP's/NS's ability or potential ability to negotiate, insist upon, or obtain more favorable terms for UP/NS transportation services, or obtain additional business, by linking, bundling, tying, or otherwise including in a negotiation or offer other rail transportation service that UP/NS is uniquely or advantageously situated to perform (including without limitation where UP/NS is the sole rail carrier serving a particular shipper facility or providing an efficient rail route).	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric* OR profit* OR margin* OR rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook OR AOP OR campaign*) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive) AND (facilit* OR plant* OR site* OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)

26/27	Produce all Documents prepared by personnel in the marketing department and presented to managers recommending, reviewing, or discussing strategies for contracting with customers that have multiple facilities served by UP/NS, including without limitations documents in the form of emails, strategy decks, playbooks, or any other form.	(negotiat* OR deal* OR strateg* OR formula OR model* OR contract* OR offer* OR propos* OR pric* OR profit* OR margin* OR rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook) AND (bundl* OR tying OR tie* OR link* OR leverag* OR provid* OR offer* OR efficien* OR advantage* OR package* OR portfolio OR "sole-served" OR "solely-served" OR "single served" OR captive OR multiple) AND (facilit* OR plant* OR site OR origin* OR destination* OR lane* OR route* OR shipper* OR customer* OR account)
28/29	Produce all Documents prepared on a weekly, monthly, quarterly, annual, or other regular basis that discuss UP's/NS's plans or strategies for retaining or increasing the revenues obtained by UP/NS from rail customers (whether by growing traffic, increasing prices, or otherwise).	(negotiat* OR strateg* OR formula OR model* OR contract* OR pric* OR profit* OR margin* or rate* OR "ROR" OR "PI" OR hurdle* OR return* OR playbook OR report) AND (retain* OR increas* OR grow* OR win* OR expand* OR renew* OR capture*) w/20 (revenue* OR traffic OR volume* OR pric* OR rate* OR contract* OR customer* OR shipper* OR account* OR facilit*)

EXHIBIT C

From: Stern, Noah P. M.
Sent: Friday, July 24, 2026 5:06 PM
To: 'Kelly, Kevin'; Laudone, Stephen S.; Georges, Maria; Korman, Marc; Enson, Eric; Gridi, Avia; Thompson, McClain; Fanchiang, Eric; Rosenthal, Michael; Cc: Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Warren, Matthew J.; William Mullins; zzExt-dludwin; Harrison, Caroline; ratkins; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly; Korman, Marc; OpalDisco
Cc: David Meyer; Matelis, Joseph J.; Hynes, Samantha F.; Aluise, Dylan M.
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal
Attachments: CPKC Response to UP 7.17.2026 Search Term Proposal.pdf

Kevin,

Thank you for sharing UP's counterproposal. CPKC believes its previously proposed search terms were reasonable, particularly in light of UP's planned use of an automated TAR process to remove from production any non-responsive documents that happen to include any of the search terms. Nonetheless, CPKC is offering in the attached chart a narrowed set of search terms that CPKC hopes UP will find acceptable in the hope of resolving this issue by agreement. We request a response to our proposal by end of day Tuesday so, if necessary, we can provide a sensible summation of any outstanding issues to Judge Soulikias ahead of our filing deadline Thursday afternoon.

In addition, we request clarification on the following issues.

Date Range: For the 16 original custodians, it was our understanding that UP had already agreed to produce documents dating back to 2019, to the extent relevant to the particular Request. That was our understanding of UP's first search term proposal sent on May 7. UP reiterated the 2019 to 2026 date range in the hit report UP sent on July 7. UP's July 7 cover email further stated UP was "collect[ing] and processing" 2019-2021 Lotus Notes data for the 16 original custodians' hitting on the CPKC terms, further confirming our impression it would be produced. Also, our recollection is that UP represented to the Court during the June 26 discovery conference that UP would be producing documents for the 16 original custodians dating back to 2019, without excluding CPKC from this commitment. If UP does not intend to produce documents for the 16 original custodians dating back to 2019 in response to CPKC's search terms/requests, please let us know.

Hit Count: Please confirm that the 40,969 hits (plus 99,482 families) listed in the top-left corner of the spreadsheet you shared reflect the total number of additional documents UP would review/produce beyond what is already captured by the search terms you are intending to use. That is our understanding from your email, but we wanted to be sure.

Best,
Noah

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

EXHIBIT D

From: Stern, Noah P. M.
Sent: Friday, July 24, 2026 5:08 PM
To: 'Laudone, Stephen S.'; Kelly, Kevin; Georges, Maria; Korman, Marc; Enson, Eric; Gridi, Avia; Thompson, McClain; Fanchiang, Eric; Rosenthal, Michael; Cc: Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Razi, Sara Y.; Bohl, Lindsey C.; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich; Damitio, Daniel; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; Warren, Matthew J.; William Mullins; zzExt-dludwin; Harrison, Caroline; Atkins, Raymond; Krovoza, Charlotte; Joseph, Neil; Flahive Wu, Laura; Benov, Matthew; Volbrecht, Tate D.; Brown, Molly; Korman, Marc; OpalDisco
Cc: David Meyer; Matelis, Joseph J.; Hynes, Samantha F.; Aluise, Dylan M.
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal
Attachments: CPKC Response to NS 7.17.2026 Search Term Proposal.pdf

Stephen,

Thank you for sharing NS's counterproposal. CPKC believes its previously proposed search terms were reasonable, particularly in light of NS's planned use of an automated TAR process to remove from production any non-responsive documents that happen to include any of the search terms. Nonetheless, CPKC is offering in the attached chart a narrowed set of search terms that CPKC hopes NS will find acceptable in the hope of resolving this issue by agreement. We request a response to our proposal by end of day Tuesday so, if necessary, we can provide a sensible summation of any outstanding issues to Judge Soulikias ahead of our filing deadline Thursday afternoon.

Best,
Noah

Highly Confidential Attachment

Filed under seal pursuant to Protective Order

EXHIBIT E

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, July 30, 2026 12:23 PM

To: Stern, Noah P. M. <sternn@sullcrom.com>; Laudone, Stephen S. <slaudone@sidley.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; ratkins <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>

Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

We are working on providing updated hit counts for the custodial search terms that you sent over on Friday. I was hoping to have those for you today, but our eDiscovery vendor ran into some technical issues with implementing the searches that have delayed us. Nonetheless, it appears we have agreement with respect to the terms proposed for Requests 10, 14, and 22. We will provide additional thoughts on the remainder once we have updated hit counts.

Regarding the two issues you raised for clarification, here are Union Pacific's responses:

- **Date Range.** For Union Pacific's 16 original custodians, we have searched Union Pacific's current and legacy systems for documents containing the terms that Union Pacific had originally proposed as modified by the revisions received from non-Applicant Class I railroads as of June 11, 2026 (the "agreed terms"). The agreed terms include searches that Union Pacific proposed to address CPKC-specific requests, but for which CPKC did not offer any specific counterproposal as of June 11, 2026. We have collected the documents returned by these searches and are reviewing them for materials responsive to discovery requests received from CPKC and the other railroads, consistent with the responsiveness criteria the parties negotiated. Union Pacific also undertook an effort to collect and export emails from its legacy system that contained the terms that CPKC proposed for the first time on June 17. Unfortunately, Union Pacific was unable to complete that collection due to the technical limitations associated with its legacy system and the gross overbreadth of those searches.

- **Hit Count.** The 99,482 documents represent the additional documents returned by the CPKC search terms that Union Pacific will be reviewing for the time period January 1, 2022 through February 17, 2026 (on top of the documents already returned by the agreed terms for the time period January 1, 2019 to February 17, 2026) for the 16 original custodians. As I wrote in my last email, we also intend to use these search terms across the 20 additional custodians that Union Pacific is collecting and processing for the time period January 1, 2022 through February 17, 2026, which will result in additional documents being pulled into the review process across all 36 custodians.

Finally, in evaluating the reasonableness of CPKC's proposed custodial search terms, one must account for Union Pacific's diligent efforts to identify and produce documents through targeted collections of other sources. Union Pacific has worked constructively with CPKC to identify the types of documents that CPKC has indicated it considers responsive to its requests, and which Union Pacific has collected and produced (or will produce shortly). We intend to provide a further update on the state of our production efforts shortly, but we are confident that these productions contain materials that squarely address the topics that CPKC is seeking to explore through discovery and are consistent with the materials that can be identified via a reasonable search.

