

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY
SOUTHERN, ET AL.

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**APPLICANTS' MOTION TO COMPEL
DISCOVERY FROM UNION PACIFIC RAILROAD COMPANY**

EXPEDITED HANDLING REQUESTED

Applicants¹ hereby move to compel discovery from Union Pacific Railroad Company (“UP”) in response to its refusal to comply with Applicants’ First Set of Interrogatories and Second Set of Discovery Requests to Union Pacific Railroad Company (the “Second Request”).

I. Introduction

Two months after Applicants served their Second Request and although Applicants have inquired at least 13 times on the timing of UP’s document productions to Applicants, UP still has not produced a single non-data document in discovery and refuses to commit to any timeline for document productions. While the three other Class 1 railroads² who received discovery requests from Applicants on the same day that UP received the Second Request have altogether produced thousands of documents, UP has been dragging its feet for weeks in an attempt to skirt its discovery obligations in this proceeding. Due to UP’s delay tactics, which included periodically representing to Applicants that searches for responsive documents were progressing and that document productions would be sent out in the near future, which did not occur, Applicants have not been able to review a single non-

¹ Applicants are Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “CP”) and Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”).

² Canadian National Railway Company, Norfolk Southern Railway Company, and BNSF Railway Company.

data document belonging to UP because UP has not produced any. Because UP has not produced any non-data documents in two months and refuses to commit to a timeline for production, Applicants request expedited consideration of this motion and ask that UP be ordered to respond to this motion within 10 days, rather than the standard 20 days, and to fully produce the documents it agreed to produce in its Responses and Objections to Applicants' Second Request (attached as Exhibit A) and the documents discussed in Applicants' May 12, 2022 email (attached as Exhibit B) on a rolling basis, with document production to be completed by no later than May 27, 2022.

II. Background

On February 23, 2022, Applicants served their First Set of Discovery Requests to Union Pacific Railroad Company ("First Request"), containing just one request asking for the production of traffic tape data for 2018, 2019, 2020, and 2021. Ex. C (Applicants' First Set of Discovery Requests to UP). Applicants requested a quick turnaround because the request was short and straightforward and referred to a concept, 100% traffic tapes, that is known and well understood by all Class 1 railroads.

On February 28, 2022, UP responded to Applicants' First Request with the following objection (attached as Exhibit D):

1. Union Pacific objects to Applicants' request in that it constitutes an interrogatory but purports to require a response within five days. *See* 49 C.F.R. § 1114.26(a). Union Pacific also objects to the request as unduly burdensome and overbroad in that it seeks information for 2018, 2020, and 2021, when the base year for the Application in this proceeding is 2019. *See* CP-24/KCS-12. Union Pacific also objects to the request as vague in that it refers generally to "traffic tape data" and appears to require something more than would be submitted as part of the Carload Waybill Sample. Union Pacific is willing to meet and confer with Applicants to attempt to understand the nature of the data they are seeking.

On March 8, 2022, Applicants provided UP with additional details and information regarding the nature of the data they are seeking in the First Request, including the particular fields

from the traffic tape data that would be helpful in analyzing UP's critiques. *See* Ex. E³ at 9-10 (E-mail correspondence between Applicants and UP re Traffic Tape data). Applicants requested that the data be produced by the end of the week. *Id.* at 10. After a back-and-forth, UP eventually responded that while it still objected to producing the requested data for 2018, 2020, and 2021, it "is not objecting to producing 2019 data that are reasonably available." *Id.* at 8. In a good faith attempt to expedite the process, Applicants agreed the next day to limit the First Request to 2019. *Id.* at 7.

On March 15, 2022, Applicants followed up on the status of the production of the 2019 traffic tapes UP had agreed to produce one week prior. *Id.* at 7. UP stated that it was "hoping to have the data later this week or early next week" and that it "had most elements [Applicants] requested." *Id.* at 6. However, UP represented that certain fields, including pricing authority, information on payouts/deductions, and the timestamp, would take some additional time to gather, if doable. *Id.* Applicants clarified on March 18, 2022 that they would require these fields in the production, but again, to compromise, allowed UP to produce system-wide car and container event data or timestamp data in an attempt to simplify the process for UP. *Id.* at 5-6.

On March 16, 2022, Applicants served their Second Request on UP. Ex. F (Applicants First Set of Interrogatories and Second Set of Discovery Requests to UP). Also on March 16, the Board issued Decision No. 16 in which the Board suspended the procedural schedule for this proceeding. *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Finance Docket 36500 (Decision No. 16 served Mar. 16, 2022) (attached as Exhibit G).

On March 24, 2022, Applicants once again followed up on the status of the production of the 2019 traffic tapes. *See* Ex. E at 4-5. UP responded that it was still considering whether to produce timestamp data or car event data and "expect[ed] to have an answer soon," demonstrating it

³ The top email in this chain was removed as it involved internal communications.

had made no progress since the prior week. *Id.* at 4. UP added, without citing any legal authority, that its understanding was that the Board’s decision to suspend the procedural schedule “suspended all deadlines, including discovery deadlines.” *Id.* On March 29, 2022, Applicants once again followed up on the status of the production of the 2019 traffic tapes. *Id.* UP responded that it was “still digging into the car event issue on this end” and reiterated its belief that “all deadlines, including discovery deadlines, have been suspended.” *Id.* at 3.

UP served its Responses and Objections to Applicants’ Second Request (“R&Os”) on March 31, 2022. Ex. A (UP’s Responses and Objections). In its R&Os, UP agreed to produce the requested document(s), or documents sufficient to show the requested information for just four of the 54 requests.⁴ UP also made it clear in its R&Os that it intended to only provide responsive documents or information to Applicants *after* the Board reinstated the procedural schedule. *Id.* at 1 (“Responsive documents or information will be made available to counsel for Applicants as soon as practicable on a rolling basis, after the Surface Transportation Board (“Board”) reinstates the procedural schedule in this proceeding.”).

On April 1, 2022, Applicants expressed to UP that they did not believe the suspension of the procedural schedule allowed UP to simply stop preparing and producing documents, materials and data that UP had already agreed to produce, and clarified whether this was UP’s position. *See* Ex. E at 3. After this inquiry went unanswered, Applicants followed up with UP on April 4 and requested a clarification of UP’s position on its discovery obligations in light of Decision No. 16 by the end of the day in case there was a need to ask Your Honor to rule on the issue. *Id.* Later that day, UP responded that it would “continue preparing and delivering what [UP had] agree[d] to produce.” *Id.* at 2. Applicants requested that UP clarify whether this meant UP was abandoning its position that

⁴ UP’s R&Os, Req. Nos. 29, 36, 40, and 52.

it was not obligated to produce documents until after the Board reinstated the procedural schedule and once again inquired about the status of UP's traffic tape production. *Id.* This inquiry was left unanswered.

Based on UP's repeated attempts to delay the production of any documents and any data, and its boilerplate objections in its R&Os, Applicants contacted UP to schedule a meet and confer on April 4, 2022. *See* Ex. H at 13-14 (E-mail correspondence between Applicants and UP regarding meet and confers). During the meet and confer, which took place on April 6, 2022, Applicants and UP discussed the production of traffic tape data and car event data. More than six weeks after Applicants sent their First Request to UP, UP finally agreed to produce 2019 traffic tape data, though only after Applicants agreed to accept the data without certain requested fields, and, produced the data on April 8, 2022.

During the meet and confer, the parties also engaged in a lengthy discussion of car and container event data for 2019, which Applicants requested in their Second Requests, wherein Applicants explained the relevance of this request and discussed a potential narrowing of the request to impose as minimal of a burden as possible on UP. Following this discussion, Applicants agreed to consult with their experts to determine if this request could be narrowed geographically to a specific list of states. That very night, Applicants informed UP that Applicants would not agree to narrow this request because their experts did not think a geographic narrowing of the request was feasible, and that they believed this narrowing would be more burdensome based on their understanding of how this data is typically compiled. Ex. H at 12. In response, UP requested that Applicants withdraw Request No. 54. *Id.* at 11-12. On April 12, 2022, in order to compromise, Applicants agreed to substantially narrow the fields of car event data requested. *Id.* at 8. UP agreed and produced car event data on April 21, 2022. To this day, this data is the only information that Applicants received from UP in connection with their Second Request.

Also during the April 6, 2022 meet and confer, the parties discussed many of the other requests UP objected to in its R&Os. Applicants made clear that for many of these requests, they were not asking UP to conduct an email search but were interested in documents that would shed light on some of UP's assertions in its Comments and Request for Conditions (the "Comments") so they could appropriately respond, and that they needed UP to provide information about what type of information exists. While UP essentially conceded that Applicants are entitled to some level of information about many of the requests Applicants made, including requests related to the capacity on lines over which KCS operates, UP asked that Applicants group the requests into categories and then further narrow the requests on geographic and temporal grounds. Applicants agreed to categorize and narrow the requests and asked that UP commit to immediately conferring internally to determine the relative burden of the narrowed requests.

In the spirit of cooperation and in an effort to reach a swift resolution of the outstanding issues related to these discovery requests, Applicants narrowed their requests and categorized them into seven distinct categories. Applicants discussed these categories during a meet and confer with UP on April 8, 2022. Applicants provided an overview of each category and explained the relevance and scope of these categories, including temporal limitations. UP and Applicants seemingly came to an agreement on six of the seven categories of requests (requests relating to data, capacity/operations since 2018, gateways/foreclosures, Mexican regulations, executive documents, and merger-related documents). *See* Ex. B. UP represented that it would produce the train event data requested by Applicants in their Second Request but that UP's data kept in the ordinary course of business did not include two fields requested by Applicants. UP also noted that the request was for data from 2018 to the present and that data since January 2018 "would be okay" since the request was limited to certain

states.⁵ Applicants stated they would confirm producing the data without these two fields would suffice, which they did the next day.

At the conclusion of the call, Applicants asked UP to confirm that it would produce responsive documents on a rolling basis and that UP would not withhold documents until the procedural schedule is reinstated. UP confirmed that it would fulfill its obligation in the discovery production process, without regard to the suspension of the schedule in Decision No. 16, and that while this call concerned the requests it objected to, it would continue searching for and producing the documents it agreed to search for and produce on March 31, 2022. Applicants agreed to send UP a written list explicitly detailing the categories of the narrowed discovery requests.

On April 12, 2022, Applicants sent UP the categories of the requests that were discussed along with a summary of UP's and Applicants' discussion during the April 8 meet and confer. Ex. B. For certain categories, Applicants memorialized UP's commitment to search for documents pursuant to the narrowed requests. *See, e.g., id.* at 1 ("UP will confer about the reasonableness of this request but will simultaneously search for documents, as defined in Applicants' requests, on 'studies, gateways, operations in the Houston area,' including documents that relate to closing the Pine Bluff Hump Yard and shifting work to Kansas City and Houston, and any retrospective analysis UP has performed evaluating those decisions."); *id.* ("UP offered to search for 'studies or analyses UP has performed regarding volume increases or efficiency improvements at the Eagles Pass Gateway' and 'studies or analyses UP has performed regarding shifts of traffic from Laredo to Eagle Pass and El Paso.'"); *id.* at 2 ("UP objected to Request 28 based on scope, burden, and relevance but agreed to search for responsive documents."); *id.* at 3 ("UP agreed to search for

⁵ Although UP has not yet done so, it has stated that it will produce only 2019 train event data in email correspondence and during the May 9, 2022 meet and confer. Applicants have not agreed to such a narrowing of the request.

documents responsive to these requests that are ‘reasonably available’ if Applicants named the proceeding(s) they are interested in.”). Applicants also memorialized their understanding that UP agreed to provide the documents it had committed to produce in its R&Os, and that it would produce such documents on a rolling basis, irrespective of the STB’s decision to suspend the procedural schedule. *Id.* at 1.

On April 14, 2022, after two additional emails from Applicants, UP responded that it was “in the process of searching for other information” and that it would “have some comments on your note from April 12,” but that these comments would not “hold[] up efforts to search for and produce material where we are in agreement about discovery.” Ex. H at 7. Based on the progress made during the April 8, 2022 meet and confer and UP’s April 14, 2022 email, Applicants understood that UP was searching for documents responsive to the requests in the April 12 email and would produce such documents on a timely basis.

Applicants followed up on the status of UP’s production on April 21, 22, 25, and 28, and May 2, explicitly requesting that UP commit to making its document production by specific dates. *See* Ex. I at 1-3 (Email correspondence between Applicants and UP re follow-ups). UP responded to certain of these follow-up emails, while ignoring others. *See id.* For example, on April 22, 2022, UP advised that it “may be able to start producing other material next week, as part of our rolling production,” which did not occur. *Id.* at 3. On April 26, 2022, UP attempted to explain away the fact that it had not been producing documents or responding to Applicants’ inquiries by stating that it “has been tied up with another STB hearing” but would “get back” to Applicants “as soon as possible.” *Id.* at 2. After two additional follow-up emails from Applicants, on May 2, 2022, UP stated that it was “continuing to search for responsive documents and getting our document production database up and running.” *Id.* at 1-2.

On May 2, 2022, Applicants followed up once again, noting that they had yet to receive a non-data production from UP, and that UP had yet to commit to a timeline to produce even one document. Ex. J at 4. On May 4, Applicants followed up with UP again, asking about the status of searches and UP's production. *Id.* at 1. In response, nearly three weeks after Applicants narrowed and categorized its requests, and after many emails from Applicants, UP provided comments on Applicants' categorization. Ex. H at 2-6. In its comments, UP stated that it continues to object to Applicants' categorized discovery requests related to capacity/operations since 2018 and gateways/foreclosure, but that it was continuing to search for certain documents responsive to these requests. *Id.* at 4. UP communicated that it believed it had determined that there were no responsive documents regarding Applicants' requests related to Mexican regulatory agencies and other merger-related documents, but that this would need to be confirmed (which is similar to what UP represented during the April 8 meet and confer). *Id.* at 5.

Regarding Applicants' general capacity-related requests, UP noted that "[a]t the [April 8] meet and confer, [Applicants] agreed to further define the geography and time period. Now⁶ that you have done so, UP continues to object to the requests for 'all documents' and to the extent the requests seek information from the period prior to 2018 for the reasons stated in its responses and objections. We remain willing to discuss reasonable limitations on these requests." *Id.* at 5. Additionally, UP stated that it disagreed with Applicants' understanding from the April 8 meet and confer that it had agreed to search for documents responsive to a request for certain documents provided to directors and officers of UP. *Id.* In other words, UP knew that Applicants understood

⁶ To be clear, Applicants did not just "[n]ow," on May 4, further define the geography and time period components of these requests, but rather did so on April 12, nearly three weeks prior. After waiting nearly three weeks, and after communicating in the meantime that they were continuing to search for documents generally, and only after several follow-up requests from Applicants, did UP inform Applicants that it was not in fact searching for documents related to capacity.

from the April 8, 2022 meet and confer that UP had agreed to search for documents responsive to this request, and did not state its contrary understanding until *nearly three weeks* later and only after *five* follow-up emails.

