

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42188

UNION PACIFIC RAILROAD COMPANY

v.

BNSF RAILWAY COMPANY

**BNSF RAILWAY COMPANY'S PROCEDURAL REPORT AND MOTION TO
HOLD PROCEEDING IN ABEYANCE PENDING RESOLUTION OF
MOTION TO DISMISS**

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Dated: July 14, 2026

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Pursuant to 49 C.F.R. § 1111.11(a), Defendant BNSF Railway Company (“BNSF”) submits this report concerning the parties’ procedural conference. For the reasons explained below, BNSF respectfully requests that the Surface Transportation Board (“STB” or “Board”) hold this proceeding in abeyance pending resolution of BNSF’s Motion to Dismiss filed on July 6, 2026.

As required by 49 C.F.R. § 1111.11(a), counsel for BNSF and Union Pacific Railroad Company (“UP”) conferred by videoconference on July 7, 2026, to discuss discovery and procedural matters. During that conference, BNSF proposed that the parties jointly ask the Board to hold the proceeding in abeyance and not establish a procedural schedule or permit discovery pending resolution of BNSF’s pending Motion to Dismiss. UP advised that it likely would not agree with that proposal and instead proposed a procedural schedule. UP proposed that discovery proceed while BNSF’s Motion to Dismiss is pending, with discovery closing on September 25, 2026,

UP's opening evidence due on October 23, 2026, BNSF's reply evidence due on November 23, 2026, and UP's rebuttal evidence due on December 23, 2026. Following the conference, UP noted that it would consider BNSF's proposal to defer scheduling and discovery pending resolution of the Motion to Dismiss. Subsequently, UP confirmed that it did not agree to BNSF's proposal. Accordingly, BNSF submits this separate report.

BNSF respectfully requests that the Board hold this proceeding in abeyance and defer the establishment of a procedural schedule pending resolution of BNSF's Motion to Dismiss. In considering abeyance requests, the Board considers "whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party." *Norfolk S. Ry. Co.—Pet. to Set Trackage Rights Comp.—Norfolk & Portsmouth Belt Line R.R.*, FD 36223, slip op. at 4 (STB served Dec. 19, 2019) (citing *N. Am. Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017)). Board precedent also supports deferring discovery and procedural scheduling pending the resolution of a motion to dismiss that may affect the scope of discovery. *See, e.g., Omaha Public Power District v. Union Pacific Railroad Co.*, NOR 42173, slip op. at 2-3 (STB served Dec. 23, 2022) (collecting cases) (staying all further discovery and suspending the procedural schedule pending resolution of UP's motion to dismiss because "a decision on UP's pending motion to dismiss may affect the scope of discovery in this proceeding").

Those standards are satisfied here. As explained in the Motion to Dismiss, the Complaint should never have been brought and fails to establish a basis for Board

investigation and action. BNSF and the Board should not have to expend resources to conduct discovery. At a minimum, the Motion to Dismiss presents multiple threshold issues that will materially affect the scope of this proceeding. Deferring discovery and the establishment of a procedural schedule until those issues are resolved would promote administrative efficiency, conserve Board resources, and avoid unnecessary expense to the parties. An appropriate procedural schedule should be tied to the scope and complexity of the issues to be addressed, which cannot be determined until the Board has ruled on BNSF's Motion to Dismiss. Abeyance would also not be fundamentally unfair to UP because it would simply defer discovery and scheduling until the Board determines whether, and to what extent, the Complaint should proceed.

Should the Board nonetheless decide to establish a schedule now while it resolves the Motion to Dismiss, BNSF alternatively suggests that the Board issue an order instituting the following procedural schedule:

Day	Event
Day 0	Board Serves Procedural Schedule Decision
Day + 120	Close of Discovery
Day + 150	UP Opening Evidence
Day + 195	BNSF Reply Evidence
Day + 225	UP Rebuttal Evidence

The proposed schedule makes two reasonable adjustments to UP's original July 7, 2026 proposal. First, BNSF's proposal would extend discovery to allow for a realistic

schedule for the parties to produce documents and depose individuals with relevant information. *See, e.g.*, BNSF Letter, *Union Pacific—Control—Norfolk Southern*, FD 36873 (filed Jul. 2, 2026). Second, the proposed schedule would allow for 45 days for BNSF's only evidentiary submission in this proceeding.¹ Adopting a realistic schedule now decreases the likelihood of the need for extensions to the schedule in the future.

For the foregoing reasons, BNSF respectfully requests that the Board hold this proceeding in abeyance pending resolution of the Motion to Dismiss and defer both the establishment of a procedural schedule and discovery. In the alternative, should the Board elect to establish a schedule while it considers the Motion to Dismiss, BNSF respectfully requests that the Board adopt the procedural schedule BNSF proposes herein.

¹ In considering any schedule in this proceeding, the Board should also be mindful of the burdens on the parties presented by the consideration of the amended application filed by UP and Norfolk Southern Railway in FD 36873 if applicants' supplemental filing is deemed sufficient to bring that proceeding out of abeyance.

Dated: July 14, 2026

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Tara A. Woods

Tara A. Woods
Counsel for BNSF Railway Company

July 14, 2026