Best,

Kevin

Kevin Kelly

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COVINGTON

EXHIBIT F

From: Laudone, Stephen S. <slaudone@sidley.com>

Sent: Thursday, July 30, 2026 12:37 PM

To: Stern, Noah P. M. <sternn@sullcrom.com>; Kelly, Kevin <Kkelly@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Enson, Eric <EEnson@crowell.com>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; Rosenthal, Michael <mrosenthal@cov.com>; Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; pdenton@steptoe.com; tstratford@steptoe.com; Cunningham, Rich <rich.cunningham@kirkland.com>; Damitio, Daniel <DDamitio@cov.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Warren, Matthew J. <mjwarren@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; zzExt-dludwin <dludwin@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Joseph, Neil <neil.joseph@kirkland.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Benov, Matthew <mbenov@cov.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Brown, Molly <MBrown@cov.com>; Korman, Marc <mkorman@sidley.com>; OpalDisco <OpalDisco@cov.com>
Cc: David Meyer <david@meyerlawdc.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Search Term Proposal

Noah,

Thank you for sharing CPKC's counterproposal. We can confirm that we have agreement with respect to the search terms for CPKC Requests 11, 12, 15, and 23. We are still evaluating the terms you proposed with respect to the remaining requests and will provide feedback as soon as possible. Norfolk Southern continues to make rolling productions of non-custodial materials responsive to CPKC's requests.

Best,
Stephen

STEPHEN S. LAUDONE
Senior Managing Associate

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EXHIBIT G

2017 WL 5508793 (D.D.C.) (Trial Filing)

United States District Court, District of Columbia.

OXBOW CARBON & MINERALS LLC, et al., Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY, et al., Defendants.

No. 11-cv-1049 (PLF) (GMH).

August 2, 2017.

Joint Status Report

[Hollis Salzman](#) (D.C. Bar No. NY0207), [Eamon O'Kelly](#) (admitted pro hac vice), [Meegan Hollywood](#) (D.C. Bar No. NY0206), Robins Kaplan LLP, 399 Park Avenue, Suite 3600, New York, NY 10022, Phone: (212) 980-7400, Fax: (212) 980-7499, hsalzman@robinskaplan.com, eokelly@robinskaplan.com, mhollywood@robinskaplan.com; [Roman Silberfeld](#) (D.C. Bar No. CA00002), Robins Kaplan LLP, 2049 Century City Park East, Suite 3400, Los Angeles, CA 90067, Phone: (310) 552-0130, Fax: (310) 229-5800, rsilberfeld@robinskaplan.com; [Stephen P. Safranski](#) (admitted pro hac vice), Anne M. Locker (admitted pro hac vice), Robins Kaplan LLP, 800 LaSalle Avenue, Suite 2800, Minneapolis, MN 55402, Phone: (612) 349-8500, Fax: (612) 339-4181, ssafranski@robinskaplan.com, alockner@robinskaplan.com, for plaintiffs Oxbow Carbon & Minerals LLC; Oxbow Mining, LLC; Oxbow Midwest Calcining LLC; Oxbow Calcining LLC; and Terror Creek LLC.

[John M. Majoras](#) (D.C. Bar # 474267), [Kristen Lejnieks](#) (D.C. Bar # 502136), Jones Day, 51 Louisiana Avenue, NW, Washington, D.C. 20001-2113, Telephone: (202) 879-3939; [Tyrone R. Childress](#) (admitted pro hac vice), [Carolyn A. Woodson](#) (admitted pro hac vice), Jones Day, 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071-2300, Telephone: (213) 489-3939; [Michael L. Rosenthal](#) (D.C. Bar # 446216), [Thomas A. Isaacson](#) (D.C. Bar # 376959), Covington & Burling LLP, One City Center, 850 Tenth Street, NW, Washington, D.C. 20001, Telephone: (202) 662-5069, for defendant Union Pacific Railroad Company.

[Bradley S. Phillips](#) (admitted pro hac vice), [Gregory M. Sergi](#) (D.C. Bar # 994418), Munger, Tolles & Olson LLP, 350 S. Grand Avenue, 50th Floor, Los Angeles, CA 90071, Telephone: (213) 683-9100, for defendant BNSF Railway Company.

Pursuant to the Order issued by the Court on June 14, 2017 (Dkt. 118), the parties submit this joint status report.

PLAINTIFFS' POSITION

A. Mr. Koch's Documents

Following the June 14, 2017 hearing, Oxbow collected 467,614 documents from the files of Mr. Koch. This includes electronic files, such as email and electronic documents saved to Mr. Koch's individual network¹ and local drives, and any electronic files maintained by Mr. Koch's assistants. In addition, relevant hard copy documents in the possession of Mr. Koch or his assistants were collected.

Following collection, Mr. Koch's documents were sent directly to Planet Data, the vendor that Oxbow used in conjunction with its previously agreed-upon custodians ("Non-Koch Custodians").² Planet Data utilizes an early case assessment tool called Exego, which was also used for processing the documents collected from the Non-Koch Custodians. Mr. Koch's files were processed through Exego where they were de-duped against the existing collection and filtered according to relevant date ranges.

Following that process, the agreed-upon search terms were applied to Mr. Koch's files. In total, 45,639 documents (82,600 documents with families) hit on the search terms.

Following application of the search terms, Planet Data collected a random 10% sample across the hits to export for review, pursuant to the Court's instructions at the June 14, 2017 hearing (Transcript at 55:23-24). To do this, Planet Data assigned a random number to every hit, sorted the documents based on the random numbers assigned to it, and extracted the first 4,663 documents, which upon export from the ECA tool for Relativity database loading and review, shrunk to 4,493 reviewable documents.³ While the sample was designed to only extract top-level emails, Oxbow pulled associated families (emails and attachments) for review. Thus, in total Oxbow reviewed 12,074 documents for purposes of the sample.

On July 26, 2017, Oxbow sent the Defendants copies of the reports generated from Exego, which indicate on a term-by-term basis how many documents hit on the search terms from Mr. Koch's files, as well as from those of the Non-Koch custodians. In addition, Oxbow sent the Defendants detailed information regarding the responsiveness rates of Mr. Koch's sampled documents as compared to those from the Non-Koch custodians. That information is depicted below.

Koch Sample

Review - Production	First Level Review
Produce Clean (Responsive)	1,223
Produce-Clean (Non-Responsive)	66
Produce Redacted	28
Privilege	92
Do Not Produce (Non-Responsive)	10,665
Total Reviewed	12,074
% Responsive	11.67%

Non-Koch Custodians

Review - Production	First Level Review
Produce Clean (Responsive)	356,195
Produce-Clean (Non-Responsive)	16,577
Produce Redacted	9,790
Privilege	15,510
Do Not Produce (Non-Responsive)	186,317
Total Reviewed	584,389
% Responsive	68.12%

On July 28, 2017, Oxbow produced to the Defendants the responsive, non-privileged documents from Mr. Koch's sample. In total the cost to collect, process, and produce Mr. Koch's sampled documents was \$57,197.95.⁴ This includes the cost to collect and process Mr. Koch's documents⁵ through Planet Data (\$18,721.45), the cost to review Mr. Koch's sampled documents and generate a privilege log (\$24,105), and the cost for project management, consulting, and preparing the documents for production (\$14,371.50). In other words, Oxbow spent a total of \$57,197.95 to produce approximately 1300 documents to the Defendants.

Moreover, the documents from Mr. Koch's sample that are responsive to the Defendants' requests for production, include things like automated deal sheets, and coal reports and newsletters from subscription services. While these items are technically responsive to Defendants' requests for production, they are of little real relevance to any claims or defenses in the lawsuit. To the extent that there is a very small number of potentially truly relevant documents, it cannot outweigh the costs and burden to Oxbow of having to review and produce the remainder of Mr. Koch's documents.

Specifically, including families, approximately 65,000 Koch documents remain in Exego. It would cost Oxbow an estimated additional \$85,000 to process, review, and produce those documents to the defendants. This amount includes the cost of processing the documents from Exego to Relativity (\$7,000), the estimated cost to review the documents at \$1 per document (\$65,000), the estimated cost to generate a privilege log (\$5,000), and the estimated project management and consulting fees to produce the remainder of Mr. Koch's documents by the September 15, 2017 deadline requested by the defendants (\$8,000).

Although Oxbow's estimated cost to review and produce the remainder of Mr. Koch's documents is less than what Oxbow originally anticipated (due to the fact that far fewer documents hit on the search terms), it is still unreasonable to expect Oxbow to bear further costs given the low responsiveness rate for Mr. Koch's sampled documents (11.67%) when compared to the average rate across the Non-Koch custodians (68.12%). The Court contemplated such a result during the June 14, 2017 hearing, "So, again, I'm happy to rule. I'm happy to hold in abeyance. It is how ever you want to proceed. But I think there is a way forward here that will either resolve this, obviously you are going to have to spend \$60,000, or put you in a better position to make your arguments as to both the burdensomeness and **more importantly the fact that it's going to result in very little gain.**" (Transcript at 57:5-12) (emphasis added); *see also* Transcript at 54:22-55:9: "I'm also happy if you want, if everyone wants to hold this in abeyance so you can figure out a way forward, given this hearing, the questions from the Court, the impressions that I've just shared with you to figure out a different way forward which may be to spend the money to do the sample, to try to negotiate. And if you are not satisfied at that point, to come back to the Court, some supplemental briefing and say this where we find ourselves. Turns out we were right. Turns out they're not willing to negotiate. Now we would have some hard data to show the Court that **further money spent in this endeavor is burdensome to our client and is going to result in very little.**" (emphasis added). Indeed, Oxbow should not have to incur additional costs to review and produce documents when the process will yield very few non-privileged, responsive documents.