Following UP's email, Applicants immediately contacted UP to schedule a meet and confer, *id.* at 2, which took place on May 9, 2022. During the meet and confer, Applicants asked UP whether it had identified *any* responsive documents, given that UP agreed to search for and produce certain documents in its March 31, 2022 R&O's and had been consistently and repeatedly communicating to Applicants for several weeks that it was searching for and on the verge of producing responsive documents. Applicants also noted that other Class 1 railroads had made substantial progress towards completing their document production for similar discovery requests served on the same day, having produced thousands of documents while UP was still at zero. UP refused to answer and instead asked when Applicants anticipated filing the "amended Application." When Applicants proposed the end of May as a reasonable deadline for UP to complete its production of responsive documents, which would have provided UP with almost three months to produce documents, UP refused to commit to any timeline for producing documents and hinted that because the procedural schedule had been shifted by the Board's Decision No. 17 (attached as Exhibit K), UP was justified in delaying its document production. When asked again if UP had found any responsive documents after over a month of searching, UP represented that there are likely responsive documents, given that Applicants' requests called for standard documents, but that they could not be produced until the document production system was set up and the documents were bates stamped.

Regarding Applicants' requests related to gateways and foreclosure, UP stated that it had no objections to producing studies and analyses it has performed from 2004 to present (acknowledging the relevance of the 2004 to present timeframe) regarding volume increases and efficiency improvements at Eagle Pass and studies or analysis it has performed regarding shifting

traffic from Laredo to Eagle Pass or El Paso, but that it would only produce such documents in electronic form. Applicants stated that they also requested a reasonable search of non-electronic documents—for example, if an employee kept binders of responsive documents on his or her desk that are easily accessible and can be quickly digitized, Applicants would expect those documents to be searched. Applicants reiterated they did not expect UP to go into each office and search through boxes of hard copies. UP steadfastly refused to negotiate and implied Applicants should file a motion to compel if they desired these documents.

Regarding Applicants' requests related to capacity in general, UP confirmed that it had not yet agreed to anything, and that it specifically objected to Applicants' use of "all Documents" in several of these requests. Applicants explained that "all Documents," which is often used in discovery and was used by UP itself in its discovery requests to Applicants (discussed *infra*), simply meant documents located after a reasonable search. Nevertheless, Applicants offered to further clarify what they meant in an attempt to compromise. UP proposed a change to "formal studies and analyses" and stated that this change would resolve their concerns regarding two of Applicants' requests, and that they had no objection to the temporal or geographical categories in these requests. However, UP objected to two additional requests because they requested documents from 1997 and 2004, respectively. UP stated that it believed that requests for documents beyond 2018 were unduly burdensome, without explaining what the burden was. Applicants first pointed out that one of these two requests does not ask for "all documents" but rather asks for something very specific, maps showing capacity, traffic and train counts, which was something UP had previously represented might be readily available, even for years before 2018. UP stated that it would need to further discuss (yet again) this request internally. This request is identical to Request No. 24 in Applicants' Second Request, originally served on March 16, 2022, Exhibit F.

At the conclusion of the May 9, 2022 meet and confer, UP stated that its refusal to produce a single document did not harm Applicants because it thought Applicants were busy working on the “amended Application.” UP also reiterated that the changes to the procedural schedule essentially excuse UP’s delay in producing documents.

III. Discussion

Pursuant to 49 C.F.R. § 1114.21, “[p]arties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .” 49 C.F.R. § 1114.21(a)(1). Regarding the sequencing and timing of discovery, “methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party’s discovery.” 49 C.F.R. § 1114.21(d).

UP has repeatedly refused to commit to producing documents by a certain timeline, despite Applicants’ 13 follow-up emails and despite Applicants’ willingness and history of compromise. As such, UP should be ordered to begin immediately producing information responsive to the categorized requests in Applicants’ April 12, 2022 email (attached as Exhibit B) and documents it had previously agreed to produce on a rolling basis, with document production to be completed by no later than May 27, 2022.

A. UP has unnecessarily delayed its productions and refuses to commit to a substantial production completion date.

As of the date of the filing of this motion, UP still has not produced a single non-data document in discovery—not for the four out of the 54 requests for which UP agreed to produce the requested documents on March 31, 2022, not for the requests for which UP has supposedly been searching for responsive documents since April 14, 2022, not for anything. Even more egregiously, UP refuses to commit to a substantial production deadline, flat out rejecting a generous deadline offered by Applicants (end of May, almost three months after Applicants originally served their discovery requests). The blatant lack of cooperation from UP has clearly shown that without a

deadline set by Your Honor by which it needs to complete its document production, it will not produce the documents to which Applicants are entitled and that they need to analyze, address and respond to arguments raised by UP and other participants in the context of this proceeding. As such, Applicants request that UP be compelled to produce in full the documents requested on a rolling basis, no later than May 27, 2022.

UP, like many other Class 1 railroads, was served with discovery requests on March 16, 2022. In fact, UP was served with many of the same requests served on other railroads. Other Class 1 railroads, however, have begun producing responsive documents many weeks ago and have made substantial progress in completing their productions, sending responsive documents through rolling productions to allow Applicants to analyze the documents produced over time. Conversely, in the same two-month period, UP has not produced a single document, yet represented to Applicants on several occasions that search and productions efforts were ongoing. These representations, although they never materialized, delayed Applicants' decision to move to compel production because they were perceived as a form of cooperation until, after two months, UP finally lost all credibility and Applicants have been forced to file this motion to compel.

As just one example of UP's dilatory tactics, UP repeatedly stated on March 24, March 29, and March 31 that it believed the suspension of the procedural schedule suspended its obligation to produce responsive documents, *see* Exs. A, E, even though it pointed to no authority stating the suspension of the procedural schedule stops the discovery process and the Board's Decision No. 16 did not discuss the suspension of discovery deadlines. Applicants asked UP to confirm its position on April 1, and UP did not respond. Ex. E at 3. Applicants once again asked UP to confirm its position on April 4, and only then did UP retract its previous statements. *Id.* at 2-3. At this point, almost two weeks had elapsed between when UP first noted that it understood the Board's decision

to suspend the procedural schedule suspended discovery obligations (on March 24), and when it retracted this argument (on April 4).

UP's other excuses for its delay in making any sort of document production are also nonsensical. For example, UP contended during the April 6 meet and confer that it is difficult to present requests to custodians because they have other obligations and are busy. In its April 26, 2022 email, in attempting to justify its failure to respond to Applicants' repeated emails, UP stated that most of the team "ha[d] been tied up with another STB hearing." Ex. I at 2. During the May 9, 2022 meet and confer, UP attempted to justify its complete lack of progress towards producing documents since the April 8, 2022 meet and confer by claiming it was still "getting [its] document production database up and running," and that it needed to bates stamp responsive documents. The only rational explanation for UP's failure to make a single document production in two months is that delay was, and is, calculated.

UP appeared to further excuse its delay by arguing that the lack of any document production caused no prejudice to Applicants because it believed Applicants were busy preparing the "amended application," and otherwise would have sufficient time to review produced materials due to the revised procedural schedule. This attempted justification has no bearing on the actual issues.

B. UP's objections to Applicants' requests summarized in the April 12, 2022 email are meritless and must be rejected.

In an attempt to compromise, Applicants summarized their narrowed discovery requests in the April 12, 2022 email. Ex. B. On May 4, UP objected to searching for and producing documents not in electronic form, for Applicants' capacity requests that reference "all documents," and for certain time periods requested. These objections are meritless and should be rejected.

1. Hard-copy documents

Though UP acknowledges the time period of 2004 to present is relevant for "studies or analyses UP has performed regarding volume increases or efficiency improvements at the Eagles

Pass Gateway” and “studies or analyses UP has performed regarding shifts of traffic from Laredo to Eagle Pass and El Paso,” UP refuses to search for any non-electronic documents, even though many documents from that period are likely to only exist in non-electronic form.⁷ To be clear, Applicants are not requesting that UP boil the ocean searching for every document that exists—Applicants simply requested (and still request) that UP perform a reasonable search.

UP has not provided any reason why a reasonable search for non-electronic documents “would be unduly burdensome in relation to the likely value of the information sought.” 49 C.F.R. 1114.21(c). In contrast, the scales heavily tip in the opposite direction. Ordinary course documents from 2004 are relevant for this request, which UP does not dispute, because 2004 is when KCS acquired the Texas Mexican Railway Company and provided another single-line option through the Laredo gateway. Competition at the Laredo gateway was central to UP’s arguments then and now. In fact, documents from 2004 might be more valuable than documents from 2018, but documents from 2004 are likely to exist only in non-electronic form (though Applicants do not know for certain because UP refused to engage in a discussion on non-electronic discovery) and Applicants are entitled to obtain them. *Finch Paper LLC—Petition for Declaratory Order*, Finance Docket No. 35981 (STB Decided Jan. 18, 2017). (“[R]esponsive information . . . to the extent and in the form it is customarily maintained by the responding party,” which “[d]iscovery obligations generally require.”)

UP failed to provide an explanation for why a reasonable search, such as asking individuals it is already asking for electronic discovery whether they also possess access to responsive

⁷ UP also objects to searching for non-electronic files for documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area, and to the extent not captured by the preceding sentence, documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. This information is relevant as discussed *infra*, Section III.B.3, and Applicants are similarly asking only for documents found after a reasonable search.

hard-copy documents, is unduly burdensome. The reason is because such a search is *not* unduly burdensome.

2. *All documents*

Only on May 4 did UP object to Applicants' requests set forth in the April 12, 2022 email, specifically rejecting to the use of "all documents" in the following three requests:

- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of rail lines and facilities owned by Applicants over or across which UP operates, such as the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision, from January 1, 2018 to present.
- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of or potential capital investments in rail lines and facilities owned by UP or formerly owned by HBT, including plans or projects to alter the capacity of these rail lines or facilities, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont), from January 1, 2018 to present.
- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here, Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.

UP claimed that the use of "all documents" was not reasonable. Ignoring UP's delay in providing its objection, these requests are not overbroad. Applicants have clarified that "all documents" simply means documents found as a result of a reasonable search, and not every single document that exists, and the requests themselves provide examples of the documents that Applicants seek. Applicants suspect that UP was already aware of the customary meaning of "all documents" in

the context of discovery, since UP itself used “all” in at least 60 of its own discovery requests included in its First Set of Discovery Requests to Applicants, including in requests to “produce all documents.” Ex. L (UP’s First Set of Discovery Requests). UP’s objection to “all documents” is simply a delay tactic.

3. *Time periods*

In its May 4 email, UP objected to the time periods of two capacity-related requests:

- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here, Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.
- Produce, for each line segment on UP’s network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

As to the first request, Applicants requested documents dating back to 1997 because that is when the UP/SP service crisis occurred. During this period, UP released a master plan of capacity projects on their slate. Since then, UP has repeatedly claimed that there is no additional need for capacity on certain lines or has demanded KCS fund any increases of capacity. But in its Comments, UP contends that current capacity is insufficient to support the increased traffic from the Transaction, and requests that the Board impose conditions to ensure that Applicants fund investments in new capacity (although other railroads would pay a share as well). As such, Applicants are entitled to see these documents dating back to 1997 to show what capacity improvement projects UP had planned, and how they have or have not progressed and the reasons why, to test the veracity of UP’s assertions. In addition, although UP objects to producing documents before 2018, it has not

articulated why producing documents since 2018 would be more burdensome than producing documents from an earlier period, particularly if certain sets of documents are centrally located.

As to the second request, UP has agreed to confer internally to determine the availability of this information, given it conceded during the April 8, 2022 meet and confer that there was a possibility that a UP employee had access to a set of these maps. Applicants simply ask that UP conduct a reasonable search for responsive documents.

IV. Conclusion

Applicants request a response to this motion from UP within 10 days in light of UP's continued shirking of its discovery obligations. Applicants respectfully request that Your Honor grant Applicants' motion to compel and require UP to produce all responsive documents pursuant to Applicants' categorized and narrowed discovery requests, as stated in Applicants' April 12, 2022 email, and all documents UP had previously agreed to produce, on a rolling basis, with document production to be completed by no later than May 27, 2022.

Respectfully submitted,

Dated: May 12, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion to Compel Discovery from Union Pacific Railroad Company to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ *Stefan Mitrovic*

May 12, 2022

Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36500

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

—CONTROL—

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

**UNION PACIFIC RAILROAD COMPANY’S RESPONSES AND OBJECTIONS TO
APPLICANTS’ FIRST SET OF INTERROGATORIES AND SECOND SET OF
DISCOVERY REQUESTS TO UNION PACIFIC RAILROAD COMPANY**

Union Pacific Railroad Company (“Union Pacific” or “UP”) hereby responds and objects
as follows to Applicants’ First Set of Interrogatories and Second Set of Discovery Requests to
Union Pacific Railroad Company (“Applicants’ Requests”) served on March 16, 2022.

GENERAL RESPONSES

The following General Responses apply to each of Applicants’ discovery requests:

1. Where UP states that it will produce documents or information, UP will conduct a reasonable search for responsive, non-privileged documents or information, subject to any other qualifications specified in its response. Responsive documents or information will be made available to counsel for Applicants as soon as practicable on a rolling basis, after the Surface Transportation Board (“Board”) reinstates the procedural schedule in this proceeding.
2. Production of information or documents does not necessarily imply that the information or documents are relevant or admissible in this proceeding or any related proceeding and is not to be construed as waiving any of the general or specific objections stated below.

3. Union Pacific has not secured verifications of the answers to interrogatories in this document. Union Pacific is prepared to discuss this matter with Applicants with respect to any particular answer.

GENERAL OBJECTIONS

The following General Objections apply to each of the Applicants' Requests and shall have the same force and effect as if set forth in full in response to each individually numbered request.

1. UP objects to Applicants' Requests to the extent they seek documents or information subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege or protection. Any production of privileged or protected documents or information is inadvertent and shall not constitute a waiver of any privilege or protection.

2. UP objects to Applicants' Requests to the extent they seek documents or information that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, UP will produce such documents and information, if not otherwise objectionable, subject to the terms of the Protective Order in this proceeding.

3. UP objects to the Applicants' Requests to the extent they purport to impose upon UP burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 CFR Part 1114, Subpart B, or under Board rules or precedents.

4. UP objects to the Applicants' Requests to the extent they purport to seek documents or information that are not relevant to the issues raised in the current proceeding.

5. UP objects to Applicants' Requests to the extent they purport to seek information or documents prepared in connection with, or information relating to, possible settlement or mediation of this or any proceeding.

6. UP objects to Applicants' Requests to the extent they seek documents or information that are not in UP's possession, custody, or control.

7. UP objects to Applicants' Requests to the extent they seek documents or information that are unreasonably cumulative or duplicative of documents already in Applicants' possession, custody, or control, or that are publicly available, or that are otherwise obtainable by Applicants in a more convenient, less burdensome, or less expensive manner than from UP.

8. UP objects to Applicants' Requests to the extent they seek documents or information that is unduly burdensome and would require UP to conduct a special study and/or analysis or undertake anything more than a reasonable search for responsive information. In responding to Applicants' Requests, UP will conduct a reasonable search of those reasonably accessible files in its possession in which information responsive to Applicants' Requests, as limited by UP's Objections, is likely to be located.

9. UP objects to Applicants' Requests to the extent they seek documents or information for the period before January 1, 2019 or after March 19, 2021.

10. UP objects to Applicants' Requests to the extent they fail to allow for a reasonable time for compliance.

11. UP reserves the right to redact non-responsive material from documents or information provided in response to Applicants' Requests. To the extent UP provides responsive documents or information, UP does not concede that such information is relevant, material, or admissible, and any such production does not waive any of UP's objections to Applicants' Requests.

12. UP's Responses and Objections are based upon information presently known. UP reserves the right to rely upon facts, documents, or other evidence that it may develop or that may

subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

INTERROGATORIES

Interrogatory No. 1

Describe UP's process to evaluate and determine capital expenditures, including but not limited to what measurements are used, how priorities are set, and how funding is determined.

