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Office of Chief Counsel
October 14, 2026
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Public Record

October 14, 2026

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

BNSF-65/CPKC-61/CSXT-36

Re: STB Docket No. FD 36873 – Issues for Resolution at October 16 Conference

Dear Judge Soulikias:

BNSF, CPKC, and CSXT write regarding the agenda for the October 16 conference.

I. CPKC Motion to Redesignate SWARS Video as Public (CPKC-58)

UP produced a video of CEO Jim Vena's public remarks at a March 2026 conference attended by rail industry stakeholders. UP designated the video as "Confidential Information." CPKC moved to redesignate the video as public, noting there were 900 attendees at the conference, including UP's competitors, and the video does not fall into any of the enumerated categories for "Confidential Information" in the Board's protective order. CPKC-58 at 2. UP replied that, even though the video is a recording of a public event, the video constitutes Confidential Information because it is "Union Pacific's proprietary recording." UP-116 at 1, 3.

A large group of rail shippers known as the Joint Shippers Associations ("JSA") filed a letter in support of CPKC's motion to redesignate the video. ACC-8/ACD-8-AFPM-8/NITL-5/TFI-8 at 2.

In addition, the JSA filed a letter with the Board concerning the video and the participation of shippers in this proceeding; the separate JSA letter to the Board asked the Board to consider UP's conduct when weighing the record and "to ensure that shippers can participate in this proceeding without fear of reprisal." ACC-9/ACD-9/AFPM-9/NITL-6/TFI-9 at 5.

II. IAIS, Foresight, and Metra's Motion to Recall Witness for Deposition (IAIS-4/FSC-2/METRA-2)

Iowa Interstate Railroad, LLC, Foresight Energy, LLC, and Northern Illinois Transit Authority commuter rail division ("Metra") moved to recall a UP witness, Katherine Novak. Movants argued that UP unreasonably terminated the deposition, including after UP consumed substantial time during the deposition by objecting to almost 50 percent of the questions and repeatedly making improper speaking objections. (IAIS-4/FSC-2/METRA-2 at 1-2). UP opposes the motion to recall Ms. Novak. UP-117.

III. UP's Motion for Subpoenas to Berkshire Hathaway (UP-115)

UP moved to compel document discovery from Berkshire Hathaway and depositions of Berkshire's CEO Greg Abel and former Chairman Warren Buffett. UP argued that discovery from Berkshire is relevant to assessing the transaction's competitive and downstream effects. UP-115

at 3-4. Berkshire opposes the motion. Berkshire replied that UP makes no showing that either Mr. Abel or Mr. Buffett has unique, relevant knowledge that cannot otherwise be obtained through less burdensome means, including through participants. Berkshire Ltr. at 3-4. Berkshire further replied that the document subpoena should be denied for the same reasons and because UP's requests to Berkshire are duplicative of requests served on BNSF. *Id.* at 4. BNSF also filed a one-page statement for Your Honor's consideration that describes the status of document and deposition discovery from non-applicant railroads, including BNSF. BNSF-63.

IV. CPKC's Notice of Filing Proposed Subpoena for Depositions of John Orr and Lance Fritz (CPKC-59)

CPKC requested that Your Honor issue a proposed subpoena for the deposition of John Orr at a date and time agreed upon with Mr. Orr's counsel. CPKC-59 at 1. CPKC also requested that Your Honor issue a proposed subpoena for the deposition of Lance Fritz. *Id.* at 2.

LIST OF ATTENDEES

A. BNSF

1. Daniel Donovan
2. McClain Thompson
3. T.J. McCarrick
4. Tim Strafford

B. CSXT

1. Eric Enson
2. John Scheib
3. Luke van Houwelingen
4. Eric Fanchiang

C. CPKC

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

D. Joint Shippers Associations

1. Jason Tutrone
2. Sandy Brown

E. IAIS, Foresight and Metra

1. Kelvin J. Dowd
2. Frank J. Pergolizzi

F. Berkshire Hathaway

1. David Elsberg
2. Nic Martin

Based on recent hearings:

A. Union Pacific

1. Michael Rosenthal
2. Laura Flahive Wu
3. Kevin Kelly

B. Norfolk Southern

1. Matthew Warren
2. Carrie Mahan
3. Stephen Laudone
4. William Mullins
5. Spencer Naake

Respectfully,

/s/ Dan Donovan
Daniel T. Donovan, P.C.
KIRKLAND & ELLIS LLP
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/s/ Joseph J. Matelis
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SULLIVAN & CROMWELL LLP
Counsel for CPKC

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

CERTIFICATE OF SERVICE

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

/s/ Onika Williams
Attorney for BNSF Railway Company
October 14, 2026