Furthermore, given the relatively small number of search term hits across Mr. Koch's collection, we do not believe it would be productive to renegotiate the search terms in this instance. As counsel for UP stated at the hearing, "Your Honor, the current set of search terms were the subject of much negotiation. I am not persuaded that they will actually result in as many false positives as perhaps Mr. O'Kelly is. In fact, I would argue that given the search terms were specifically designed for coal and petcoke, they may actually result in less hits for Mr. Koch's documents." (Transcript at 56:10-16). Defendants have now reversed themselves, contending that notwithstanding the small number of hits, the Parties should still engage in negotiations over the search terms. However, given the number of hits, Oxbow fears that it would likely cost Oxbow more money in attorney time to negotiate new search terms than whatever savings it might achieve from reducing the number of reviewable documents.⁶

Oxbow believes it might be more productive if Defendants, having reviewed the sample of approximately 1300 documents, were to identify specific documents or categories of documents in the sample production that the Defendants believe are particularly relevant to the case, and are uniquely located in Mr. Koch's files. Oxbow could then concentrate on searching for and producing such documents.⁷

In an email dated July 26, 2017, Oxbow offered to meet and confer with the Defendants to discuss this proposal. In the alternative, Oxbow indicated its willingness to review the remainder of Mr. Koch's documents and produce any non-privileged, responsive documents if Defendants are willing to pay Oxbow's costs of doing so. Defendants did not respond to Oxbow's email, nor did they make any attempt to meet and confer with Oxbow following the results of the sampling process and prior to filing this Joint Status Report.

Oxbow remains willing to meet and confer with the Defendants to identify relevant and unique documents from Mr. Koch's files. However, based on the foregoing, Oxbow respectfully requests that the Court deny Defendants' motion to compel.

In the alternative, if the Court is inclined to grant Defendants' motion, Oxbow respectfully requests that in light of Defendants' insistence that the cost of reviewing the remainder of Mr. Koch's documents and producing the relatively small number that will be responsive to the requests for production is not unreasonable, the Court order that Defendants bear those costs in whole or in part.

2. Data Discovery Issues

During a telephone call on August 1, 2017 to discuss the filing of this Joint Status Report, counsel for Defendant Union Pacific informed Oxbow that Defendants intend to raise with the Court a long-running dispute regarding production of information regarding Oxbow's revenues, costs, and margins. It is Oxbow's position that Defendants are raising this issue prematurely.

Counsel for Oxbow and for Defendant BNSF had been corresponding on this issue for several months. Earlier that same day, August 1, 2017, counsel for Oxbow called counsel for BNSF to propose a resolution to the ongoing dispute. Counsel for BNSF responded via email and suggested that the issue be added to a previously scheduled meet and confer on other discovery issues set for August 3, 2017 (tomorrow). Oxbow hopes that the dispute will be resolved following that discussion, and thus believes that it is premature to involve the Court in this dispute at this time.

DEFENDANTS' POSITION

A. Defendants' Motion to Compel Documents from William I. Koch

Over the last six weeks, Defendants have sought to work with the Oxbow Plaintiffs (“Oxbow”)⁸ to resolve the dispute over the production of documents from the files of William I. Koch, the founder, CEO, and principal owner of Oxbow. *See* Defendants' Mot. to Compel (Feb. 9, 2017; Dkt. 105). Defendants understand that Oxbow has completed review of a sample of about 12,000 of Mr. Koch's documents. Despite finding more than **1,200** responsive documents in that small sample, Oxbow now refuses to conduct any further review or production of Mr. Koch's documents. Because Defendants believe Oxbow's position is unjustifiable and would prevent Defendants from obtaining a significant number of relevant documents from Oxbow's CEO, Defendants are unable to withdraw their Motion to Compel.

On June 14, 2017, the Court held a hearing on Defendants' Motion to Compel. *See* Tr. of 6/14/17 Hearing (Dkt. 120). At the conclusion of the hearing, the Court stated it was “inclined to grant the motion,” but that it was willing to hold the motion in abeyance if Oxbow agreed to collect Mr. Koch's documents, run the current search terms across these documents, and review a sample of 10% of the documents hitting on the search terms. Tr. at 53:23; 55:18-56.

On July 26, 2017, Oxbow informed Defendants that they had completed the sampling of Mr. Koch's documents and provided Defendants with a limited set of statistics regarding the sampling. Oxbow told Defendants that it has 60,000 additional, unreviewed, documents from Mr. Koch's files that hit upon the previously agreed-upon search terms for all Oxbow custodians; anticipating a similar responsive rate to the small sample Oxbow reviewed, this suggests that there are about 7,200 more

responsive and unique documents in Mr. Koch's files (almost 10,000 in total). Thus, it is now clear that Mr. Koch possesses a significant number of documents relevant to this litigation.⁹

The statistics provided in Oxbow's section of this joint status report readily confirm that Oxbow should be required to complete review and production of Mr. Koch's files. Those statistics show that (1) the previously agreed upon search terms are incredibly effective in narrowing the universe documents to be reviewed—the search terms appear to have hit upon less than 20 percent of Mr. Koch's documents; (2) contrary to Oxbow's opposition to Defendants' motion to compel, Mr. Koch does in fact have thousands of non-duplicative, responsive documents; (3) the total number of Mr. Koch's documents that Oxbow would need to review (Oxbow says it is about 65,000) is a small percentage of the 580,000 documents Oxbow claims it already has reviewed from other Oxbow employees; and (4) the total number of responsive documents anticipated from Mr. Koch (approximately 10,000) is consistent with the average number of documents produced for the other Oxbow custodians (approximately 9,700). It is not surprising that the “Responsive” rate for Mr. Koch's documents is lower than that rate for documents from Oxbow employees whose work focused entirely or primarily on Oxbow's coal and petcoke businesses. But, that is not a legitimate justification for Oxbow's position that it will not review and produce the remaining documents from Mr. Koch.

In order to address Oxbow's cost concerns,¹⁰ Defendants were prepared to negotiate more narrow search terms for Mr. Koch's documents, if Oxbow demonstrated that the total volume was enormous and the burden disproportionately large. *See* Tr. at 43:18-19 (recognizing that false positives could be dealt with through re-negotiation or “narrowing” of the search terms). But, Oxbow said that it was unwilling to do so and has failed to propose revisions to the search terms or even to provide Defendants with the information necessary to have an informed discussion about search terms.¹¹ Nor has Oxbow offered any other suggestions to Defendants that would reduce the purported burden on Oxbow while providing Defendants with the responsive and relevant documents from Mr. Koch's files.

Oxbow now suggests that Defendants should bear the cost of this production. However, Oxbow provides no justification for overcoming the strong presumption that a responding party must bear the expense of complying with discovery requests. Here, Oxbow seeks to recover more than \$150,000,000 and does not dispute that it has the resources to pay for the discovery; under these circumstances, there is no undue burden justifying cost-shifting.

For these reasons, Defendants are unable to withdraw the Motion to Compel. Defendants respectfully request that this Court grant the Motion to Compel in its entirety, or in the alternative, schedule a telephone conference to resolve the dispute. Consistent with this Court's Order dated June 14, 2017 (Dkt. 119), Defendants are prepared to submit a letter brief that more fully explains their position and responds to Oxbow's arguments.

B. Defendants' Request for Oxbow's Revenues, Costs, Margins, and Profits

On August 13, 2015, Defendants served their First Set of Requests for Production on Oxbow, which included Request No. 50 that asks for “[a]ll annual financial statements and other Documents sufficient to show each Plaintiff entity's annual revenues (by commodity), costs, margins and profits.” Defendants understand that there is no dispute from Oxbow as to the relevance of the information sought by Request No. 50. Oxbow recently indicated that it is still trying to determine how to produce the requested information, but Oxbow has not provided any proposal, specific details, or timing for the production of additional information responsive to Request No. 50.

Defendants believe this issue has been outstanding for far too long with no foreseeable resolution. Oxbow's contention that this issue is premature for the Court's consideration is untenable. Defendants' document request has been outstanding for *almost two years* and, during that time, Defendants have repeatedly met and conferred with Plaintiff regarding this deficiency with no resolution. Pursuant to this Court's order (Dkt. 119, filed June 14, 2017), Defendants' counsel notified Oxbow's counsel on July 20, 2017, of their intent to contact the Court's chambers to request a telephone conference and requested the availability of Oxbow's counsel for such a conference. Oxbow's counsel, however, has refused to provide their availability for a telephone

conference with the Court. Defendants would like to arrange a telephone conference for as soon as would be convenient for the Court to address this issue and are prepared to submit their position via letter as required under the Court's order.