UP Response to Interrogatory No. 1:

UP objects to this interrogatory on the ground that the term "process" is vague. UP further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because the interrogatory appears to encompass UP's capital spending relating to line renewal projects, equipment acquisition, and other capital spending that has no bearing on the issues in this proceeding.

Subject to and without waiving the objections set forth above, UP directs Applicants to the Verified Statement of Jon T. Panzer in UP's Opening Comments and Evidence, filed in Docket No. EP 711 (Sub-No. 1), on October 26, 2016.

Interrogatory No. 2

Describe all material operational and blocking changes at or in the Englewood and Settegast yards made under UP's implementation of PSR.

UP Response to Interrogatory No. 2:

UP objects to this interrogatory on the ground that the terms "material" and "under UP's implementation of PSR" are vague. UP further objects to this interrogatory on the grounds that it is vague, overly broad, unduly burdensome, not proportional to the needs of this proceeding, and

seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because UP's implementation of PSR is not at issue in this proceeding.

Interrogatory No. 3

Describe the operating plan between UP and Port Terminal Railroad Association Including (a) any changes in that operating plan since January 1, 2018, and (b) any anticipated or planned future changes in that operating plan.

UP Response to Interrogatory No. 3:

UP objects to this interrogatory on the ground that the term "operating plan between UP and Port Terminal Railroad Association" is vague. UP further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because the operations of the Port Terminal Railroad Association are not at issue in this proceeding.

REQUESTS

Request No. 1

Produce Train Event Data by commodity since January 1, 2018 for UP trains operating in whole or in part in Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Texas, and Wisconsin.

UP Response to Request No. 1:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because UP did not use train event data in its comments. UP further objects to this request because responding would require undertaking a special study.

Subject to and without waiving its General Objections and the objections above, UP is available to meet and confer regarding this request.

Request No. 2

Produce all Documents from 2004 to present studying, analyzing, discussing, or evaluating the impact of KCS's control of Transportación Ferroviaria Mexicana, S.A. de C.V., KCSM and/or TM, including, without limitation, impacts on competition, rate levels, UP service, or UP traffic levels.

UP Response to Request No. 2:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents from "2004 to present" discussing the "impact" of KCS's control of TFM "without limitation" lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 3

Produce all Documents from 2004 to present studying, analyzing, discussing, or evaluating the advantages or disadvantages of the El Paso, Eagle Pass, and Brownsville gateways, vis-à-vis the Laredo gateway, Including all Documents analyzing, discussing, or evaluating the suitability of the El Paso, Eagle Pass, and Brownsville gateways as substitutes for the Laredo gateway.

UP Response to Request No. 3:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents from "2004 to present" and "discussing" the "advantages or disadvantages" of the specified gateways lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 4

Produce all Documents from 2004 to present concerning circumstances that would impact shipper preferences for their traffic being handled at any Mexican border crossing served by UP in preference to another such crossing, such as events disrupting or enhancing service quality.

UP Response to Request No. 4:

UP objects to this request on the ground that the term “circumstances that would impact shipper preferences for their traffic” is vague. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants’ request for “all” documents from “2004 to present” concerning “circumstances” that would “impact shipper preferences for their traffic” lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 5

Produce all Documents from 2004 to present studying, analyzing, discussing, or evaluating changes in traffic at the El Paso, Eagle Pass, Laredo, and Brownsville gateways.

UP Response to Request No. 5:

UP objects to this request on the ground that the term “changes in traffic” is vague. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because

Applicants' request for "all" documents from "2004 to present" discussing "changes in traffic" at various gateways lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 6

Produce all Documents since 2004 studying, analyzing or discussing the potential for increasing the volume of, or improving the efficiency of handling, rail traffic moving to/from Mexico to routes via the Eagle Pass gateway.

UP Response to Request No. 6:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "since 2004" discussing the potential for "increasing the volume" or "improving the efficiency" of traffic moving via the Eagle Pass gateway lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 7

Produce all Documents since 2004 studying, analyzing or discussing the potential for shifting rail traffic moving to/from Mexico from routes via the Laredo gateway to routes via the Eagle Pass or El Paso gateways.

UP Response to Request No. 7:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because

Applicants' request for "all" documents "since 2004" discussing the potential for "shifting rail traffic" between gateways lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 8

Produce all Documents concerning investments, new services, or other developments since 2004, including, but not limited to, the timing of such services, investments and other developments, investments considered but not implemented and the timing of any such investments, and conditions precedent to any such investments being made, that UP believes affected shippers' choices among the Laredo, Brownsville, El Paso and Eagle Pass gateways.

UP Response to Request No. 8:

UP objects to this request on the grounds that it is incomprehensible, vague, overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "since 2004" concerning investments "or other developments" that UP believes "affected shippers' choices" among gateways lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 9

Produce all Documents concerning UP's commitments and standards for service frequency and transit times on UP rail traffic moving to/from Mexico via the El Paso, Eagle Pass, Laredo, and Brownsville gateways.

UP Response to Request No. 9:

UP objects to this request on the ground that the terms "commitments" and "standards" are vague. UP further objects to this request on the grounds that it is overly broad, unduly

burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "concerning" commitments and standards with regarding UP traffic moving over four gateways lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 10

To the extent not already produced in response to another request, produce all Documents since 2004 concerning investments by UP, BNSF, FEX or others, Including the timing of such investments, to improve the capabilities of the Eagle Pass gateway and the Brownsville gateway.

UP Response to Request No. 10:

UP objects to this request on the ground that the terms "timing of such investment" and "capabilities" are vague. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "since 2004" concerning investments by UP and other carriers relating to the Eagle Pass and Brownsville gateways lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 11

Produce all Documents analyzing, discussing, or evaluating the ability, desirability, or need for any rail carrier other than UP or KCS to obtain direct access to Laredo via trackage rights or ownership.

UP Response to Request No. 11:

UP objects to this request on the ground that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding, including because Applicants' request for "all" documents discussing the ability of any rail carrier to obtain direct access to Laredo lacks a reasonable scope limitation.

Request No. 12

Produce all Documents studying, analyzing or discussing the transportation options in Mexico available to shippers of rail traffic between the United States and Mexico, including, without limitation, service offered by KCSM, FXE, trucks or vessels.

UP Response to Request No. 12:

UP objects to this request on the ground that the term "transportation options in Mexico" is vague. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "discussing" the "transportation options in Mexico available to shippers of rail traffic between the United States and Mexico" lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 13

Produce all Documents studying, analyzing or discussing the cross-border transportation options available to shippers of rail traffic between the United States and Mexico, including, without limitation, service offered by UP, KCS, BNSF, trucks, or vessels.

UP Response to Request No. 13:

UP objects to this request on the ground that the term “cross-border transportation options” is vague. UP further objects to this request on the grounds it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants’ request for “all” documents “discussing” the “cross-border transportation options available to shippers of rail traffic between the United States and Mexico” lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 14

Produce all Documents analyzing, discussing, or evaluating UP’s efforts to work with, invest in, or otherwise improve service on FXE lines.

UP Response to Request No. 14:

UP objects to this request on the ground the term “efforts to work with” is vague. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants’ request for “all” documents “discussing” UP’s “efforts to work with, invest in, or otherwise improve service” on “FXE lines” lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 15

Produce all Documents analyzing or discussing capacity of rail lines and facilities owned by UP, or currently owned or formerly owned by HBT, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont, as well as lines currently owned or formerly owned by HBT), including, without limitation, plans or projects to alter the capacity of these rail lines or facilities owned by UP or HBT on these rail lines.

UP Response to Request No. 15:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "discussing" the "capacity of rail lines and facilities" owned by UP or HBT over which KCS operates between Laredo and Shreveport lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 16

Produce all Documents prepared by or for UP or in UP's possession analyzing or discussing capacity, Including any studies commissioned or reviewed by UP regarding capacity, of rail lines and facilities owned by Applicants over or across which UP operates, including, without limitation, the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision.

UP Response to Request No. 16:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "discussing" capacity on certain lines lacks a reasonable

scope limitation. UP further objects to this request to the extent it seeks document that are not in UP's possession, custody, or control.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 17

Produce all Documents created since August 12, 1996 studying, analyzing or discussing alternative routes that would bypass Houston for UP rail traffic moving to or from Mexico.

UP Response to Request No. 17:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents created "since August 12, 1996," lacks a reasonable scope limitation.

Request No. 18

Produce all Documents created since 1997 studying, analyzing, or discussing plans or recommendations for improvements in capacity on lines owned by UP in the Houston area.

UP Response to Request No. 18:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents created "since 1997" lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 19

Produce all Documents related to recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal.

UP Response to Request No. 19:

UP objects to this request on the ground that the term “Houston Terminal” is vague. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants’ request for “all” documents “related to” any “recommendations” about Houston-area capacity improvements lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 20

Produce all Documents since 2018 studying, analyzing, or discussing the impact on Houston-area facilities of operational changes made by UP associated with its implementation of PSR, including, without limitation, its decision to close UP’s hump yard in Pine Bluff, AK, to shelve the planned Brazos Yard, and to reassign work from Settegast Yard to Englewood Yard.

UP Response to Request No. 20:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because UP’s implementation of PSR is not at issue in this proceeding.

Request No. 21

Produce data on the length of UP’s trains operating to, from, or through Houston since 2018 at the most detailed level maintained by UP.

UP Response to Request No. 21:

See Response to Request No. 1.

Request No. 22

Produce all Documents concerning, discussing, or derived from the pending Texas Department of Transportation Houston-Beaumont Region Freight Study, a draft report of which was issued in August 2021.

UP Response to Request No. 22:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "concerning" the referenced Freight Study lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 23

Produce all Documents concerning, discussing, or derived from the Texas Department of Transportation, Rail Division, Neches River Bridge Study, Jefferson and Orange Counties, CSJ: 7220-01-001.

UP Response to Request No. 23:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "concerning" the referenced Neches River Bridge Study lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 24

Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

UP Response to Request No. 24:

UP objects to this request on the ground that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for information "covering each year from 2004 to the present" regarding "each line segment on UP's network" lacks a reasonable scope limitation. UP further objects to this request to the extent that responding would require undertaking a special study.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 25

Produce all Documents related to any capacity or train modeling and/or modeling conducted using Rail Traffic Controller software offered by Berkeley Simulation Software, LLC that UP reviewed or conducted, Including work conducted by any third-party UP engaged, since 2004, relating to lines over which KCS or CP operates, or lines that cross CP or KCS lines, including, but not limited to, inputs to and outputs of any such modeling, the modeling files themselves, and any analysis of such modeling. Direct any third party who conducted the RTC modeling for you to do the same.

UP Response to Request No. 25:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because

Applicants' request for "all" documents "related to" any "capacity or train modeling" "since 2004" that is "related to" lines over which KCS or CP operates or lines that cross CP or KCS lines lacks a reasonable scope limitation. UP further objects to this request to the extent that Applicants are requesting documents not in UP's custody, control, or possession.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 26

Produce all Documents from 2010 to present reflecting correspondence with third parties (including, without limitation, Mexican agencies ARTF, COFECE, or others) about the possibility of UP obtaining a Mexican rail concession.

UP Response to Request No. 26:

UP objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, including because Applicants' request for "all" documents "from 2010 to present" "reflecting" correspondence with "third parties" about obtaining "a Mexican rail concession" lacks a reasonable scope limitation.

Request No. 27

Produce all Documents from 2010 to present studying, analyzing or discussing the possibility of UP obtaining a Mexican rail concession.

UP Response to Request No. 27:

UP objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, including because Applicants' request for "all" documents "from 2010

to present” “discussing” the “possibility” obtaining “a Mexican rail concession” lacks a reasonable scope limitation.

Request No. 28

Produce all Documents from 2004 to present that were provided by UP to members of its management (directors and officers, and their direct reports) relating in whole or in part to (a) rail traffic volumes moving to or from Mexico via (i) UP or (ii) KCS, or (b) truck traffic volumes moving to or from Mexico.

UP Response to Request No. 28:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants’ request for “all” documents “from 2004 to present” provided to UP’s “directors and officers, and their direct reports” “relating to” “volumes moving to or from Mexico” by UP, KCS, or truck lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 29

Produce Your five-year volume-growth forecast for interchange with KCSM at Laredo.

UP Response to Request No. 29:

Subject to and without waiving its General Objections, UP will produce the requested forecast if it exists and can be located through a reasonable search.

Request No. 30

Produce all Documents since January 1, 1994, analyzing the effect of past Class 1 rail mergers, Including transactions in which UP participated, on any aspect of competition in the market for transportation services.

UP Response to Request No. 30:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "since 1994" analyzing the "effect of past Class 1 rail mergers" on "any aspect of competition" lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 31

Produce all Documents analyzing, discussing, or evaluating decisions made as a result of the Proposed CP-KCS Transaction, Including on decisions related to capacity investments.

UP Response to Interrogatory No. 31:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "discussing" any "decisions made as a result of the Proposed CP-KCS Transaction" lacks a reasonable scope limitation. UP also objects to production of documents created after the announcement of the Proposed CP-KCS Transaction.

Request No. 32

Produce all Documents concerning the impact of the Proposed CP-KCS Transaction, Including its impact on competition, on any aspect of UP's business, or on any third party.

UP Response to Request No. 33:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor

reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "concerning" the "impact" of the Proposed CP-KCS Transaction" on "any aspect of UP's business" or "any third party" lacks a reasonable scope limitation. UP also objects to production of documents created after the announcement of the Proposed CP-KCS Transaction.

Request No. 33

Produce all Documents that UP has provided to any third party regarding the Proposed CP-KCS Transaction.

UP Response to Request No. 33:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents that UP has provided to "any third party" regarding the Proposed CP-KCS Transaction lacks a reasonable scope limitation. UP also objects to production of documents created after the announcement of the Proposed CP-KCS Transaction.

Request No. 34

Produce copies of all expert witness statements, submitted by UP in merger proceedings since 1980 before the Interstate Commerce Commission or the STB in which UP or its predecessors were applicants, that address competition issues, the one-lump theory, or the benefits of single-line service.

UP Response to Request No. 34:

UP objects to this request on the ground that the requested documents should be obtainable by Applicants in a more convenient, less burdensome, or less expensive manner than from UP. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is

neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" expert witness statements that address "competition issues" lacks a reasonable scope limitation.

Request No. 35

Produce all employee witness statements, submitted by UP in merger proceedings since 1980 before the Interstate Commerce Commission or the STB in which UP or its predecessors were applicants, that address competition issues, the one-lump theory, or the benefits of single-line service.

UP Response to Request No. 35:

UP objects to this request on the ground that the requested documents should be obtainable by Applicants in a more convenient, less burdensome, or less expensive manner than from UP. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" employee witness statements that address "competition issues" lacks a reasonable scope limitation.

Request No. 36

Produce all Documents sufficient to show the GTM Rate, by dollar amount, by year, paid by KCS and others since 2015.

UP Response to Request No. 36:

UP objects to this request on the ground that the term "by dollar amount" is vague.

Subject to and without waiving its General Objections and the objection above, UP will produce documents sufficient to show the GTM Rate for 2019, 2020, and 2021.

Request No. 37

Produce all Documents that discuss, demonstrate, or analyze how UP spends the GTM Rate fees paid by KCS, since 2015.

UP Response to Request No. 37:

UP objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and including because Applicants' request for "all" documents "since 2015" that "discuss" how UP spends the GTM Rate fees paid by KCS lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objection above, UP states that it does not track its spending of GTM Rate fees paid by KCS.

Request No. 38

Produce all Documents to show how UP spends or has spent funds paid by KCS and/or others under specific capacity agreements related to UP's Brownsville Subdivision.