Respectfully submitted,

s/Hollis Salzman

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Dated: August 2, 2017

s/John M. Majoras

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Dated: August 2, 2017

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Attorneys for Defendant BNSF Railway Company

Dated: August 2, 2017

Footnotes

- 1 As communicated to the Defendants both during a meet and confer and in writing, documents that Mr. Koch may have maintained on a shared network folder or shared network drive would have already been included in what has already been produced to the Defendants. When Oxbow searched central sources, all relevant documents from those files were collected regardless of custodian.
- 2 The Non-Koch Custodians include the 19 agreed-upon Oxbow custodians as well as the general custodian, "Oxbow Email Archive." As is standard practice at large companies, when emails are deleted from an active inbox they are preserved within Oxbow's email archive, which saves one copy of each unique email across custodians. There is no way to attribute those emails to a single custodian because the search pulls archived emails from all of the 19 agreed-upon custodians. Therefore, we have included the custodian "Oxbow Email Archive" for purposes of this exercise. This does not include documents collected from shared network folders.
- 3 The sampling process was described to the Defendants via email on June 21, 2017. On June 22, 2017, counsel for the Defendants indicated that the process was acceptable to them.
- 4 In an email to the Defendants on July 26, 2017 attaching the requested hit lists and responsiveness statistics, Oxbow stated that it cost \$51,650.95 to collect, process, and review Mr. Koch's documents. That was a preliminary amount as of July 25, 2017. Included in the figure above, is time spent from July 26, 2017 through July 28, 2017 to finalize the production and privilege log.

- 5 As explained in Oxbow's opposition to the Defendants' motion to compel, due to limitations with Oxbow's IT systems, Mr. Koch's entire email and network files needed to be collected in order to de-dupe, filter, and apply the agreed-upon search terms.
- 6 Importantly because the parties have not met and conferred or corresponded regarding the sampling results, there has been no discussion regarding how new search terms would be applied (i.e., across Mr. Koch's entire collection versus the subset of documents that hit on the original search terms), or whether further sampling would need to be conducted in order to test the new terms. Despite indicating that Defendants would be willing to meet and confer regarding "next steps" following the sampling process, Defendants did not even respond to Oxbow's email providing the results and offering to discuss them further.
- 7 For instance, in a footnote to their section of this report, Defendants noted that they identified documents relating to Oxbow's business strategy and finances that they believe are unique to Mr. Koch. Oxbow would be willing to search for and produce such documents to the extent they are, indeed, relevant and responsive to this case.
- 8 The Oxbow Plaintiffs consist of five different corporate entities: Oxbow Carbon & Minerals LLC; Oxbow Mining, LLC; Oxbow Midwest Calcining LLC; Oxbow Calcining LLC; and Terror Creek LLC. *See* First Am. Compl., ¶¶ 9-13 (Dkt. 53, filed May 1, 2013).
- 9 Oxbow produced the approximately 1,200 responsive documents from the sample on Friday, July 28, 2017. During the initial review of this production, Defendants located useful documents relating to Oxbow's finances and business strategy that are unique to Mr. Koch. The produced documents also support Defendants' contention that Mr. Koch, the senior-most executive at Oxbow, was involved in every level of Oxbow's coal and petcoke businesses—from the strategic, executive level down to the transaction level for key transactions. As this production was made less than a week ago, Defendants have not yet been able to conduct a thorough review, but thus far the production shows Mr. Koch to not only be an independent source of important documents and information, but also the sole source for some information.
- 10 Contrary to Oxbow's prior estimates, Oxbow recently told Defendants that the total cost of reviewing and producing all of Mr. Koch's documents would be approximately \$136,000, which is almost half what Oxbow estimated in their opposition to the motion to compel.
- 11 The search term reports sent by Oxbow do not include the basic information that is needed to determine whether or not a term is leading to false positives or is generating inconsistent hits across custodians. For example, the reports fails to indicate, on a term by term basis, how many documents were included in the sample and how many of those documents were responsive. Without that information, there is no way for Defendants to assess whether or not a certain term is overbroad.

End of Document

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EXHIBIT H

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BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
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By Email

July 2, 2026

McClain Thompson
Kirkland & Ellis LLP
1301 Pennsylvania Ave, N.W.
Washington, DC 2004
mcclain.thompson@kirkland.com

Re: STB Docket NO. FD 36873 – Collection Methodology

Dear McClain:

As a follow-up to the ALJ hearing on June 26, 2026, Union Pacific (“UP”) provides the following information regarding the collection methodology used for the original 16 custodians and additional details on the limitations of exporting Lotus Notes data. UP migrated its email system from Lotus Notes to Microsoft Office 365 (“O365”) in 2021. This migration occurred on a rolling basis throughout 2021 until completion. As a result, emails from custodians for the 2019–2021 period reside in the legacy Lotus Notes archive, managed by ZL Technologies (“ZL”), while emails from a certain period in 2021 forward are maintained in O365.

I. Lotus Notes Data (2019–2021)

During the relevant period, UP utilized ZL to manage Lotus Notes email data subject to litigation holds. ZL does not maintain custodian inboxes in their native form. Instead, it preserves a single archived copy of each email that is subject to a litigation hold. All retained emails are fully indexed and searchable within ZL.

ZL continues to store UP’s Lotus Notes email data for the 2019–2021 timeframe. However, ZL is no longer UP’s active litigation hold system, and the underlying infrastructure (including servers and software) has not been upgraded since the 2021 migration to O365. As a result, ZL is now a legacy system with material technical and operational limitations.

II. Limitations on Exporting from ZL

UP’s ability to export data from ZL is subject to significant constraints:

- **Volume limitations:** Exports are limited to approximately 50 GB per job, with a maximum of two concurrent exports.

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McClain Thompson

July 2, 2026

Page 2 of 3

- **System constraints:** These limitations cannot be increased without upgrading legacy hardware and licensing, which UP no longer maintains given its transition to O365.
- **Manual process:** Exports require continuous manual monitoring. If an export fails, it does not automatically restart and must be manually reinitiated.
- **Casebook limitations:** ZL requires exports to be organized into “casebooks,” each of which is limited to approximately 300,000 documents. Once that threshold is reached, a new casebook must be created before exports can continue.

Based on these constraints, UP estimates that the 16 original custodians collectively have approximately 1 terabyte of Lotus Notes email data for the 2019–2021 period. Exporting this volume of data in full would require at least 30 calendar days under ideal conditions and likely significantly longer in practice due to the manual nature of the process and the potential for export interruptions.

III. Collection Approach for Lotus Notes Data

Considering the limitations described above, UP determined that exporting the entirety of Lotus Notes email data for the 16 custodians was not feasible or proportional. Accordingly, UP has implemented a collection methodology using agreed-upon search terms:

- UP ran the search terms, including all modifications proposed by non-Applicant Class I railroads as of June 11, 2026, across the ZL system and exported only the hits.
- UP is currently applying the additional search terms that CPKC proposed on June 17, 2026, across the ZL system and is exporting the hits.

This approach ensures that potentially responsive information is identified for review while avoiding the substantial burden and inefficiency associated with a full export of legacy Lotus Notes data.

IV. O365 Data (Post-Migration)

With respect to O365 data (including Email, Teams, and OneDrive), UP initially collected documents for the 16 custodians using “export” search terms provided to BNSF on June 16, 2026. UP has since supplemented those initial collection efforts by completing full mailbox and O365 data source collections for these 16 custodians.

This O365 data is currently being processed and globally de-duplicated by Lighthouse. UP confirms that there is no remaining uncollected O365 email, Teams, or One Drive data for these 16 custodians.

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McClain Thompson

July 2, 2026

Page 3 of 3

Should you have any questions, UP is willing to meet and confer to discuss these issues further.

Respectfully,

/s/ Maria Georges

Maria Georges
Covington & Burling LLP
*Counsel to Union Pacific Corporation and
Union Pacific Railroad Company*

EXHIBIT I

From: Georges, Maria <mgeorges@cov.com>

Sent: Thursday, July 9, 2026 9:50 PM

To: Laudone, Stephen S. <slaudone@sidley.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Korman, Marc <mkorman@sidley.com>; Kelly, Kevin <Kkelly@cov.com>; zzExt-aellis <aellis@stblaw.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; David Meyer <david@meyerlawdc.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>; Vaidya, Tushar <tushar.vaidya@kirkland.com>

Cc: zzExt-dludwin <dludwin@cov.com>; Flahive Wu, Laura <flahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Magcale, Jamie Dominique U <JMagcale@cov.com>; Brown, Molly <MBrown@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Warren, Matthew J. <mjwarren@sidley.com>; ratkins <ratkins@sidley.com>; William Mullins <wmullins@mullinslawgroup.net>; Spencer Naake <snaake@mullinslawgroup.net>; OpalDisco <OpalDisco@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Applicants' 1st Set of Discovery Requests

McClain –

For UP, I can confirm that all email, OneDrive, and Teams data has been collected and searched for the initial 16 custodians. I can also confirm that UP has initiated full 0365 email, Teams, and One Drive collections for the additional 20 custodians for the time period of 2021-2026 and that those collections remain ongoing. Due to the size of the 0365 exports, we do not anticipate collection/processing/searching of this data to be completed for several more weeks.

I can also confirm that for the 16 custodians, Lotus Notes data has been collected, processed, and searched for the previously agreed-upon terms. Due to the complexity of the CPKC terms and the challenges associated with exporting the Lotus Notes data, which have previously been explained to you, collection of Lotus Notes data for the CPKC terms for the original 16 custodians for the time period 2019-2021 remains ongoing.

As for your remaining reasonable questions concerning UP's July 2 letter, the letter states that UP has exported full 0365 custodial files for the original 16 custodians. For the Lotus Notes email for the initial 16 custodians where email families were searched using the agreed-upon search terms, ~92% of email families (or ~70% of the total population based on file size) were not exported from the ZL system. I can also confirm that when UP runs search terms across the ZL system and UP gets a hit on a cover email, but the family member does not hit on a term, the full family is exported. I can also confirm the opposite is true, namely if there is a hit on a family member but not on a cover email, the full family is exported.

All the best,

Maria

Maria Georges

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
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EXHIBIT J

Filed under seal pursuant to protective order

EXHIBIT K

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Wednesday, July 15, 2026 5:58 PM
To: Stern, Noah P. M.; Matelis, Joseph J.; Warren, Matthew J.; Flahive Wu, Laura; Rosenthal, Michael; zzExt-dludwin; Damitio, Daniel; Harrison, Caroline; Krovoza, Charlotte; Brown, Molly; Benov, Matthew; Georges, Maria; Korman, Marc; ratkins
Cc: David Meyer; Hynes, Samantha F.; Aluise, Dylan M.; Golden, Nathan H.; Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Enson, Eric; Razi, Sara Y.; Bohl, Lindsey C.; *pdenton@steptoe.com; *tstraftford@steptoe.com; Cunningham, Rich; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; William Mullins; Joseph, Neil; Volbrecht, Tate D.; zzExt-Laurel.Fresquez; Spencer Naake; Gridi, Avia; Thompson, McClain; Fanchiang, Eric; OpalDisco
Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Requests
Categories: CPKC

Noah,

Here are Union Pacific's responses to the items raised in our July 10 email.

- **Request 4 (Customer Communications)**

- Your follow-up request rests on a misunderstanding that we have corrected before. There is not one individual or even a few Union Pacific employees who centrally maintain the customer tracker and collect related communications. The tracker is compiled by numerous Union Pacific employees at all levels of the company, and it would be unduly burdensome to search all of them for potentially responsive communications, especially where Union Pacific has produced its tracker.

- **Requests 10 (Merger Analyses)**

- We identified folders on a SharePoint site and a shared drive that contain potentially responsive materials. We are collecting and reviewing documents from those locations. We made an initial production of responsive materials on Friday, and expect to produce additional documents on a rolling basis in the future.

- **Requests 13 & 14 (Interline Initiatives)**

- CPKC's requests are limited to executive level documents. There is no basis to add non-executive individuals as custodians to identify the materials that went to UP's executives regarding these initiatives. The specific examples you provide below reinforce this point.
- You have asked about a White Paper published by Matt Gloeb on the Falcon Premium Service. It appears this document is publicly available on Union Pacific's website at [https://www.up.com/news/service/falcon-premium-service-it-230525\[up.com\]](https://www.up.com/news/service/falcon-premium-service-it-230525[up.com]).
- You have asked about certain privilege redactions, it is apparent on the face of the produced documents that the redacted sections of the presentations contain privileged legal advice regarding antitrust guidelines for the meetings that were shared pursuant to a common interest.
- You have asked us to check whether there are additional responsive documents related [REDACTED]

[REDACTED] As an initial matter, we expect the CEO-related materials will exist in the custodial files of Jim Vena. However, we also reviewed the specific content you cited, and it appears you have mischaracterized Union Pacific's production in material several respects:

- [REDACTED] We will check whether the meeting occurred. We note that

- You state that the produced documents only contain one [REDACTED]
- You state only [REDACTED]
- Nonetheless, we will check again to confirm we've received any centrally stored responsive documents.
 - For the Louisville initiative, we have not identified any code names related to the project. In addition to senior M&S leadership, we expect that Laura Heisterkamp would have also received responsive documents to the extent they were circulated at the executive level.
- **Requests 16 & 18 (Growth Strategy & Forecasts) and 20, 24, 26 (Pricing Strategy)**
 - We produced the Sales Playbook on Friday shortly before you sent your email.
 - Our collection of responsive documents is ongoing. We already made an initial production of responsive materials on Friday, and will produce additional documents on a rolling basis in the future.
 - We confirmed on July 9 that we would remove the railroad-wide or commodity-wide limitations to our custodial review for the referenced strategy documents. For our collection of non-custodial documents, we have identified a reasonable set of responsive documents that we are producing consistent with my prior correspondence. You have some initial examples of these documents, and we will be producing more in the future.
 - Regarding the last bullet in your email, it looks like this was drafted before my most recent response, which make clear that we have not limited our search to versions of the document types CPKC described.
- **Request 22 (PSR)**
 - Union Pacific uses the term PSR and Precision Scheduled Railroading. We are not aware of a codename used in place of PSR. Union Pacific's Unified Plan 2020 included implementation of PSR principles.
 - Across the entire railroad, there were many individuals who led implementation of various efforts related to PSR, with reports regarding these efforts circulated to senior leadership, including leaders within Union Pacific's Operations department such as Eric Gehringer and John Turner.
- **Request 28 (Regular Revenue Strategy Reports)**
 - The regularly prepared Business Review and Annual Operating Plan documents referenced in my last email address revenue strategies, among other things.
- **CRM**
 - Union Pacific's investigation is ongoing, and it may generate reports from Salesforce as part of its targeted collections if necessary to respond to specific requests.

Finally, regarding your request for supplemental metadata, we have provided file paths in our most recent production and expect to provide that same data moving forward. To the extent you have questions regarding specific portions of past productions, please let us know, and we will take a look.

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Stern, Noah P. M. <sternn@sullcrom.com>

Sent: Friday, July 10, 2026 3:57 PM

To: Kelly, Kevin <Kkelly@cov.com>; Matelis, Joseph J. <Matelisj@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>
Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEEnson@crowell.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake <snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; OpalDisco <OpalDisco@cov.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Requests

[EXTERNAL]

Kevin,

Thank you for the responses UP has provided. Follow-up questions from CPKC are in red below.

In addition, during the meet-and-confer on June 30, Laura indicated that UP had provided metadata information that would allow for the source of the documents that have been produced by UP to be identified, including custodian/author and file-path information. However, while NS has generally provided this information with its productions, as far as CPKC is aware UP has not. The missing metadata are necessary to understand the context of UP's productions, and for us to be able to determine which executives to depose about certain documents. Would you be able to provide a replacement load file for UP's past productions that includes the same metadata fields that NS has provided and confirm that UP intends to provide similar metadata information going forward?

Best,
Noah

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Wednesday, July 8, 2026 10:57 AM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; zzExt-dludwin <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>;

Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>

Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEnson@crowell.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake <snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; OpalDisco <OpalDisco@cov.com>

Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework - CPKC Requests

Joe,

Following up on the conversation below, here are some further updates from Union Pacific on CPKC's requests:

- **Requests 10 (Merger Analyses)**

- We have identified documents responsive to this request stored in a non-custodial source. We will be making an initial production of these documents this week and additional rolling productions in the future.
- Can you please provide additional detail about the source of the responsive documents UP has identified, the sources UP has previously searched, and whether UP's search for additional non-custodial material responsive to this request is ongoing?

- **Request 14 (Interline Initiatives)**

- We will be producing a presentation that we have located regarding the Louisville Interline Initiative this week. To the extent we identify additional responsive documents, we will produce them.
- See below.

- **Requests 16 & 18 (Growth Strategy & Forecasts) and 20, 24, 26 (Pricing Strategy)**

- We are collecting a series of regularly prepared reports generated by different units within Union Pacific's Marketing & Sales team, which address Union Pacific's growth and pricing strategies and forecasts, among other topics. These include Business Review and Annual Operating Plan (AOP) documents prepared by the units. We are aiming to make an initial production of these documents this week and additional rolling productions in the future.
- Thank you for agreeing to search for and produce additional documents responsive to these Requests. Can you please provide an estimate of when you anticipate UP's non-custodial search in response to these Requests will be complete? Additionally, can you please confirm when you intend to produce UP's Sales Playbook, referenced in your prior email?
- To be clear, in responding to these Requests, both through UP's custodial and non-custodial search process, does UP intend to limit its response to railroad-wide and commodity-wide strategy documents? As previously stated, CPKC is interested in and has requested more granular strategy documents, including regional or customer-specific strategies. To the extent UP is unwilling to produce those documents, please tell us so that we may raise the issue with Judge Soulikias. As previously stated, we are willing to work with UP to identify a reasonable set of such materials that UP is willing to produce, such as strategy documents for a sample of UP's largest customers.
 - Applicants recently told the Board that "Applicants' projected diversions are concentrated in commodity-corridor pairs in which Applicants historically had little or no traffic." UP-67/NS-65, at 1. We consider it critically important to understand UP's pre-merger efforts to win business in those areas, but are concerned that none of the custodians, who are senior

executives, will possess ordinary-course documents about those commodity-corridor pairs, or associated customers. A targeted collection of those strategy documents is critical in our view to help us understand your experts' view that significant growth can be expected in those areas.