UP Response to Request No. 38:

UP objects to this request on the ground that the term "specific capacity agreements" is vague. UP further objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and including because Applicants' request for "all" documents that "show" how UP spends funds paid by KCS lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 39

Produce all Documents relating to the implementation of PSR and/or other changes to operations in and around Houston, Texas, including but not limited to the closure of yards, changes to operating plans or train plans, blocking changes, and/or crew and/or employee changes.

UP Response to Request No. 39:

UP objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and including because Applicants' request for "all" documents "relating to the implementation of PSR" in and around Houston lacks a reasonable scope limitation.

Request No. 40

Produce all Documents sufficient to show all maintenance expenditures on UP or HBT routes over which KCS operates under the KCS Trackage Rights.

UP Response to Request No. 40:

UP objects to this request on the ground that the term "maintenance expenditures" is vague. UP further objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome and not proportional to the needs of this proceeding.

Subject to and without waiving its General Objections and the objections above, UP will produce documents sufficient to show HBT maintenance expenditures for 2019, 2020, and 2021. UP further states that, as it understands Applicants' use of the term "maintenance expenditures," that this information does not track such expenditures by line.

Request No. 41

Produce all Documents sufficient to show all slow order and/or speed restrictions that apply to UP or HBT routes over which KCS operates under KCS Trackage Rights.

UP Response to Request No. 41:

UP objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome and not proportional to the needs of this proceeding.

Subject to and without waiving its General Objections and the objections above, UP states that KCS should have the requested information in its possession in order to conduct operations lawfully over the KCS Trackage Rights.

Request No. 42

Produce all Documents discussing or analyzing capital investment evaluation for any decision relating to capacity improvements to track or facilities utilized by KCS under the KCS Trackage Rights, including but not limited to UP's Beaumont, Lafayette, Angleton and Brownsville Subdivisions and any trackage currently or formerly owned by HBT.

UP Response to Request No. 42:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "discussing" capital investments lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 43

To the extent not already produced in response to another request, produce Documents sufficient to show all capacity projects in process or completed in the Houston Terminal area since January 1, 2018.

UP Response to Request No. 43:

UP objects to this request on the ground that the term “Houston Terminal area” is vague.

Subject to and without waiving its General Objections and the objections above, UP will conduct a reasonable search for documents sufficient to show UP capacity projects in the Houston area in process or completed between January 1, 2018, and March 19, 2021.

Request No. 44

Produce daily or weekly performance data for the Englewood and Settegast yards Including:

- a) Performance indicators;
- b) Yard capacity;
- c) Yard inventories;
- d) Dwell time;
- e) Number of trains receiving;
- f) Number of train departing; and
- g) Number of employees.

UP Response to Request No. 44:

UP objects to this request on the ground that the term “performance data” is vague. UP further objects to this request on the grounds that it is unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because performance of Englewood and Settegast yards are not at issue in this proceeding.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 45

Produce performance metrics for UP's Brownsville Subdivision, Including:

- a) Train counts by carrier; and
- b) Planned versus actual run times.

UP Response to Request No. 45:

UP objects to this request on the ground that the term "performance metrics" is vague. UP further objects to this request on the grounds that it is unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of this proceeding. UP further objects to this request because responding would require undertaking a special study.

Request No. 46

Produce all Documents discussing or analyzing the current capacity of UP's Brownsville Subdivision, projections related to capacity, and any further capacity requirements.

UP Response to Request No. 46:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" documents "discussing" a variety of issues relating to capacity of UP's Brownsville Subdivision lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 47

Produce performance metrics for the interchange between UP and Port Terminal Railroad Association, Including daily planned interchanges versus actual interchanges, adherence to established interchanges times, and volumes.

UP Response to Request No. 47:

UP objects to this request on the ground that the term “performance metrics” is vague. UP further objects to this request on the grounds that it is unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of this proceeding, including because interchange between UP and the Port Terminal Railroad Association is not at issue in this proceeding.

Request No. 48

Produce the employee counts of UP unionized employees by position and location for Texas, Louisiana, and Arkansas.

UP Response to Request No. 48:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because UP employment levels are not at issue in this proceeding. UP further objects to this request to the extent that responding would require undertaking a special study.

Request No. 49

Produce all Documents discussing or relating to any complaints relating to service provided by UP.

UP Response to Request No. 49:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because complaints relating to service provided by UP are not at issue in this proceeding.

Request No. 50

Produce all Communications with Norfolk Southern Railway Company, Including any subsidiaries, employees, officers, agents, or any third party acting on behalf of Norfolk Southern Railway Company, regarding any commercial opportunities that would utilize any part of the Meridian Speedway in the route.

UP Response to Request No. 50:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants' request for "all" communications regarding lacks a reasonable scope limitation.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Request No. 51

Produce minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors relating to:

- a) the CP-KCS Transaction;
- b) the CN-KCS Transaction;
- c) Capacity in Texas, Louisiana, and Arkansas;
- d) Infrastructure investments in Texas, Louisiana, and Arkansas;
- e) Mexican concessions; and
- f) Service complaints or service improvement efforts.

UP Response to Request No. 51:

UP objects to this request on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because it appears to be a fishing expedition for material provided to UP's Board of Directors.

Request No. 52

Produce a complete copy of UP's current timetable(s) that include the UP Beaumont, Angleton, Lafayette and Brownsville Subdivisions and trackage in the Houston Terminal not covered as part of those Subdivisions.

UP Response to Request No. 52:

Subject to and without waiving its General Objections, UP will produce a complete copy of UP's current timetables responsive to this request.

Request No. 53

Produce complete copies of the timetable(s) and General Orders of UP and its predecessors, and of HBT in effect between August 12, 1996 and January 31, 1997.

UP Response to Request No. 53:

UP objects to this request on the ground that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because Applicants are requesting that UP search for documents from over 25 years ago.

Request No. 54

Produce system-wide car and container event data for 2019 including, but not limited to:

- a) Car initial and number (and container initial and number where applicable);
- b) Loaded empty status;
- c) Event time stamp;
- d) Event location station/Standard Point Location Code (maintained by the National Motor Freight Traffic Association);
- e) Event location railroad;
- f) Reporting railroad; and Event type code (and decoder to extent these codes differ from those contained the Train II database maintained by Railinc).

UP Response to Request No. 54:

UP objects to this request on the grounds that it is vague insofar as it seeks information “including, but not limited to” the categories described above. UP further objects to this request in that it is overly broad, unduly burdensome, not proportional to the needs of this proceeding, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including because it seeks detailed data regarding movements of the millions of cars and containers that moved over UP’s entire network in 2019.

Subject to and without waiving its General Objections and the objections above, UP is willing to meet and confer regarding this request.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
WHITNEY LARKIN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5542

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

Attorneys for Union Pacific Railroad Company

March 31, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2022, I caused a copy of Union Pacific Railroad Company's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests by email or by first-class mail, postage prepaid, on all parties of record in this proceeding.

/s/ Michael L. Rosenthal

Exhibit B

From: Cyr, Marc-André O.
Sent: Tuesday, April 12, 2022 5:51 PM
To: 'Rosenthal, Michael'; David Meyer
Cc: Orlich, Frank P.; WMullins@bakerandmiller.com; Paris, Adam S.; Hynes, Samantha F.; Sarnoff, Zachary A.; Heflin, Jason O.; Agarwal, Pratik; Lu, Alisa Y.
Subject: RE: FD 36500 - UP discovery responses

Mike,

Thank you for speaking with us on Wednesday, April 6 and Friday, April 8 regarding UP's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests. Please find the categories of the requests we discussed below, with a summary of UP and Applicants' discussions and next steps. Applicants also understand UP as agreeing to produce documents it had agreed to produce in its R&Os, and that it will produce documents on a rolling basis, irrespective of the STB's decision to suspend the procedural schedule. Unless otherwise stated, UP and Applicants agree to continue to meet and confer regarding these Requests if needed.

Category 1: Data Requests

- Req. No. 54

Request No. 54 from Applicants' Second Set of Discovery Requests asks for certain system-wide car and container event data. UP continues to object to producing this data on grounds of lack of relevancy. Applicants and UP agreed to discuss this issue further.

Category 2: Capacity/Operations Since 2018

- Interrogatory No. 2
- Req. Nos. 20, 39, 48

Applicants and UP discussed these requests about changes in operations in the Houston area in the time period corresponding to UP's implementation of PSR. Applicants request documents dating back to 2018. UP will confer about the reasonableness of this request but will simultaneously search for documents, as defined in Applicants' requests, on "studies, gateways, operations in the Houston area," including documents that relate to closing the Pine Bluff Hump Yard and shifting work to Kansas City and Houston, and any retrospective analysis UP has performed evaluating those decisions.

Category 3: Gateways/Foreclosure

- Req. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 29.

Applicants and UP discussed these requests relevant to UP's assertions of foreclosure generally and that Ferromex service via the Eagle Pass Gateway cannot provide an effective substitute to KCSM service via the Laredo Gateway. Applicants request documents dating back to 2004. UP offered to search for "studies or analyses UP has performed regarding volume increases or efficiency improvements at the Eagles Pass Gateway" and "studies or analyses UP has performed regarding shifts of traffic from Laredo to Eagle Pass and El Paso."

Category 4: Capacity in general

- Interrogatory Nos. 1, 3
- Req. Nos. 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 52, 53

Applicants agreed to consolidate these requests and provide definitive time periods and geographic scopes for these requests, and have done so below.

- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of rail lines and facilities owned by Applicants over or across which UP operates, such as the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision, from January 1, 2018 to present.
 - Geographic region: the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision
- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of or potential capital investments in rail lines and facilities owned by UP or formerly owned by HBT, including plans or projects to alter the capacity of these rail lines or facilities, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont), from January 1, 2018 to present.
 - Geographic region: Rail lines and facilities owned by UP over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont)
- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here, Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.
 - Geographic region: Houston terminal area, as UP defines it in its comments
- Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

Category 5: Mexican Regulatory

- Req. Nos. 26, 27

Applicants and UP discussed the requests for documents or communications with third parties (such as Mexican agencies ARTF, COFECE) and internal studies or analyses regarding the possibility of UP obtaining a Mexican rail concession. Applicants request documents dating back to 2010. UP will investigate whether there are any responsive documents and the burden associated with collecting and producing these documents, while reserving its right to object to the relevancy of these two requests.

Category 6: Executive Documents

- Req. Nos. 28, 51

Applicants and UP discussed the requests for documents provided by UP to members of its management (directors and officers) and minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors, related to the issues in this proceeding. UP objected to Request 28 based on scope, burden, and relevance but agreed to search for responsive documents.

Applicants confirm that this request is limited to "issues in this proceeding," as defined as issues related to any of the other document requests, and that they are particularly interested in "documents analyzing or evaluating decisions made as a result of this proposed transaction" with a focus on "capacity investment and competition." Applicants also

confirm that they will only request documents dating to 2018 and that UP need only search for documents that are “easily accessible.”

Category 7: Merger-related Documents

- Req. Nos. 30, 31, 32, 33, 34, 35, 50

Applicants and UP discussed these requests that concern documents related to Class 1 rail mergers generally or the CP-KCS Transaction. UP agreed to search for documents responsive to these requests that are “reasonably available” if Applicants named the proceeding(s) they are interested in. Applicants confirm that the proceedings they are interested in are the Union Pacific and Missouri Pacific and Western Pacific, Union Pacific and Missouri-Kansas-Texas, and/or Union Pacific and Chicago and North Western mergers. Applicants and UP also specifically discussed Request No. 50 from Applicants’ Second Set of Discovery Requests, which asks for communications between UP and NS regarding the Meridian Speedway. UP objected based on scope but agreed to check for responsive communications, as defined in Applicants’ requests.

Best,

Marc-André

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, April 07, 2022 9:23 AM
To: David Meyer <david@meyerlawdc.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cym@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

David,

Either you misunderstood my email, or you are intentionally misrepresenting what I said. In any event, we can save the discussion for the continuation of our meet and confer on Friday. I don't think further emails will be productive.

Regards,

Mike

From: David Meyer <david@meyerlawdc.com>
Sent: Thursday, April 07, 2022 9:16 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cym@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: Re: FD 36500 - UP discovery responses

[EXTERNAL]

Mike

Thank you for confirming that there was no data underlying Mr. Haley's testimony, but that is irrelevant to our entitlement to test assertions about the inherent superiority of UP's routes and service, which underlie (false) assertions that CPKC will be compelled to foreclose UP in order to win. Our request stands.

David

Sent from my iPhone

On Apr 7, 2022, at 9:12 AM, Rosenthal, Michael <mrosenthal@cov.com> wrote:

Frank,

Thank you for your email. Now that I understand the basis for Applicants' Request No. 54, I ask that you withdraw the request. Assuming the UP witness you are referencing is Mr. Haley, you are not accurately characterizing his statement. More important for discovery purposes, Applicants are incorrect in believing that the car movement data they are seeking in Request No. 54 are "data underlying" Mr. Haley's statement (without regard to your mischaracterization of his statement). Stated differently, Mr. Haley did not present data regarding actual transit times that were drawn from car movement data or other sources. Finally, with respect to your experts, they're not in a position to determine what would be more burdensome to UP -- but given your misunderstanding about UP's use of the data in its evidence, there now does not appear to be any basis for producing the data, regardless of geographic limitation, especially given the context of this proceeding.

Regards,

Mike

From: Orlich, Frank P. <orlichf@sullcrom.com>

Sent: Wednesday, April 06, 2022 11:27 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

As agreed during the meet-and-confer, we are following up on whether we would agree to narrow Req. No. 54 geographically to Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Texas, and Wisconsin. After consulting with our experts, it appears that narrowing this request to a subset of states will be more burdensome for UP and less helpful for Applicants. Therefore, we will maintain Req. No. 54 as currently drafted.

UP's witnesses claim that having the shortest transit time, as determined by who has the shortest route length, is the "merit" that wins a shipper's business, free of rate reduction or foreclosure. Applicants are seeking the data underlying this assertion. In order to properly evaluate this claim, Applicants require all railroad traffic patterns, not just those limited to, for example, Laredo to Chicago. For example, auto

shippers in Mexico may exhibit patterns regarding railroad choice, route length, and transit time to move traffic to the West Coast, which would show how they weigh these factors.

Best,
Frank

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Tuesday, April 5, 2022 9:55 AM
To: Lu, Alisa Y. <lua@sullcrom.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Sorry - 12:00-12:30 and 3:00-4:00 won't work, but other times are still open tomorrow.

From: Lu, Alisa Y. <lua@sullcrom.com>
Sent: Tuesday, April 05, 2022 9:44 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]
Mike,

We are available to meet at 3 p.m. ET tomorrow, April 6. Please let us know if that time works for you and we can circulate a Zoom link.

Thank you,
Alisa

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, April 4, 2022 5:37 PM
To: Lu, Alisa Y. <lua@sullcrom.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Alisa,

We'd be happy to talk on Wednesday or Friday of this week.

Regards,

Mike

From: Lu, Alisa Y. <lua@sullcrom.com>
Sent: Monday, April 04, 2022 10:54 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cym@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

Please let us know when you are available this week to meet-and-confer regarding the timing of UP's production of its traffic tape data and UP's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests.

Thanks,
Alisa

From: Michael Rosenthal <mrosenthal@cov.com>
Date: Thursday, March 31, 2022 at 7:31 PM
To: Michael Rosenthal <mrosenthal@cov.com>
Subject: FD 36500 - UP discovery responses

To parties on the STB service list for FD 36500:

Attached please find a service copy of UP's responses and objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests to Union Pacific.