- With respect to the pricing strategy documents, to be clear, we are not just asking for additional versions of the "document types [we] have described," as stated in your prior email. We cited those documents to illustrate the kinds of internal metrics UP uses to set price and pricing strategy. Please confirm that you have asked (or intend to ask) your client about those and similar metrics, with the ultimate goal of identifying other types of documents responsive to this request (including the examples listed in Joe's prior email).

Best,

Kevin

Kevin Kelly

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COVINGTON

From: Kelly, Kevin <Kkelly@cov.com>

Sent: Thursday, June 25, 2026 9:03 PM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>

Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEnson@crowell.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake <snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>; OpalDisco <OpalDisco@cov.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

Joe,

Thank you again for providing additional information regarding CPKC's requests in your email below. Here are Union Pacific's responses:

- **Request 4 (Customer Communications)**

- As we discussed last week, there is not one individual Union Pacific employee who centrally maintains the tracker of customer communications that Union Pacific produced. Instead, there are numerous Union Pacific employees at all levels of the company who reached out to customers regarding the merger using approved outreach materials that Union Pacific has previously produced. These employees would then update the tracker, which was maintained in a central non-custodial location, to reflect their outreach and the responses they received.
- The tracker document UP has produced does not contain any actual customer correspondence, only summaries. We request UP collect customer correspondence that those who maintain the tracker have and produce it.
- **Requests 10 (Merger Analyses)**
 - Union Pacific is further investigating whether there are centralized non-custodial sources of documents reflecting Union Pacific's analysis of potential mergers responsive to this request. We have identified one non-custodial shared drive folder that might contain responsive documents. We are collecting the potentially responsive documents from that source for review and will produce responsive, non-privileged documents to the extent they are identified. We are also continuing to investigate whether any other non-custodial sources of responsive documents exist.
 - See above.
- **Requests 13 & 14 (Interline Initiatives)**
 - For Falcon Premium, Union Pacific has conducted a targeted collection effort for these documents and completed production. Please let us know if you have any specific questions regarding the documents produced.
 - For the Louisville interline initiative, Union Pacific continues to conduct a targeted collection effort for responsive documents regarding this initiative, but we have not located much in the way of responsive documents regarding the initiative. Based on our investigation, the Louisville initiative did not require any new service designs from Union Pacific, instead leveraging existing Union Pacific service and Norfolk Sothorn's logistics for crosstown moves, so there were limited documents regarding its implementation on the Union Pacific side. We will produce the additional responsive, non-privileged documents we identify, including what we have identified to date.
 - For both interline initiatives, our expectation is executive level documents regarding the initiatives would be circulated to senior leadership in Union Pacific's Marketing & Sales department, including Kenny Rocker.
 - As previously requested, please identify who the project lead for the Falcon Premium initiative is, and whether they are a custodian. The documents UP have produced indicate [REDACTED] [REDACTED] Neither is a custodian, so CPKC is concerned that UP's custodial search process will not adequately capture materials responsive to this request. See UP_0022839; UP_0022840. [REDACTED] [REDACTED] Otherwise, would you be willing to conduct a targeted collection of Pat Linden's and Matt Gloeb's files?
 - We believe the Falcon Premium documents UP has produced include 26 items (several of which are duplicates) in the bates range UP_0022803 to UP_0022935, but please let us know if there are any other responsive documents UP has produced. In light of UP's representation that it does not intend to produce further non-custodial materials beyond these, we have several questions about the documents that have been produced.
 - The Falcon Premium documents include six presentations that contain privilege redactions, even though the presentations were shared with the leadership of both UP and CN. See UP_0022845; UP_0022851; UP_0022855; UP_0022873; UP_0022887; UP_0022907; UP_0022930. What is the basis for these redactions?
 - Several documents reference a [REDACTED] [REDACTED] UP_0022873, at 878. Please either produce this document or point us to where it is in UP's productions.

- Please confirm how these documents were collected and what steps you took to ensure this is a comprehensive set of materials.

[REDACTED]

- Similarly, the documents contain several references

[REDACTED]

Is it possible

to produce all the scorecards?

- For the Louisville initiative, as previously requested, please identify (a) who the UP project leads were for the initiative and (b) whether there were any code names for this initiative used internally by UP. UP claims that the custodial search process is likely to address these Requests, but has not explained why. We're particularly concerned for this information because the current hit search terms for the Louisville-related Requests hit on just 92 documents.

- **Request 22 (PSR)**

- For PSR, we will be producing the responsive, non-privileged documents from non-custodial sources that Union Pacific has located through its targeted collection efforts. Our expectation is that reports regarding the success of PSR efforts at Union Pacific would be circulated to senior leadership, including leaders within Union Pacific's Operations department such as Eric Gehringer and John Turner.
- As previously requested, please identify (a) who the UP project leads were for the initiative and (b) whether there were any code names for this initiative used internally by UP. UP claims that the custodial search process is likely to address these Requests, but without answers to these questions we can't verify that claim.

- **Requests 16 & 18 (Growth Strategy & Forecasts)**

- We appreciate you identifying the examples of potentially responsive document types you referenced on our call. We are further investigating the document types you have described and will provide an update on whether we are able to identify non-custodial locations where responsive documents are centrally stored.
- On the "playbook" issue, it appears that the references you have identified are to integration playbooks (that will be developed as part of integration planning efforts) and the potential integration of sales account playbooks as part of the merger. The latter references Union Pacific's existing "Sales Playbook," which addresses sales processes and tools on a technical level, but does not offer growth or pricing strategies. We have collected Union Pacific's Sales Playbook and will produce it for your review.
- See above.

- **Requests 20, 24, 26 (Pricing Strategy)**

- We appreciate you identifying the examples of potentially responsive document types you referenced on our call. We are further investigating the document types you have described and will provide an update on whether we are able to identify non-custodial locations where responsive documents are centrally stored.
- See above.

- **Request 28 (Regular Revenue Strategy Reports)**

- We expect any regularly prepared reports responsive to this request would be circulated to senior leadership in Union Pacific's Marketing & Sales department, including Kenny Rocker.
- We repeat our request that you identify the regularly prepared reports responsive to this Request.

- **CRM**
 - Union Pacific utilizes SalesForce.
 - Does UP intend to make any productions from Salesforce?

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 [cov.com]

COVINGTON

From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Thursday, June 18, 2026 10:05 PM

To: Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Ludwin, Derek <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; ratkins <ratkins@sidley.com>

Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <alused@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Stern, Noah P. M. <sternn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEnson@crowell.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake <snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

[EXTERNAL]

Matt, Laura, and Kevin – thank you for the discussion Tuesday. I’ve provided below cites to the documents I mentioned and summarized where I think we left things, although obviously feel free to supplement and clarify. Please let me know when we can next discuss. Joe

- **Request 4**
 - Who maintains UP’s tracker about customer communications about the proposed transaction and is that person a custodian (or, if multiple people, are any custodians)? What we are interested in is a way to see actual correspondence with the customers about the transaction. If those documents are going to be picked up in the custodial search, that could be a path to resolution. If not, a targeted collection effort might be appropriate.

- Is there a similar process for collecting customer feedback at NS and, if so, are those involved custodians? Again, we are looking for a way to see actual correspondence with the customers.
- **Requests 10 & 11**
 - Are there central sources (for instance, in the corporate development department or the legal department) that maintain business records evidencing changes in perspective at UP on potential benefits and detriments of Class 1 consolidation, through analysis of other potential deals or otherwise? We are not seeking legal analyses but thought that the Legal Department might have records about prior initiatives.
 - What we are most interested is any documents containing analyses/discussion of these issues showing the evolution of views since the 2001 Major Rail Consolidation Procedures.
- **Requests 12-15, 22-23**
 - Who was the point-person(s) or project lead(s) on the initiatives described in these Requests and are they custodians? If the leads are going to be included in the custodial search, that could be a path to resolution. If not, we would like to discuss a targeted collection effort. With respect to PSR, we understand that it is a broad initiative in which many people were involved, but was there a responsible person(s) who is not a custodian charged with tracking the success of the efforts?
 - UP is continuing to collect documents concerning the initiative described in Request 15, and we will let you know if we have any questions after receiving those materials.
- **Requests 16-19**
 - As a general matter, these requests are designed to help us understand how UP and NS plan growth efforts and make forecasts. UP has said the merger is needed to help it grow. We are trying to understand what UP's growth plans have been in the past and what made those efforts successful or unsuccessful. UP and NS have agreed to look for and produce railroad-wide and commodity-wide strategy documents (and some of that material has already been produced by UP). We asked whether there are other kinds of analyses (e.g., regional or customer-specific, which could be the case for the largest customers for instance). Some relevant citations from the productions to date:
 - E.g., [REDACTED]
- **Requests 20 & 21, 24-27**
 - We are seeking documents that allow us to understand how UP and NS negotiate with customers and set price. Among other things, UP appears to rely on internal rate of return (or similar) metrics (i.e., a piece of business should meet some internal profitability threshold before being accepted). We are interested in both how those metrics are set (be it in the finance department or otherwise) and how the marketing division uses them in practice. In addition, we are looking for documents about how UP negotiates with, and sets prices for, customers with multiple facilities. Some relevant citations from the UP production are below; we are interested in similar NS material as well. Things like training materials for your salesforce, pricing policies that describe under what circumstances discounts may be offered and who is authorized to approve them, and notes of meetings documenting approval of quotes or discounts to customers would be particularly relevant:

- Several UP documents refer to [REDACTED]
[REDACTED] We are interested in how [REDACTED] is calculated and how it is used in making pricing decisions, including any policies, strategies/discussion of approaches to guidelines, ranges, or collars for acceptable levels of PI (or any other similar metric if PI is not the relevant one).
- Other documents refer to a [REDACTED]
[REDACTED]

- **Requests 28 & 29**

- What we are interested in are regularly prepared reports that are not in the files of the custodians. Are there any (for instance, within subgroups of the marketing department)?

- **CRM**

- Do UP and NS use a customer relationship management tool like Salesforce?

EXHIBIT L

From: Korman, Marc <mkorman@sidley.com>
Sent: Wednesday, July 15, 2026 4:39 PM
To: Stern, Noah P. M.; Matelis, Joseph J.; Warren, Matthew J.; Flahive Wu, Laura; Kelly, Kevin; Rosenthal, Michael; zzExt-dludwin; Damitio, Daniel; Harrison, Caroline; Krovoza, Charlotte; Brown, Molly; Benov, Matthew; Georges, Maria; Atkins, Raymond; Laudone, Stephen S.
Cc: David Meyer; Hynes, Samantha F.; Aluise, Dylan M.; Golden, Nathan H.; Donovan, Daniel T.; McCarrick, T.J.; zzExt-aellis; Enson, Eric; Razi, Sara Y.; Bohl, Lindsey C.; *pdenton@steptoe.com; *tstraftford@steptoe.com; Cunningham, Rich; Scheib, John M.; Gardiner, Kent; van Houwelingen, Luke; William Mullins; Joseph, Neil; Volbrecht, Tate D.; zzExt-Laurel.Fresquez; Spencer Naake; Gridi, Avia; Thompson, McClain; Fanchiang, Eric
Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework
Categories: CPKC

Noah,

Responses on behalf of NS are in bold italics and yellow highlight below. Thank you.

-Marc

MARC A. KORMAN
Counsel

SIDLEY AUSTIN LLP
+1 202 736 8417
mkorman@sidley.com

From: Stern, Noah P. M. <sternnn@sullcrom.com>
Sent: Friday, July 10, 2026 3:43 PM
To: Korman, Marc <mkorman@sidley.com>; Matelis, Joseph (NON-SIDLEY @SULLCROM.COM) <Matelisj@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; zzExt-dludwin <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>
Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M. <aluised@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEnson@crowell.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstraftford@steptoe.com <tstraftford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake <snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mccclain.thompson@kirkland.com>; Fanchiang, Eric

<EFanchiang@crowell.com>

Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

Marc,

Thank you for the responses NS has provided. Follow-up questions from CPKC are below in red.

Best,

Noah

From: Korman, Marc <mkorman@sidley.com>

Sent: Thursday, June 25, 2026 1:05 PM

To: Matelis, Joseph J. <Matelisj@sullcrom.com>; Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; zzExt-dludwin <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Atkins, Raymond <ratkins@sidley.com>; Laudone, Stephen S. <slaudone@sidley.com>

Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan M.

<aluised@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Stern, Noah P. M.

<sternn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J.

<tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEnson@crowell.com>; Razi, Sara

Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com

<pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich

<rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent

<KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins

<wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D.

<tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake

<snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain

<mccclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>

Subject: [EXTERNAL] RE: FD 36873 - Meet & Confer re Custodial Search Framework

Below are responses on behalf of Norfolk Southern. Thank you.

MARC A. KORMAN

Counsel

SIDLEY AUSTIN LLP

+1 202 736 8417

mkorman@sidley.com

From: Matelis, Joseph J. <Matelisj@sullcrom.com>

Sent: Thursday, June 18, 2026 10:05 PM

To: Warren, Matthew J. <mjwarren@sidley.com>; Flahive Wu, Laura <lflahivewu@cov.com>; Kelly, Kevin <Kkelly@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; zzExt-dludwin <dludwin@cov.com>; Damitio, Daniel <DDamitio@cov.com>; Harrison, Caroline <CHarrison@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>; Brown, Molly <MBrown@cov.com>; Benov, Matthew <mbenov@cov.com>; Georges, Maria <mgeorges@cov.com>; Korman, Marc <mkorman@sidley.com>; Atkins, Raymond <ratkins@sidley.com>

Cc: David Meyer <david@meyerlawdc.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Aluise, Dylan

M. <aluised@sullcrom.com>; Golden, Nathan H. <goldenn@sullcrom.com>; Stren, Noah (NON-SIDLEY @SULLCROM.COM) <sternnn@sullcrom.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; zzExt-aellis <aellis@stblaw.com>; Enson, Eric <EEnson@crowell.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; *pdenton@steptoe.com <pdenton@steptoe.com>; *tstrafford@steptoe.com <tstrafford@steptoe.com>; Cunningham, Rich <rich.cunningham@kirkland.com>; Scheib, John M. <scheib@gentrylocke.com>; Gardiner, Kent <KGardiner@crowell.com>; van Houwelingen, Luke <LVanHouwelingen@crowell.com>; William Mullins <wmullins@mullinslawgroup.net>; Joseph, Neil <neil.joseph@kirkland.com>; Volbrecht, Tate D. <tate.volbrecht@kirkland.com>; zzExt-Laurel.Fresquez <Laurel.Fresquez@stblaw.com>; Spencer Naake <snaake@mullinslawgroup.net>; Gridi, Avia <Avia.Gridi@stblaw.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Fanchiang, Eric <EFanchiang@crowell.com>
Subject: RE: FD 36873 - Meet & Confer re Custodial Search Framework

Matt, Laura, and Kevin – thank you for the discussion Tuesday. I’ve provided below cites to the documents I mentioned and summarized where I think we left things, although obviously feel free to supplement and clarify. Please let me know when we can next discuss. Joe

- **Request 4**

- Who maintains UP’s tracker about customer communications about the proposed transaction and is that person a custodian (or, if multiple people, are any custodians)? What we are interested in is a way to see actual correspondence with the customers about the transaction. If those documents are going to be picked up in the custodial search, that could be a path to resolution. If not, a targeted collection effort might be appropriate.
- Is there a similar process for collecting customer feedback at NS and, if so, are those involved custodians? Again, we are looking for a way to see actual correspondence with the customers.

NS Response: Numerous commercial employees at all levels of the organization reached out to customers regarding the merger. Although Norfolk Southern observes that Union Pacific had a more significant role in obtaining customer letters of support regarding the transaction. NS has identified and is producing responsive and non-privileged customer communication tracker documents.

- Thank you for agreeing to produce the customer tracking documents. Can you please confirm that the tracker in question is NS_00095560? If so,

[REDACTED]

- Additionally,

[REDACTED]

NS Response: NS_0095560 and NS_NS0095561 are both customer tracking documents, which contain information regarding who NS communicated with and who would and would not provide a support letter in many cases. NS_00095982 is an additional responsive document on this topic. And as noted above, Union Pacific had more of a role on obtaining customer letters of support regarding the transaction, a clear sign of customer views. To the extent NS locates additional non-privileged, responsive documents, it will produce them and also expects that documents of this nature will be in the custodial searches. Requesting individualized correspondence with every customer through a non-custodial search is unduly burdensome. Non-privileged and responsive documents will also be produced through the custodial searches. We have also requested the referenced “State and Local Stakeholders” document and will determine whether it is responsive and not privileged (and will produce if so).

-
- **Requests 10 & 11**
 - Are there central sources (for instance, in the corporate development department or the legal department) that maintain business records evidencing changes in perspective at UP on potential benefits and detriments of Class 1 consolidation, through analysis of other potential deals or otherwise? We are not seeking legal analyses but thought that the Legal Department might have records about prior initiatives.
 - What we are most interested is any documents containing analyses/discussion of these issues showing the evolution of views since the 2001 Major Rail Consolidation Procedures.

NS Response: Norfolk Southern is working with potentially relevant subject matter experts to determine if such business records exist. To the extent responsive and non-privileged documents are identified, those will be produced.