Regards,

Mike Rosenthal

Michael L. Rosenthal

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5448 | mrosenthal@cov.com
www.cov.com [cov.com]

<image001.jpg>

****This is an external message from: david@meyerlawdc.com ****

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Exhibit C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET No. 36500

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

– CONTROL –

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

APPLICANTS'

FIRST SET OF DISCOVERY REQUESTS TO UNION PACIFIC RAILROAD COMPANY

Pursuant to 49 C.F.R. Part 1114, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, "Canadian Pacific" or "CP") and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, "KCS"; together with CP, the "Applicants") request that UP respond to the following discovery requests as soon as possible, and no later than 5 days from the date of service hereof.

DEFINITIONS

1. "UP" means Union Pacific Railroad Company; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

2. “Communication” shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible. Requests to produce or identify Communications encompass text messages, emails, instant messages on any platform, agendas, meeting notes, talking points, and presentation slides, and include information that was displayed or shown to another party without being transmitted to that party.

3. “Including” means “including, but not limited to.”

4. “You” and “Your” mean UP.

INSTRUCTIONS

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

2. References to railroads, shippers, consultants or companies include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents and representatives thereof.

3. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

4. To the extent materials called for herein are confidential, Applicants will protect them from disclosure to third parties in accord with the Protective Order entered in this proceeding and will solely use those materials for the purpose of this proceeding, and not for any other business, commercial, or other competitive purpose. Applicants will cooperate with counsel for UP to identify information that would warrant a confidential or highly confidential designation.

5. UP is requested to contact Adam Paris of Sullivan & Cromwell ((310) 712-6663, or parisa@sullcrom.com) or Marc-André O. Cyr of Sullivan & Cromwell ((212) 558-3123, or cyrm@sullcrom.com) to discuss any questions regarding these requests.

REQUEST

1. Produce complete traffic tape data for the years 2018, 2019, 2020, and 2021, including all available data records for both loaded and empty movements and revenue and non-revenue movements for the entire UP system, and including standard fields of information typically provided to the STB when preparing the Carload Waybill Sample.

Dated: February 23, 2022

/s/ William A. Mullins

William A. Mullins
Erin A. Glavich
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Facsimile: (202) 663-7849

Adam J. Godderz
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1360
Facsimile: (816) 983-1227

Counsel for KCS

/s/ David L. Meyer

David L. Meyer
Law Office of David L. Meyer
1105 S Street NW
Washington, D.C. 20009
Email: David@MeyerLawDC.com
Telephone: (202) 294-1399

Adam S. Paris
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, CA 90067-1725
Email: parisa@sullcrom.com
Telephone: (310) 712-6663

Sophia A. Vandergrift
Sullivan & Cromwell LLP
1700 New York Avenue, N.W., Suite 700
Washington, D.C. 20006-5215
Email: vandergrifts@sullcrom.com
Telephone: (202) 956-7625

Jeffrey J. Ellis
Canadian Pacific
7550 Ogden Dale Road S.E.

Calgary, AB T2C 4X9 Canada
Email: Jeff_Ellis@cpr.ca
Telephone: (888) 333-6370

Counsel for CP

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Applicants' First Set of Requests for Production to UP to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Sonia Gupta

Sonia Gupta

February 23, 2022

Exhibit D

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36500

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

—CONTROL—

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

**UNION PACIFIC RAILROAD COMPANY’S RESPONSES AND OBJECTIONS
TO APPLICANTS’ FIRST SET OF DISCOVERY REQUESTS**

Union Pacific Railroad Company responds to Applicants’ First Set of Discovery Requests to Union Pacific Railroad Company as follows:

REQUESTS

Request No. 1:

Produce complete traffic tape data for the years 2018, 2019, 2020, and 2021, including all available data records for both loaded and empty movements and revenue and non-revenue related movements for the entire UP system, including standard fields of information provided to the STB when preparing the Carload Waybill Sample.

Union Pacific Response to Request No. 1:

Union Pacific objects to Applicants’ request in that it constitutes an interrogatory but purports to require a response within five days. *See* 49 C.F.R. § 1114.26(a). Union Pacific also objects to the request as unduly burdensome and overbroad in that it seeks information for 2018, 2020, and 2021, when the base year for the Application in this proceeding is 2019. *See* CP-24/KCS-12. Union Pacific also objects to the request as vague in that it refers generally to “traffic tape data” and appears to require something

more than would be submitted as part of the Carload Waybill Sample. Union Pacific is willing to meet and confer with Applicants to attempt to understand the nature of the data they are seeking.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
WHITNEY LARKIN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5542

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

Attorneys for Union Pacific Railroad Company

February 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2022, I caused a copy of Union Pacific Railroad Company's Responses and Objections to Applicants' First Set of Discovery Requests by email or by first-class mail, postage prepaid, on all parties of record in this proceeding.

/s/ Michael L. Rosenthal

Exhibit E

-----Original Message-----

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Tuesday, April 05, 2022 4:07 PM

To: Cyr, Marc-André O. <cyrm@sullcrom.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

We're scheduled to have a meet and confer session tomorrow. I'd be happy to address traffic tape issues at that time, especially in relation to Applicants' (alternative) request for car movement data.

Regards,

Mike

-----Original Message-----

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Tuesday, April 05, 2022 4:04 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

[EXTERNAL]

Mike,

Could you please, by tomorrow, provide a firm date that you can commit to for the production of the traffic tape data? If it is something that you cannot agree to, we intend to move to compel.

Many thanks,

Marc-André Cyr

Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Cyr, Marc-André O.

Sent: Monday, April 04, 2022 7:42 PM

To: 'Rosenthal, Michael' <mrosenthal@cov.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Thank you. Should we consider the following statement, made on p. 1 of UP's Responses to Applicants First set of Interrogatories and Second set of Discovery Requests to UP, as withdrawn?

"Responsive documents or information will be made available to counsel for Applicants as soon as practicable on a rolling basis, after the Surface Transportation Board ("Board") reinstates the procedural schedule in this proceeding."

In addition, could you please provide an update on the production of the traffic tape data for 2019? I understand that producing car event data lengthens the process, but it has been several weeks already.

Regards,

Marc-André Cyr

Sullivan & Cromwell LLP

T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Monday, April 04, 2022 7:07 PM

To: Cyr, Marc-André O. <cyrm@sullcrom.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

We'll continue preparing and delivering what we agree to produce.

Regards,

Mike

-----Original Message-----

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Monday, April 04, 2022 12:08 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

[EXTERNAL]

Hi Mike,

I hope you had a good weekend. It would be very helpful if you could let us know by EOD if your position is that the suspension of the procedural schedule allows you to stop preparing and delivering the documents, materials and data that you have accepted to produce.

Regards,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Cyr, Marc-André O.
Sent: Friday, April 01, 2022 12:50 PM
To: 'Rosenthal, Michael' <mrosenthal@cov.com>
Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>
Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Hi Mike,

We do not believe that the suspension of the procedural schedule allows you to stop preparing and delivering the documents, materials and data that you have accepted to produce. Please let us know as soon as possible if this is your position as we may need to ask the ALJ to rule on this issue.

Regards,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Tuesday, March 29, 2022 6:37 PM
To: Cyr, Marc-André O. <cyrm@sullcrom.com>
Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>
Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

I'm still digging into the car event issue on this end. However, as I said before, with the procedural schedule suspended, I believe all deadlines, including discovery deadlines, have been suspended.

Regards,

Mike

-----Original Message-----

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Tuesday, March 29, 2022 5:32 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

[EXTERNAL]

Hi Mike,

Do you have an update for us?

Thanks,

Marc-André Cyr

Sullivan & Cromwell LLP

T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Thursday, March 24, 2022 5:35 PM

To: Cyr, Marc-André O. <cyrm@sullcrom.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

As I said in my March 15 email, I was anticipating that Applicants would not insist on the timestamp information, since it is not part of the Waybill Sample data provided to the STB. When you said you wanted timestamp data either as part of waybill data or separately as car event data -- "whichever is easier/faster" -- we started looking into that issue. I expect to have an answer soon. However, didn't the Board suspend the procedural schedule? My understanding is that the decision suspended all deadlines, including discovery deadlines.

Regards,

Mike

-----Original Message-----

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Thursday, March 24, 2022 5:27 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

[EXTERNAL]

Hi Mike,

We expected to receive the data earlier this week -- do you think you will be able to send tonight or tomorrow?

Many thanks,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Cyr, Marc-André O.
Sent: Friday, March 18, 2022 3:13 PM
To: 'Rosenthal, Michael' <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; David Meyer <david@meyerlawdc.com>
Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

That is correct.

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Friday, March 18, 2022 2:22 PM
To: Cyr, Marc-André O. <cyrm@sullcrom.com>
Cc: WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; David Meyer <david@meyerlawdc.com>
Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

Just to be clear, are you saying Applicants wouldn't need a response to Applicants' Document Request No. 54 if we produce "timestamp" information as part of the Waybill data?

Regards,

Mike

-----Original Message-----

From: Cyr, Marc-André O. <cyrm@sullcrom.com>
Sent: Friday, March 18, 2022 2:06 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; David Meyer <david@meyerlawdc.com>
Subject: RE: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

[EXTERNAL]

Thanks Mike. We are going to need either the timestamp, or system-wide car and container event data, whichever is easier/faster on your end. If you prefer to produce car event data, here is what we are going to need:

- (a) Car initial and number (and container initial and number where applicable);
- (b) Loaded empty status;
- (c) Event time stamp;
- (d) Event location station/Standard Pointe Location Code;
- (e) Event location railroad;
- (f) Reporting railroad;
- (g) Event type code.

Best,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Message-----

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Tuesday, March 15, 2022 8:14 PM
To: Cyr, Marc-André O. <cyrm@sullcrom.com>
Cc: WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; David Meyer <david@meyerlawdc.com>
Subject: Re: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

We're hoping to have the data later this week or early next week. We had most elements you requested, but not the pricing authority, information on payouts/deductions, or the timestamp.

We think we can add the first two elements and match them to other records to create one clean set of data. We haven't come up with a way to deal with your request for timestamp data. My understanding is that it is an operating data point, not something tied to the revenue waybill (and not something given to the STB as part of Waybill Sample data)— so our plan is to produce what we have as soon as we can.

If the timestamp data is critical, please me know, but at this point it seems like the burdens would outweigh any benefits, assuming there is some way we could tie everything together.

Regards,

Mike

On Mar 15, 2022, at 11:54 AM, Cyr, Marc-André O. <cyrm@sullcrom.com> wrote:

[EXTERNAL]
Sounds good. Thank you.

From: Rosenthal, Michael <mrosenthal@cov.com<mailto:mrosenthal@cov.com>>
Date: Tuesday, Mar 15, 2022, 12:53
To: Cyr, Marc-André O. <cyrm@sullcrom.com<mailto:cyrm@sullcrom.com>>
Cc: WMullins@bakerandmiller.com <WMullins@bakerandmiller.com<mailto:WMullins@bakerandmiller.com>>, Paris, Adam S. <Parisa@sullcrom.com<mailto:Parisa@sullcrom.com>>, Hynes, Samantha F.

<hyness@sullcrom.com<mailto:hyness@sullcrom.com>>, Agarwal, Pratik
<PAgarwal@cov.com<mailto:PAgarwal@cov.com>>, David Meyer
<david@meyerlawdc.com<mailto:david@meyerlawdc.com>>
Subject: [EXTERNAL] Re: Applicants' First set of Discovery Requests to UP

Marc-Andre,

I'm in an all-day hearing today, but I'll explain where we are when I break free this evening.

Regards,

Mike

> On Mar 15, 2022, at 9:41 AM, Cyr, Marc-André O. <cyrm@sullcrom.com> wrote:

>

> [EXTERNAL]

>

> Mike,

>

> I write to follow-up on UP's production of 2019 traffic tapes. Please let us know when you expect to produce this data.

>

> Best,

>

> Marc-André Cyr

> Sullivan & Cromwell LLP

> T: (857) 209- 1986 | cyrm@sullcrom.com

>

>

> -----Original Message-----

> From: Cyr, Marc-André O.

> Sent: Wednesday, March 09, 2022 7:29 PM

> To: 'Rosenthal, Michael' <mrosenthal@cov.com>

> Cc: WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>;

> Hynes, Samantha F. <hyness@sullcrom.com>; Agarwal, Pratik

> <PAgarwal@cov.com>; David Meyer <david@meyerlawdc.com>

> Subject: RE: Applicants' First set of Discovery Requests to UP

>

> Mike,

>

> Although Applicants reserve their right to seek traffic tapes for other years in the future, we are ok with UP producing 2019 data only at this time.

>

> Regards,

>

> Marc-André Cyr

> Sullivan & Cromwell LLP

> T: (857) 209- 1986 | cyrm@sullcrom.com

>

> -----Original Message-----

> From: Rosenthal, Michael <mrosenthal@cov.com>

> Sent: Tuesday, March 08, 2022 10:55 PM

> To: David Meyer <david@meyerlawdc.com>

> Cc: Cyr, Marc-André O. <cym@nullcrom.com>;
 > WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@nullcrom.com>;
 > Hynes, Samantha F. <hyness@nullcrom.com>; Agarwal, Pratik
 > <PAgarwal@cov.com>
 > Subject: [EXTERNAL] Re: Applicants' First set of Discovery Requests to
 > UP
 >
 > David,
 >
 > First, the request Applicants sent today is different than the request Applicants sent two weeks ago. I don't want UP to have to run any traffic data twice, so I want to confirm that the second request is actually what Applicants want.
 >
 > Second, UP didn't use UP waybill data in its own filing, but it is not objecting to producing 2019 data that are reasonably available. It is objecting to producing data from other years. If you have reason you believe data from those other years are properly subject to discovery, let me know.
 >
 > Third, I'm not familiar with all the fields UP produces to the STB in its waybill process, so I'm not promising anything until I investigate the request I just received earlier this evening.
 >
 > Fourth, even assuming all the fields requested are part of the waybill process, I can't promise how quickly the data can be produced. Especially when I just received the request earlier this evening.
 >
 > Fifth, happy to have this same discussion with the ALJ.
 >
 > Regards,
 >
 > Mike
 >
 > On Mar 8, 2022, at 9:34 PM, David Meyer <david@meyerlawdc.com> wrote:
 >
 > [EXTERNAL]
 > Mike, this is absurd. 100% traffic tapes are a well known thing in the rail industry, and UP is no stranger to that industry. We will proceed to the ALJ promptly absent some further reassurance of cooperation.
 >
 > Law Office of David L. Meyer
 > David@MeyerLawDC.com
 > 202-294-1399
 > [https://urldefense.com/v3/__http://www.MeyerLawDC.com__;!!ARePqKBowW4!](https://urldefense.com/v3/__http://www.MeyerLawDC.com__;!!ARePqKBowW4!iAHiYC1do-g8k1cTUBiX999Jz87aCgUATuSyqlbm9GqShwKrUwAf34c9Ftc49g$)
 > iAHiYC1do-g8k1cTUBiX999Jz87aCgUATuSyqlbm9GqShwKrUwAf34c9Ftc49g\$
 >
 >
 > On Mar 8, 2022, at 10:27 PM, Rosenthal, Michael <mrosenthal@cov.com> wrote:
 >
 >
 > Marc-Andre,
 >
 > I received your email. The request you set out below is different from the request Applicants originally sent UP, which asked for: "all available data records for both loaded and empty movements and revenue and non-revenue related movements." Please confirm that Applicants intended to narrow their request as described below. Once we're clear on what you want, we will investigate whether UP has the specific data requested and how long it will take to produce the data for 2019. We continue to object to producing data for other years. Also, please confirm the file name of the workpapers that contain the comparable data produced by Applicants.

>
> Regards,
>
> Mike
>
> From: Cyr, Marc-André O. <cyrm@sullcrom.com>
> Sent: Tuesday, March 08, 2022 6:52 PM
> To: Rosenthal, Michael <mrosenthal@cov.com>
> Cc: 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>;
> 'david@meyerlawdc.com' <david@meyerlawdc.com>; Paris, Adam S.
> <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>
> Subject: Applicants' First set of Discovery Requests to UP
>
> [EXTERNAL]
>
> Counsel,
>
>
>
> We served a request for production of your complete traffic tape data for years 2018, 2019, 2020 and 2021 on February 23. Although we do not view this request as ambiguous or vague, we are available to provide further clarity. Please provide waybill records for all revenue movements, empty and loaded, including the following information:
>
>
> * Waybill Number
> * Waybill Date
> * Car Number and Initial (Container Number and Initial where applicable)
> * AAR Car Type
> * Car Ownership
> * Shipper
> * Consignee
> * Freight Payer
> * Number of Carloads/Units on Waybill
> * Intermodal Service Code (As defined in STB's Carload Waybill Sample)
> * Transit Code (As defined in STB's Carload Waybill Sample)
> * Type of Move (As defined in STB's Carload Waybill Sample)
> * 7-Digit STCC Commodity Code
> * Lading Weight of Shipment
> * Empty/Load Indicator
> * Actual Miles
> * Rebill Code
> * Through Freight Revenues (where available)
> * Through Fuel Surcharge Revenues (where available)
> * Carriers' own division of through freight revenues
> * Carriers' own division of through fuel surcharge revenues
> * Payouts and revenue deductions from carriers' own division of revenues, including, but not limited to, payments to shortline and switching railroads
> * Full route information for movement (including information sufficient to identify all railroads and junctions involved in the end-to-end movement)
>

> * Including, but not limited to, information sufficient to identify the ultimate origin and destination railroad SCACs and location FSACs , as well as the carriers' own on and off junctions points and receiving and forwarding railroads where applicable

>

> * Pricing Authority

> * Shipment termination timestamp (i.e., the date and time the shipment is released to the consignee)

>

>

> Please produce this data this week.

>

>

>

> Sincerely,

>

> Marc-André Cyr

> Sullivan & Cromwell LLP | 125 Broad Street |

> New York, NY 10004-2498

> T: (212) 558-3123 | F: (212) 558-3588 | C: (857) 209-1986

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>

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> _____

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> =====

> **This is an external message from: mrosenthal@cov.com **

Exhibit F

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET No. 36500

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

– CONTROL –

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

**APPLICANTS’
FIRST SET OF INTERROGATORIES AND SECOND SET OF DISCOVERY REQUESTS TO UNION
PACIFIC RAILROAD COMPANY**

Pursuant to 49 C.F.R. Part 1114, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “Canadian Pacific” or “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”; together with CP, the “Applicants”) request that UP respond to the following discovery requests as soon as possible, and no later than 15 days from the date of service hereof.

DEFINITIONS

1. “UP” means Union Pacific Railroad Company; its parent companies; subsidiaries; controlled, affiliated and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

2. “Application” means the Railroad Control Application (Volume 1 “CP-25/KCS-13” and Volume 2 “CP-26/KCS-14”) filed by Applicants in Finance Docket No. 36500 on October 29, 2021.

3. “ARTF” means the Agencia Reguladora del Transporte Ferroviario.

4. “BNSF” means BNSF Railway Company; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

5. “COFECE” mean Comisión Federal de Competencia Económica.

6. “Communication” shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible. Requests to produce or identify Communications encompass text messages, emails, instant messages on any platform, agendas, meeting notes, talking points, and presentation slides, and include information that was displayed or shown to another party without being transmitted to that party.

7. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

8. “Document” means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company Communications, correspondence, presentations, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts,

models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes.

Further, the term “Document” includes:

- (a) both basic records and summaries of such records (Including computer runs);
- (b) both original versions and copies that differ in any respect from original versions; and
- (c) both Documents in the possession, custody or control of UP and Documents in the possession, custody or control of consultants or others who have assisted UP in the creation of said Documents.

9. “FXE” means Ferromex, its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

10. “GTM Rate” means the fee paid by KCS and/or others to UP under the trackage rights agreements for use of the tracks currently owned by UP or currently or formerly owned by HBT forming a connected series of tracks used by KCS extending between Beaumont, the Houston terminal area, and Rosenberg, Texas; and between Victoria, Robstown and Corpus Christi, Texas.

11. “HBT” means the Houston Belt & Terminal Railway Company.

12. “Houston Terminal” means the trackage in the Houston area as discussed using the term “Houston terminal” in Decision No. 44 in STB Finance Docket No. 32760 or in the Restated and Amended Settlement Agreement filed jointly by UP and BNSF in STB Finance Docket No. 32760 and STB Finance Docket No. 32760 (Sub-No. 21) on March 1, 2002.

13. “Including” means “including, but not limited to.”

14. “KCS Trackage Rights” means the trackage rights granted to The Texas Mexican Railway Company (“TM”) in Decision No. 44 in STB Finance Docket No. 32760, Sub Nos. 13 and 14 and by the “clear route” condition” imposed by the STB in Decision No. 10 in STB Finance Docket No. 32760 (Sub-No. 26), and under agreements (Including amendments thereto) entered between TM and either UP or HBT pursuant to said grants and authorities.

15. “KCSM” means KCS’s affiliate, Kansas City Southern de México, S.A. de C.V.

16. “Meridian Speedway” means the 320-mile railroad line between Meridian, Mississippi and Shreveport, Louisiana that is owned by Meridian Speedway, LLC, a joint venture between KCS and Norfolk Southern Railway Company.

17. “Proposed CP-KCS Transaction” means the proposed combination of CP and KCS for which Applicants are seeking STB approval in Finance Docket No. 36500.

18. “PSR” means Precision Scheduled Railroading principles as implemented by a specified railroad.

19. “Subdivision” with respect to a named UP subdivision means that trackage identified in UP’s current timetable by that name.

20. “Train Event Data” means information for UP road train movements to, from, within, or through lines on the UP system, Including:

- (a) Unique Train Identification Symbol and/or Number;
- (b) Train Date;
- (c) Train Type (intermodal, unit, merchandise, foreign, etc.);
- (d) Actual and scheduled event date/time stamp;

- (e) Event type indicator specifying if the event was an arrival, a departure, an intermediate handling event, or an instantaneous time as in the case of a non-dwell event (e.g., passing a scanner);
- (f) Event Station, State or Province, SPLC, and FSAC;
- (g) Number of loaded cars;
- (h) Number of loaded intermodal units;
- (i) Number of empty cars;
- (j) Number of empty intermodal units;
- (k) Trailing net tons;
- (l) Trailing gross tons;
- (m) Length of train;
- (n) Number of active locomotives;
- (o) Horsepower of active locomotives;
- (p) Direction of travel;
- (q) Interchange Indicator specifying if the train was received or delivered in interchange;
- (r) Identification of Interchange Railroad;
- (s) Industry Handling Indicator specifying if the train pulled cars from origin or placed cars at destination;
- (t) Time elapsed at event location;
- (u) Time elapsed between event locations; and
- (v) Miles between event locations.

21. “You” and “Your” mean UP.

INSTRUCTIONS

1. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.
2. References to railroads, shippers, consultants or companies include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents and representatives thereof.
3. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.
4. Unless otherwise specified, the time period for these requests is from January 1, 2018, through the date of the response.
5. To the extent materials called for herein are confidential, Applicants will protect them from disclosure to third parties in accord with the Protective Order entered in this proceeding and will solely use those materials for the purpose of this proceeding, and not for any other business, commercial, or other competitive purpose. Applicants will cooperate with counsel for UP to identify information that would warrant a confidential or highly confidential designation.
6. UP is requested to contact Adam Paris of Sullivan & Cromwell ((310) 712-6663, or parisa@sullcrom.com) or Marc-André O. Cyr of Sullivan & Cromwell ((212) 558-3123, or cymr@sullcrom.com) to discuss any questions regarding these requests.

INTERROGATORIES

1. Describe UP's process to evaluate and determine capital expenditures, including but not limited to what measurements are used, how priorities are set, and how funding is determined.

2. Describe all material operational and blocking changes at or in the Englewood and Settegast yards made under UP's implementation of PSR.

3. Describe the operating plan between UP and Port Terminal Railroad Association Including (a) any changes in that operating plan since January 1, 2018, and (b) any anticipated or planned future changes in that operating plan.

REQUESTS

1. Produce Train Event Data by commodity since January 1, 2018 for UP trains operating in whole or in part in Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Texas, and Wisconsin.

2. Produce all Documents from 2004 to present studying, analyzing, discussing, or evaluating the impact of KCS's control of Transportación Ferroviaria Mexicana, S.A. de C.V., KCSM and/or TM, including, without limitation, impacts on competition, rate levels, UP service, or UP traffic levels.

3. Produce all Documents from 2004 to present studying, analyzing, discussing, or evaluating the advantages or disadvantages of the El Paso, Eagle Pass, and Brownsville gateways, vis-à-vis the Laredo gateway, Including all Documents analyzing, discussing, or evaluating the suitability of the El Paso, Eagle Pass, and Brownsville gateways as substitutes for the Laredo gateway.

4. Produce all Documents from 2004 to present concerning circumstances that would impact shipper preferences for their traffic being handled at any Mexican border crossing served by UP in preference to another such crossing, such as events disrupting or enhancing service quality.

5. Produce all Documents from 2004 to present studying, analyzing, discussing, or evaluating changes in traffic at the El Paso, Eagle Pass, Laredo, and Brownsville gateways.

6. Produce all Documents since 2004 studying, analyzing or discussing the potential for increasing the volume of, or improving the efficiency of handling, rail traffic moving to/from Mexico to routes via the Eagle Pass gateway.

7. Produce all Documents since 2004 studying, analyzing or discussing the potential for shifting rail traffic moving to/from Mexico from routes via the Laredo gateway to routes via the Eagle Pass or El Paso gateways.

8. Produce all Documents concerning investments, new services, or other developments since 2004, including, but not limited to, the timing of such services, investments and other developments, investments considered but not implemented and the timing of any such investments, and conditions precedent to any such investments being made, that UP believes affected shippers' choices among the Laredo, Brownsville, El Paso and Eagle Pass gateways.

9. Produce all Documents concerning UP's commitments and standards for service frequency and transit times on UP rail traffic moving to/from Mexico via the El Paso, Eagle Pass, Laredo, and Brownsville gateways.

10. To the extent not already produced in response to another request, produce all Documents since 2004 concerning investments by UP, BNSF, FFE or others, including the timing of such investments, to improve the capabilities of the Eagle Pass gateway and the Brownsville gateway.

11. Produce all Documents analyzing, discussing, or evaluating the ability, desirability, or need for any rail carrier other than UP or KCS to obtain direct access to Laredo via trackage rights or ownership.

12. Produce all Documents studying, analyzing or discussing the transportation options in Mexico available to shippers of rail traffic between the United States and Mexico, including, without limitation, service offered by KCSM, FXE, trucks or vessels.

13. Produce all Documents studying, analyzing or discussing the cross-border transportation options available to shippers of rail traffic between the United States and Mexico, including, without limitation, service offered by UP, KCS, BNSF, trucks, or vessels.

14. Produce all Documents analyzing, discussing, or evaluating UP's efforts to work with, invest in, or otherwise improve service on FXE lines.

15. Produce all Documents analyzing or discussing capacity of rail lines and facilities owned by UP, or currently owned or formerly owned by HBT, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont, as well as lines currently owned or formerly owned by HBT), including, without limitation, plans or projects to alter the capacity of these rail lines or facilities owned by UP or HBT on these rail lines.

16. Produce all Documents prepared by or for UP or in UP's possession analyzing or discussing capacity, Including any studies commissioned or reviewed by UP regarding capacity, of rail lines and facilities owned by Applicants over or across which UP operates, including, without limitation, the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision.

17. Produce all Documents created since August 12, 1996 studying, analyzing or discussing alternative routes that would bypass Houston for UP rail traffic moving to or from Mexico.

18. Produce all Documents created since 1997 studying, analyzing, or discussing plans or recommendations for improvements in capacity on lines owned by UP in the Houston area.

19. Produce all Documents related to recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal.

20. Produce all Documents since 2018 studying, analyzing, or discussing the impact on Houston-area facilities of operational changes made by UP associated with its implementation of PSR, including, without limitation, its decision to close UP's hump yard in Pine Bluff, AK, to shelve the planned Brazos Yard, and to reassign work from Settegast Yard to Englewood Yard.

21. Produce data on the length of UP's trains operating to, from, or through Houston since 2018 at the most detailed level maintained by UP.

22. Produce all Documents concerning, discussing, or derived from the pending Texas Department of Transportation Houston-Beaumont Region Freight Study, a draft report of which was issued in August 2021.

23. Produce all Documents concerning, discussing, or derived from the Texas Department of Transportation, Rail Division, Neches River Bridge Study, Jefferson and Orange Counties, CSJ: 7220-01-001.

24. Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable

number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

25. Produce all Documents related to any capacity or train modeling and/or modeling conducted using Rail Traffic Controller software offered by Berkeley Simulation Software, LLC that UP reviewed or conducted, Including work conducted by any third-party UP engaged, since 2004, relating to lines over which KCS or CP operates, or lines that cross CP or KCS lines, including, but not limited to, inputs to and outputs of any such modeling, the modeling files themselves, and any analysis of such modeling. Direct any third party who conducted the RTC modeling for you to do the same.

26. Produce all Documents from 2010 to present reflecting correspondence with third parties (including, without limitation, Mexican agencies ARTF, COFECE, or others) about the possibility of UP obtaining a Mexican rail concession.

27. Produce all Documents from 2010 to present studying, analyzing or discussing the possibility of UP obtaining a Mexican rail concession.

28. Produce all Documents from 2004 to present that were provided by UP to members of its management (directors and officers, and their direct reports) relating in whole or in part to (a) rail traffic volumes moving to or from Mexico via (i) UP or (ii) KCS, or (b) truck traffic volumes moving to or from Mexico.

29. Produce Your five-year volume-growth forecast for interchange with KCSM at Laredo.

30. Produce all Documents since January 1, 1994, analyzing the effect of past Class 1 rail mergers, Including transactions in which UP participated, on any aspect of competition in the market for transportation services.

31. Produce all Documents analyzing, discussing, or evaluating decisions made as a result of the Proposed CP-KCS Transaction, Including on decisions related to capacity investments.

32. Produce all Documents concerning the impact of the Proposed CP-KCS Transaction, Including its impact on competition, on any aspect of UP's business, or on any third party.

33. Produce all Documents that UP has provided to any third party regarding the Proposed CP-KCS Transaction.

34. Produce copies of all expert witness statements, submitted by UP in merger proceedings since 1980 before the Interstate Commerce Commission or the STB in which UP or its predecessors were applicants, that address competition issues, the one-lump theory, or the benefits of single-line service.

35. Produce all employee witness statements, submitted by UP in merger proceedings since 1980 before the Interstate Commerce Commission or the STB in which UP or its predecessors were applicants, that address competition issues, the one-lump theory, or the benefits of single-line service.