- Could you please provide an anticipated timeline for the results of your search? Depending on the results of the search, we may have additional questions about its details and scope.

NS Response: NS is in the process of responding to approximately 350 discovery requests with hundreds of subparts. If non-privileged, responsive documents are located, they will be produced in accordance with any deadlines set by the Administrative Law Judge. Thus far, no non-privileged, responsive documents have been found to exist and no such central source has been located.

- **Requests 12-15, 22-23**
 - Who was the point-person(s) or project lead(s) on the initiatives described in these Requests and are they custodians? If the leads are going to be included in the custodial search, that could be a path to resolution. If not, we would like to discuss a targeted collection effort. With respect to PSR, we understand that it is a broad initiative in which many people were involved, but was there a responsible person(s) who is not a custodian charged with tracking the success of the efforts?
 - UP is continuing to collect documents concerning the initiative described in Request 15, and we will let you know if we have any questions after receiving those materials.

NS Response: The initiative asked about in CPKC Request No. 12 had no code name but was commonly referred to internally as “lane rationalization,” “zero-based review,” “zero-based network design,” or, on occasion, “lane elimination.” The leadership team members involved in final decisions include current custodians Yannik Thomas and Shawn Tureman.

- While we appreciate your representation that “Yannik Thomas and Shawn Tureman were involved in the final decision” for this initiative, we repeat our request that you identify the project lead or leads and conduct a targeted search of their documents for material responsive to this request.

NS Response: Yannik Thomas and Shawn Tureman were the “executive-level” leads, which are the types of documents CPKC(1)(12) requests. That said, NS will reach out to others involved in this initiative and produce any non-privileged, responsive documents, if they exist, on a non-custodial basis. In addition, documents responsive to this request may be in the custodial files of Yannik Thomas and Shawn Tureman.

The initiative asked about in CPKC Request No. 15 had no code name but was commonly referred to internally as “Louisville Domestic Service.” Once again, custodian Sean Tureman was one of the leadership members involved in the initiative.

- We appreciate your representation that “Sean Tureman was one of the leadership members involved in the initiative.” NS has [REDACTED]

[REDACTED] We repeat our request that you identify the project lead or leads and conduct a targeted search of their documents for materials responsive to this Request.

NS Response: Shawn Tureman (whose name we inadvertently misspelled in one response above) was the “executive-level” lead, which is the type of documents CPKC(1)(15) requests. That said, NS will reach out to others involved in this initiative and produce any non-privileged, responsive documents, if they exist, on a non-custodial basis. In addition, documents responsive to this request may be in the custodial files of Shawn Tureman.

In regards to Precision Scheduled Railroading (CPKC Request No. 23), counsel is inquiring with Norfolk Southern as to whether there was a responsible person(s) who is not a custodian charged with tracking. We also note that we have PSR search terms as part of the custodial searches and are reviewing centralized Teams channels that relate to PSR.

- We appreciate NS’s commitment to investigate this issue further. Can you please confirm whether there are any internal code names or terminology used to describe NS’s PSR initiative? For example, we understand that TOP21 may have been such a term, as reflected in [this](#) press release.

NS Response: TOP, TOP21, SPG, and PSR are all terms NS used. Based on those names, NS is searching centralized team channels for potentially responsive documents. Further, NS believes

the Chief Operating Officer was the ultimate responsible party. Now that predecessor COOs have been added as custodians, there may be non-privileged, responsive documents identified through the custodial review.

- **Requests 16-19**

- As a general matter, these requests are designed to help us understand how UP and NS plan growth efforts and make forecasts. UP has said the merger is needed to help it grow. We are trying to understand what UP's growth plans have been in the past and what made those efforts successful or unsuccessful. UP and NS have agreed to look for and produce railroad-wide and commodity-wide strategy documents (and some of that material has already been produced by UP). We asked whether there are other kinds of analyses (e.g., regional or customer-specific, which could be the case for the largest customers for instance). Some relevant citations from the productions to date:

- [REDACTED]
- [REDACTED]

NS Response: Norfolk Southern is identifying documents similar to NS_00058646 and will produce them to the extent they are responsive and not privileged. In addition, NS expects custodial documents to be responsive to the requests.

- To be clear, in responding to these requests, both through its custodial and non-custodial search process, does NS intend to limit its response to railroad-wide and commodity-wide strategy documents?

NS Response: Similar to the agreement reached regarding responsiveness criteria, NS agrees to not limit its response to railroad-wide and commodity-wide strategy documents. However, requesting individualized documents through a non-custodial search is unduly burdensome. Non-privileged and responsive documents will also be produced through the custodial searches.

- Applicants recently told the Board that “Applicants’ projected diversions are concentrated in commodity-corridor pairs in which Applicants historically had little or no traffic.” UP-67/NS-65, at 1. We consider it critically important to understand NS’s pre-merger efforts to win business in those areas, but are concerned that none of the custodians, who are senior executives, will possess ordinary-course documents about those commodity-corridor pairs, or associated customers. A targeted collection of those strategy documents is critical in our view to help us understand your experts’ view that significant growth can be expected in those areas.

NS Response: NS disagrees that relevant documents would not be identifiable through a custodial search. Part of the purpose of custodial searches is to make discovery more efficient and NS agreed to every custodian requested by the parties thus far.

- If you intend to withhold [REDACTED] on responsiveness grounds, could you please explain the reason you believe they are not responsive, including whether you are limiting responsiveness to railroad-wide and commodity-wide strategy documents? They appear particularly relevant in our view.

NS Response: NS has agreed above and in the responsiveness criteria to not limit its production to railroad-wide or commodity-wide strategy documents. NS does not intend to withhold any [REDACTED]

- During the meet-and-confer, NS suggested that it was continuing to search for responsive strategy documents and that NS may have already produced certain of these documents. Can you please confirm that NS is continuing to search for such documents or, if its search is complete, identify the relevant items you have produced so that CPKC can evaluate how it intends to proceed? If NS's search is ongoing, we would appreciate any guidance you can provide as to when you anticipate it will conclude.

NS is continuing to search for non-privileged documents that are responsive to this request and will produce any such documents on a rolling basis and in accordance with any deadlines set by the Administrative Law Judge. NS included materials responsive to these requests in its latest production and expects to produce additional responsive materials in forthcoming productions.

- **Requests 20 & 21, 24-27**

- We are seeking documents that allow us to understand how UP and NS negotiate with customers and set price. Among other things, UP appears to rely on internal rate of return (or similar) metrics (i.e., a piece of business should meet some internal profitability threshold before being accepted). We are interested in both how those metrics are set (be it in the finance department or otherwise) and how the marketing division uses them in practice. In addition, we are looking for documents about how UP negotiates with, and sets prices for, customers with multiple facilities. Some relevant citations from the UP production are below; we are interested in similar NS material as well. Things like training materials for your salesforce, pricing policies that describe under what circumstances discounts may be offered and who is authorized to approve them, and notes of meetings documenting approval of quotes or discounts to customers would be particularly relevant:

- [REDACTED]



NS Response: Norfolk Southern is collecting documents responsive to these requests and will produce them to the extent that they are not privileged. In addition, NS expects custodial documents to be responsive to the requests.

- Can you please provide additional detail about (a) the types of responsive materials NS has identified through its search, (b) the source(s) the materials were collected from and (c) the sources that were searched?
- Additionally, could you please provide the timing of NS's anticipated production of the identified materials?

NS is continuing to search for non-privileged documents that are responsive to this request and will produce any such documents on a rolling basis and in accordance with any deadlines set by the Administrative Law Judge. NS produced revenue and pricing strategy documents in its most recent production, and we are continuing to review potentially responsive material identified and collected from non-custodial Teams channels and scoping conversations with NS personnel.

- **Requests 28 & 29**

- What we are interested in are regularly prepared reports that are not in the files of the custodians. Are there any (for instance, within subgroups of the marketing department)?

NS Response: Norfolk Southern expects that relevant regularly prepared reports would be in the files of custodians given that multiple members of the marketing leadership team are custodians.

- What have you done to determine whether there are any regularly prepared reports that are responsive to this request, but would not be in the relevant custodial files? Joe's prior email asked whether such reports exist, but this question was not answered.

NS Response: Part of the purpose of custodial searches is to make discovery more efficient and NS agreed to every custodian requested by the parties thus far. Separately asking NS personnel about each of the approximately 350 discovery requests received so far is not an efficient way to obtain discoverable material. That said, NS is inquiring with the marketing department as to whether such documents exist and will produce non-privileged, responsive regularly prepared reports, if they exist. NS has already produced some revenue and pricing strategy documents in its most recent production.

- **CRM**

- Do UP and NS use a customer relationship management tool like Salesforce?

NS Response: Norfolk Southern uses Salesforce.

- Does NS intend to make any productions from Salesforce?

NS Response: It is unclear what CPKC request this question relates to. When Salesforce contains appropriately responsive, non-privileged information, NS produces from that source. For example, in response to BNSF(2)(58), NS generated a report from Salesforce.