36. Produce all Documents sufficient to show the GTM Rate, by dollar amount, by year, paid by KCS and others since 2015.

37. Produce all Documents that discuss, demonstrate, or analyze how UP spends the GTM Rate fees paid by KCS, since 2015.

38. Produce all Documents to show how UP spends or has spent funds paid by KCS and/or others under specific capacity agreements related to UP's Brownsville Subdivision.

39. Produce all Documents relating to the implementation of PSR and/or other changes to operations in and around Houston, Texas, including but not limited to the closure of yards, changes to operating plans or train plans, blocking changes, and/or crew and/or employee changes.

40. Produce all Documents sufficient to show all maintenance expenditures on UP or HBT routes over which KCS operates under the KCS Trackage Rights.

41. Produce all Documents sufficient to show all slow order and/or speed restrictions that apply to UP or HBT routes over which KCS operates under KCS Trackage Rights.

42. Produce all Documents discussing or analyzing capital investment evaluation for any decision relating to capacity improvements to track or facilities utilized by KCS under the KCS Trackage Rights, including but not limited to UP's Beaumont, Lafayette, Angleton and Brownsville Subdivisions and any trackage currently or formerly owned by HBT.

43. To the extent not already produced in response to another request, produce Documents sufficient to show all capacity projects in process or completed in the Houston Terminal area since January 1, 2018.

44. Produce daily or weekly performance data for the Englewood and Settegast yards Including:

- (a) Performance indicators;
- (b) Yard capacity;
- (c) Yard inventories;

- (d) Dwell time;
- (e) Number of trains receiving;
- (f) Number of train departing; and
- (g) Number of employees.

45. Produce performance metrics for UP's Brownsville Subdivision,

Including:

- (a) Train counts by carrier; and
- (b) Planned versus actual run times.

46. Produce all Documents discussing or analyzing the current capacity of UP's Brownsville Subdivision, projections related to capacity, and any future capacity requirements.

47. Produce performance metrics for the interchange between UP and Port Terminal Railroad Association, Including daily planned interchanges versus actual interchanges, adherence to established interchanges times, and volumes.

48. Produce the employee counts of UP unionized employees by position and location for Texas, Louisiana, and Arkansas.

49. Produce all Documents discussing or relating to any complaints relating to service provided by UP.

50. Produce all Communications with Norfolk Southern Railway Company, Including any subsidiaries, employees, officers, agents, or any third party acting on behalf of Norfolk Southern Railway Company, regarding any commercial opportunities that would utilize any part of the Meridian Speedway in the route.

51. Produce minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors relating to:

- (a) the CP-KCS Transaction;
- (b) the CN-KCS Transaction;
- (c) Capacity in Texas, Louisiana, and Arkansas;
- (d) Infrastructure investments in Texas, Louisiana, and Arkansas;
- (e) Mexican concessions; and
- (f) Service complaints or service improvement efforts.

52. Produce a complete copy of UP's current timetable(s) that include the UP Beaumont, Angleton, Lafayette and Brownsville Subdivisions and trackage in the Houston Terminal not covered as part of those Subdivisions.

53. Produce complete copies of the timetable(s) and General Orders of UP and its predecessors, and of HBT in effect between August 12, 1996 and January 31, 1997.

54. Produce system-wide car and container event data for 2019 including, but not limited to:

- (a) Car initial and number (and container initial and number where applicable);
- (b) Loaded empty status;
- (c) Event time stamp;
- (d) Event location station/Standard Point Location Code (maintained by the National Motor Freight Traffic Association);
- (e) Event location railroad;
- (f) Reporting railroad; and

(g) Event type code (and decoder to extent these codes differ from those contained the Train II database maintained by Railinc).

Dated: March 16, 2022

/s/ William A. Mullins

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Counsel for CP

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Applicants' First Set of Interrogatories and Second Set of Discovery Requests to UP to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Sonia Gupta

Sonia Gupta

March 16, 2022

Exhibit G

51159
EB

SERVICE DATE – MARCH 16, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500

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

—CONTROL—

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

Docket No. FD 36500 (Sub-No. 1)

ILLINOIS CENTRAL RAILROAD COMPANY—ACQUISITION OF A LINE OF
RAILROAD BETWEEN KANSAS CITY, MO., AND SPRINGFIELD AND EAST ST. LOUIS,
ILL.—KANSAS CITY SOUTHERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 2)

ILLINOIS CENTRAL RAILROAD COMPANY—TRACKAGE RIGHTS BETWEEN
AIRLINE JUNCTION, MO., AND GRANDVIEW, MO.—
KANSAS CITY SOUTHERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD
COMPANY—CONTROL—GATEWAY EASTERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 4)

ILLINOIS CENTRAL RAILROAD COMPANY—ASSIGNMENT OF KCS TRACKAGE
RIGHTS BETWEEN ROCK CREEK JUNCTION, MO., AND AIRLINE JUNCTION, MO.—
UNION PACIFIC RAILROAD COMPANY

Docket No. FD 36500 (Sub-No. 5)

NORFOLK SOUTHERN RAILWAY COMPANY—TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN

Decision No. 16

Digest:¹ The Board directs applicants to address an apparent inconsistency in certain data submitted to the Board, provides an opportunity for other parties to reply to applicants' submission, and suspends the procedural schedule. This decision also explains the service requirements for the sub-docketed proceedings.

Decided: March 16, 2022

On October 29, 2021, Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants), filed an application (Application) seeking Board approval for the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corporation, of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates (Transaction).

Clarification of Data. As part of their Application, Applicants submitted traffic density charts in Exhibit 14 as required by 49 C.F.R. § 1180.8(a)(5).² (Appl., Vol. II, Ex. 14 at 462-516.) Exhibit 14 shows CP and KCS lines that handle one million or more gross ton-miles per mile of road (GT/M) per year and respective densities, broken down by segments of such lines between major freight yards and terminals. Applicants' Exhibit 14 contains 2019 baseline and 2020 GT/M data for CP and KCS lines, as well as estimated GT/M levels upon full integration of the CP-KCS networks that would be expected to occur three years following Board approval of the Transaction, referred to as "Growth Plan Year 3."

On October 28, 2021, one day before filing the Application, Canadian Pacific responded to an information request from the Board's Office of Environmental Analysis (OEA), submitting requested materials that were developed in cooperation with KCS. (CP Response to OEA Information Request No. 1 (CP Response No. 1), Oct. 28, 2021.) CP's submission includes a "Master Segment Table," which contains, among other things, 2019 baseline GT/M data for CP and KCS lines. (CP Response No. 1, Master Segment Table.) However, it appears that the 2019 baseline GT/M data in the Master Segment Table submitted to OEA are different from the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The proposed Transaction is subject to the regulations set forth at 49 C.F.R. part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 C.F.R. § 1180.0(b). See Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 2-3 (STB served Apr. 23, 2021).

2019 baseline GT/M data in Exhibit 14 of the Application. (Compare, e.g., Appl., Vol. II, Ex. 14 at 498 (showing the Kansas City, Mo.-Slater, Mo. segment having 10.376 million average GT/M in 2019), with CP Response No. 1, Master Segment Table at 7 (showing the Kansas City, Mo.-Slater, Mo. segment having 5.83 million GT/M in 2019).)

This apparent inconsistency has been raised in the context of the responsive application filed by Canadian National Railway Company and its rail operating subsidiaries (collectively, CN). In a reply to CN's January 12, 2022 description of its anticipated responsive application, Applicants fault CN's use of the 2019 baseline GT/M data for rail segments that constitute KCS's Springfield Line, which were taken from Exhibit 14 of the Application. (Applicants Reply 8-10, Jan. 28, 2022.) Applicants state that the data presented by CN "reflects an apples-to-oranges comparison between two very different calculations of traffic density on the Line," and proffer data to provide "a correct, apples-to-apples comparison," which appear to be the 2019 baseline data submitted to OEA and which, according to Applicants, were readily available in the Application workpapers submitted last fall. (*Id.* at 9.) Applicants suggest that the two sets of baseline data resulted from differences in how KCS and CP calculate such data. Specifically, Applicants state that the 2019 baseline data taken from Exhibit 14 and used by CN "were calculated as KCS does in the ordinary course, treating all gross tons that touch a segment as present for all the miles of a segment," whereas the estimated "Growth Plan Year 3" data from Exhibit 14 that was presented by CN "were calculated as CP does in the ordinary course, treating gross tons as on the segment only for the actual miles they traversed." (*Id.* at 9 n.7.)

The Board will direct Applicants to explain further this apparent inconsistency between the 2019 baseline GT/M data in Exhibit 14 and the 2019 baseline GT/M data submitted to OEA, and to indicate which 2019 baseline data should be used in analyzing the environmental and transportation impacts of the Transaction, and the reasons why that data should be used. Should Applicants conclude that they wish to supplement or amend Exhibit 14, Applicants shall indicate what, if any, other data or information in the Application should be revised accordingly, and any necessary changes to the procedural schedule. Other parties will have an opportunity to respond.

Applicants shall be directed to provide the Board with this information by March 21, 2022. Replies to Applicants' submission will be due no later than five days after the filed date of Applicants' submission.³ The Board will suspend the procedural schedule in this proceeding, pending further order by the Board.

Filings in Sub-docketed Proceedings. On February 28, 2022, CN filed a responsive application in Docket Nos. FD 36500 (Sub-No. 1), FD 36500 (Sub-No. 2), FD 36500 (Sub-No. 3), and FD 36500 (Sub-No. 4). Also on February 28, 2022, Norfolk Southern Railway Company filed a responsive application in Docket No. FD 36500 (Sub-No. 5). Any filing submitted in any of these sub-docketed proceedings is subject to the same service requirements applicable to filings in the primary docket, see Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 2 (STB served Nov. 23, 2021), and must also be served on all parties of record in each sub-docket.

³ If the fifth day falls on a weekend or holiday, the due date will be the next business day. See 49 C.F.R. § 1104.7(a).

It is ordered:

1. Applicants shall provide the information described above by March 21, 2022. Replies to the information provided by Applicants are due no later than five days following Applicants' submission.
2. The procedural schedule in this proceeding is suspended until further order by the Board.
3. Any filing submitted in Docket Nos. FD 36500 (Sub-No. 1), FD 36500 (Sub-No. 2), FD 36500 (Sub-No. 3), FD 36500 (Sub-No. 4), and FD 36500 (Sub-No. 5), is subject to the same service requirements applicable to filings in the primary docket and must be served on all parties of record in each sub-docket.
4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Exhibit H

From: Cyr, Marc-André O.
Sent: Thursday, May 5, 2022 11:45 AM
To: Rosenthal, Michael
Cc: Orlich, Frank P.; 'WMullins@bakerandmiller.com'; Paris, Adam S.; Hynes, Samantha F.; Sarnoff, Zachary A.; Heflin, Jason O.; Agarwal, Pratik; Lu, Alisa Y.; 'david@meyerlawdc.com'
Subject: RE: [EXTERNAL] RE: FD 36500 - UP discovery responses

That works. I will circulate a zoom invite.

Thanks,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Date: Thursday, May 05, 2022, 11:43
To: Cyr, Marc-André O. <cym@sullcrom.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>, 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>, Paris, Adam S. <Parisa@sullcrom.com>, Hynes, Samantha F. <hyness@sullcrom.com>, Sarnoff, Zachary A. <sarnoffz@sullcrom.com>, Heflin, Jason O. <heflinj@sullcrom.com>, Agarwal, Pratik <PAgarwal@cov.com>, Lu, Alisa Y. <lua@sullcrom.com>, 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

Thanks. How about 4:00 pm?

Regards,

Mike

From: Cyr, Marc-André O. <cym@sullcrom.com>
Sent: Thursday, May 05, 2022 11:39 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

We are available between 9:00-10:30 am EST and after 3:00 pm EST. Do any of these times work on your end?

Regards,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, May 05, 2022 10:44 AM
To: Cyr, Marc-André O. <cyrm@sullcrom.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

How does your schedule look on Monday?

Regards,

Mike

From: Cyr, Marc-André O. <cyrm@sullcrom.com>
Sent: Wednesday, May 04, 2022 11:35 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Hi Mike,

When would you be available to discuss?

Regards,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Wednesday, May 04, 2022 6:42 PM
To: Cyr, Marc-André O. <cyrm@sullcrom.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

I've provided responses below in red text.

Regards,

Mike

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Monday, May 02, 2022 6:36 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A.

<sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>

Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

What we proposed on April 12 is below, but I am recopying it here for convenience.

Regards,

Marc-André

* * * * *

Mike,

Thank you for speaking with us on Wednesday, April 6 and Friday, April 8 regarding UP's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests. Please find the categories of the requests we discussed below, with a summary of UP and Applicants' discussions and next steps. Applicants also understand UP as agreeing to produce documents it had agreed to produce in its R&Os, and that it will produce documents on a rolling basis, irrespective of the STB's decision to suspend the procedural schedule. Unless otherwise stated, UP and Applicants agree to continue to meet and confer regarding these Requests if needed.

Category 1: Data Requests

- Req. No. 54

Request No. 54 from Applicants' Second Set of Discovery Requests asks for certain system-wide car and container event data. UP continues to object to producing this data on grounds of lack of relevancy. Applicants and UP agreed to discuss this issue further.

Union Pacific has produced responsive data.

Category 2: Capacity/Operations Since 2018

- Interrogatory No. 2
- Req. Nos. 20, 39, 48

Applicants and UP discussed these requests about changes in operations in the Houston area in the time period corresponding to UP's implementation of PSR. Applicants request documents dating back to 2018. UP will confer about the reasonableness of this request but will simultaneously search for documents, as defined in Applicants' requests, on "studies, gateways, operations in the Houston area," including documents that relate to closing the Pine Bluff Hump

Yard and shifting work to Kansas City and Houston, and any retrospective analysis UP has performed evaluating those decisions.

As discussed at the meet and confer, UP continues to object for the reasons stated in its responses and objections. However, UP is continuing to search for "higher level" documents describing UP's implementation of Unified Plan 2020 in relation to Houston-area operations and similar documents containing retrospective analyses of the implementation.

Category 3: Gateways/Foreclosure

- Req. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 29.

Applicants and UP discussed these requests relevant to UP's assertions of foreclosure generally and that Ferromex service via the Eagle Pass Gateway cannot provide an effective substitute to KCSM service via the Laredo Gateway. Applicants request documents dating back to 2004. UP offered to search for "studies or analyses UP has performed regarding volume increases or efficiency improvements at the Eagles Pass Gateway" and "studies or analyses UP has performed regarding shifts of traffic from Laredo to Eagle Pass and El Paso."

As discussed at the meet and confer, UP continues to object for the reasons stated in its responses and objections. However, UP agreed to search for and produce studies and analyses it has performed regarding volume increases and efficiency improvements at Eagle Pass and studies or analysis it has performed regarding shifting traffic from Laredo to Eagle Pass or El Paso, to the extent such documents exist in electronic form.

Category 4: Capacity in general

- Interrogatory Nos. 1, 3
- Req. Nos. 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 52, 53

Applicants agreed to consolidate these requests and provide definitive time periods and geographic scopes for these requests, and have done so below.

- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of rail lines and facilities owned by Applicants over or across which UP operates, such as the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision, from January 1, 2018 to present.
 - Geographic region: the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision
- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of or potential capital investments in rail lines and facilities owned by UP or formerly owned by HBT, including plans or projects to alter the capacity of these rail lines or facilities, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont), from January 1, 2018 to present.
 - Geographic region: Rail lines and facilities owned by UP over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont)
- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here,

Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.

- Geographic region: Houston terminal area, as UP defines it in its comments
- Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

At the meet and confer, you agreed to further define the geography and time period. Now that you have done so, UP continues to object to the requests for "all documents" and to the extent the requests seek information from the period prior to 2018 for the reasons stated in its responses and objections. We remain willing to discuss reasonable limitations on these requests.

Category 5: Mexican Regulatory

- Req. Nos. 26, 27

Applicants and UP discussed the requests for documents or communications with third parties (such as Mexican agencies ARTF, COFECE) and internal studies or analyses regarding the possibility of UP obtaining a Mexican rail concession. Applicants request documents dating back to 2010. UP will investigate whether there are any responsive documents and the burden associated with collecting and producing these documents, while reserving its right to object to the relevancy of these two requests.

My notes from the meet and confer indicate that we discussed Document Request No. 26, not No. 27. As to No. 26, UP agreed to search while maintaining its objections. I believe UP determined that no responsive documents exist, but I need to confirm my recollection.

Category 6: Executive Documents

- Req. Nos. 28, 51

Applicants and UP discussed the requests for documents provided by UP to members of its management (directors and officers) and minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors, related to the issues in this proceeding. UP objected to Request 28 based on scope, burden, and relevance but agreed to search for responsive documents.

Applicants confirm that this request is limited to "issues in this proceeding," as defined as issues related to any of the other document requests, and that they are particularly interested in "documents analyzing or evaluating decisions made as a result of this proposed transaction" with a focus on "capacity investment and competition." Applicants also confirm that they will only request documents dating to 2018 and that UP need only search for documents that are "easily accessible."

As discussed during our meet and confer session, Document Request No. 28's request for documents provided to "members of [UP's] management includes a very large number of people -- much larger than Request No. 51's request for document provided to UP's directors. In addition, Request No. 28's request for "all documents" is objectionable for multiple reasons described in UP's responses and objections. UP did not agree to search for responsive documents. With regard to Request No. 51, UP objected to production of Board minutes or materials but agreed to investigate whether responsive information exists. UP is continuing to investigate and maintains its objections.

Category 7: Merger-related Documents

- Req. Nos. 30, 31, 32, 33, 34, 35, 50

Applicants and UP discussed these requests that concern documents related to Class 1 rail mergers generally or the CP-KCS Transaction. UP agreed to search for documents responsive to these requests that are “reasonably available” if Applicants named the proceeding(s) they are interested in. Applicants confirm that the proceedings they are interested in are the Union Pacific and Missouri Pacific and Western Pacific, Union Pacific and Missouri-Kansas-Texas, and/or Union Pacific and Chicago and North Western mergers. Applicants and UP also specifically discussed Request No. 50 from Applicants’ Second Set of Discovery Requests, which asks for communications between UP and NS regarding the Meridian Speedway. UP objected based on scope but agreed to check for responsive communications, as defined in Applicants’ requests.

I believe UP determined that it does not have reasonably available copies of materials from the proceedings you identified, but I need to confirm my recollection. I also believe UP determined it has no responsive documents reflecting communications with NS about the Meridian Speedway in connection with this transaction, but again, I need to confirm my recollection.

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, May 02, 2022 6:27 PM
To: Cyr, Marc-André O. <cym@sullcrom.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

Thanks for your note. I'll go back and review your note from April 12.

Regards,

Mike

From: Cyr, Marc-André O. <cym@sullcrom.com>
Sent: Monday, May 02, 2022 5:43 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: FW: FD 36500 - UP discovery responses

[EXTERNAL]
Mike,

In reviewing our correspondence, we noticed you said you would have some comments on my note from April 12, which we never received. Considering we have not received any non-data production from UP so far and it still seems unclear when we are going to receive the first one, we just wanted to confirm that you were ok with my note from April 12. If not, let's schedule a call to discuss.

Many thanks,

Marc-André

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Thursday, April 14, 2022 6:43 PM

To: Cyr, Marc-André O. <cyrm@sullcrom.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

Thanks for your confirmation with regard to train event data. I'm hoping we'll have car event data ready for production early next week. We're in the process of searching for other information. I'll have some comments on your note from April 12, but that isn't holding up efforts to search for and produce material where we are in agreement about discovery.

Regards,

Mike

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Wednesday, April 13, 2022 7:54 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

During our meet-and-confer on April 8, 2022, you represented that UP would be unable to produce two of the fields ("Trailing net tons" and "Direction of travel") Applicants requested in RFP No. 1, which asks for train event data, because the information is not kept in the ordinary course of business. We said we would check if there were any fields that could serve as a substitute. We are confirming that producing train event data without these two fields, but with the other information requested in RFP No. 1, is sufficient.

Separately, can you confirm that you will be able to produce system-wide car and container event data or, alternatively, the seven fields I identified in my email from yesterday?

Last, do you have an idea as to when we can be expecting your next production of documents?

Many thanks,

Marc-André Cyr

Sullivan & Cromwell LLP

T: (857) 209- 1986 | cyrm@sullcrom.com

From: Cyr, Marc-André O.

Sent: Tuesday, April 12, 2022 7:03 PM

To: 'Rosenthal, Michael' <mrosenthal@cov.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; 'Agarwal, Pratik' <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: RE: FD 36500 - UP discovery responses

Mike,

As an update to the below and in light of our phone conversation, you represented to me that in a spirit of collaboration, UP will agree to produce system-wide car and container event data for 2019 if we can find a way to make the data collection and production not too burdensome. Applicants are certainly willing to compromise and work to limit such burden. For example, Applicants would agree to substantially narrowing the “width” of the car event data requested. As to “width,” Applicants would only require the following seven fields:

1. Location
2. Event code
3. Loaded/Empty Status
4. Time stamp
5. Car/Container initial
6. Car/Container number
7. The railroad reporting the event

Applicants can also substantially reduce the “length” of this data, by agreeing to exclude the “passing stations” event type, if UP agrees to produce data which effectively links individual waybill movements to the different trains as they travel on between origin and destination (we understand that some railroads refer to this as “Train Denorm” data). We remain open to discussing other alternatives and are available to arrange a call between Applicants’ consultants and UP’s consultants in the very near term, if you need further explanation or details and if this can help speed things up.

Best,

Marc-André Cyr

Sullivan & Cromwell LLP

T: (857) 209- 1986 | cym@sullcrom.com

From: Cyr, Marc-André O.

Sent: Tuesday, April 12, 2022 5:51 PM

To: 'Rosenthal, Michael' <mrosenthal@cov.com>; David Meyer <david@meyerlawdc.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Subject: RE: FD 36500 - UP discovery responses

Mike,

Thank you for speaking with us on Wednesday, April 6 and Friday, April 8 regarding UP’s Responses and Objections to Applicants’ First Set of Interrogatories and Second Set of Discovery Requests. Please find the categories of the requests we discussed below, with a summary of UP and Applicants’ discussions and next steps. Applicants also understand UP as agreeing to produce documents it had agreed to produce in its R&Os, and that it will produce documents on a rolling

basis, irrespective of the STB's decision to suspend the procedural schedule. Unless otherwise stated, UP and Applicants agree to continue to meet and confer regarding these Requests if needed.

Category 1: Data Requests

- Req. No. 54

Request No. 54 from Applicants' Second Set of Discovery Requests asks for certain system-wide car and container event data. UP continues to object to producing this data on grounds of lack of relevancy. Applicants and UP agreed to discuss this issue further.

Category 2: Capacity/Operations Since 2018

- Interrogatory No. 2
- Req. Nos. 20, 39, 48

Applicants and UP discussed these requests about changes in operations in the Houston area in the time period corresponding to UP's implementation of PSR. Applicants request documents dating back to 2018. UP will confer about the reasonableness of this request but will simultaneously search for documents, as defined in Applicants' requests, on "studies, gateways, operations in the Houston area," including documents that relate to closing the Pine Bluff Hump Yard and shifting work to Kansas City and Houston, and any retrospective analysis UP has performed evaluating those decisions.

Category 3: Gateways/Foreclosure

- Req. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 29.

Applicants and UP discussed these requests relevant to UP's assertions of foreclosure generally and that Ferromex service via the Eagle Pass Gateway cannot provide an effective substitute to KCSM service via the Laredo Gateway. Applicants request documents dating back to 2004. UP offered to search for "studies or analyses UP has performed regarding volume increases or efficiency improvements at the Eagles Pass Gateway" and "studies or analyses UP has performed regarding shifts of traffic from Laredo to Eagle Pass and El Paso."

Category 4: Capacity in general

- Interrogatory Nos. 1, 3
- Req. Nos. 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 52, 53

Applicants agreed to consolidate these requests and provide definitive time periods and geographic scopes for these requests, and have done so below.

- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of rail lines and facilities owned by Applicants over or across which UP operates, such as the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision, from January 1, 2018 to present.
 - Geographic region: the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision
- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of or potential capital investments in rail lines and facilities owned by UP or formerly owned by HBT, including plans or projects to alter the capacity of these rail lines or facilities, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont), from January 1, 2018 to present.

- Geographic region: Rail lines and facilities owned by UP over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont)
- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here, Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.
 - Geographic region: Houston terminal area, as UP defines it in its comments
- Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

Category 5: Mexican Regulatory

- Req. Nos. 26, 27

Applicants and UP discussed the requests for documents or communications with third parties (such as Mexican agencies ARTF, COFECE) and internal studies or analyses regarding the possibility of UP obtaining a Mexican rail concession. Applicants request documents dating back to 2010. UP will investigate whether there are any responsive documents and the burden associated with collecting and producing these documents, while reserving its right to object to the relevancy of these two requests.

Category 6: Executive Documents

- Req. Nos. 28, 51

Applicants and UP discussed the requests for documents provided by UP to members of its management (directors and officers) and minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors, related to the issues in this proceeding. UP objected to Request 28 based on scope, burden, and relevance but agreed to search for responsive documents.

Applicants confirm that this request is limited to "issues in this proceeding," as defined as issues related to any of the other document requests, and that they are particularly interested in "documents analyzing or evaluating decisions made as a result of this proposed transaction" with a focus on "capacity investment and competition." Applicants also confirm that they will only request documents dating to 2018 and that UP need only search for documents that are "easily accessible."

Category 7: Merger-related Documents

- Req. Nos. 30, 31, 32, 33, 34, 35, 50

Applicants and UP discussed these requests that concern documents related to Class 1 rail mergers generally or the CP-KCS Transaction. UP agreed to search for documents responsive to these requests that are "reasonably available" if Applicants named the proceeding(s) they are interested in. Applicants confirm that the proceedings they are interested in are the Union Pacific and Missouri Pacific and Western Pacific, Union Pacific and Missouri-Kansas-Texas, and/or Union Pacific and Chicago and North Western mergers. Applicants and UP also specifically discussed Request No. 50 from Applicants' Second Set of Discovery Requests, which asks for communications between UP and NS regarding the Meridian Speedway. UP objected based on scope but agreed to check for responsive communications, as defined in Applicants' requests.

Best,

Marc-André

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, April 07, 2022 9:23 AM
To: David Meyer <david@meyerlawdc.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

David,

Either you misunderstood my email, or you are intentionally misrepresenting what I said. In any event, we can save the discussion for the continuation of our meet and confer on Friday. I don't think further emails will be productive.

Regards,

Mike

From: David Meyer <david@meyerlawdc.com>
Sent: Thursday, April 07, 2022 9:16 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: Re: FD 36500 - UP discovery responses

[EXTERNAL]

Mike

Thank you for confirming that there was no data underlying Mr. Haley's testimony, but that is irrelevant to our entitlement to test assertions about the inherent superiority of UP's routes and service, which underlie (false) assertions that CPKC will be compelled to foreclose UP in order to win. Our request stands.

David

Sent from my iPhone

On Apr 7, 2022, at 9:12 AM, Rosenthal, Michael <mrosenthal@cov.com> wrote:

Frank,

Thank you for your email. Now that I understand the basis for Applicants' Request No. 54, I ask that you withdraw the request. Assuming the UP witness you are referencing is Mr. Haley, you are not accurately

characterizing his statement. More important for discovery purposes, Applicants are incorrect in believing that the car movement data they are seeking in Request No. 54 are "data underlying" Mr. Haley's statement (without regard to your mischaracterization of his statement). Stated differently, Mr. Haley did not present data regarding actual transit times that were drawn from car movement data or other sources. Finally, with respect to your experts, they're not in a position to determine what would be more burdensome to UP -- but given your misunderstanding about UP's use of the data in its evidence, there now does not appear to be any basis for producing the data, regardless of geographic limitation, especially given the context of this proceeding.

Regards,

Mike

From: Orlich, Frank P. <orlichf@sullcrom.com>
Sent: Wednesday, April 06, 2022 11:27 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

As agreed during the meet-and-confer, we are following up on whether we would agree to narrow Req. No. 54 geographically to Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Texas, and Wisconsin. After consulting with our experts, it appears that narrowing this request to a subset of states will be more burdensome for UP and less helpful for Applicants. Therefore, we will maintain Req. No. 54 as currently drafted.

UP's witnesses claim that having the shortest transit time, as determined by who has the shortest route length, is the "merit" that wins a shipper's business, free of rate reduction or foreclosure. Applicants are seeking the data underlying this assertion. In order to properly evaluate this claim, Applicants require all railroad traffic patterns, not just those limited to, for example, Laredo to Chicago. For example, auto shippers in Mexico may exhibit patterns regarding railroad choice, route length, and transit time to move traffic to the West Coast, which would show how they weigh these factors.

Best,
Frank

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Tuesday, April 5, 2022 9:55 AM
To: Lu, Alisa Y. <lua@sullcrom.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Sorry - 12:00-12:30 and 3:00-4:00 won't work, but other times are still open tomorrow.

From: Lu, Alisa Y. <lua@sullcrom.com>
Sent: Tuesday, April 05, 2022 9:44 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

We are available to meet at 3 p.m. ET tomorrow, April 6. Please let us know if that time works for you and we can circulate a Zoom link.

Thank you,
Alisa

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, April 4, 2022 5:37 PM
To: Lu, Alisa Y. <lua@sullcrom.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Alisa,

We'd be happy to talk on Wednesday or Friday of this week.

Regards,

Mike

From: Lu, Alisa Y. <lua@sullcrom.com>
Sent: Monday, April 04, 2022 10:54 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

Please let us know when you are available this week to meet-and-confer regarding the timing of UP's production of its traffic tape data and UP's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests.

Thanks,

From: Michael Rosenthal <mrosenthal@cov.com>

Date: Thursday, March 31, 2022 at 7:31 PM

To: Michael Rosenthal <mrosenthal@cov.com>

Subject: FD 36500 - UP discovery responses

To parties on the STB service list for FD 36500:

Attached please find a service copy of UP's responses and objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests to Union Pacific.

Regards,

Mike Rosenthal

Michael L. Rosenthal

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5448 | mrosenthal@cov.com
www.cov.com [cov.com]

<image001.jpg>

****This is an external message from: david@meyerlawdc.com ****

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Exhibit I

From: Agarwal, Pratik <PAgarwal@cov.com>
Sent: Monday, May 2, 2022 3:53 PM
To: Cyr, Marc-André O.; Rosenthal, Michael; Lu, Alisa Y.
Cc: 'eglavich@bakerandmiller.com'; 'nathaniel.zebrowski@fticonsulting.com'; Orlich, Frank P.; 'wmullins@bakerandmiller.com'; 'david@meyerlawdc.com'; Paris, Adam S.
Subject: [EXTERNAL] RE: FD 36500 UP's Responses and Objections

Hi Marc-André,

We are working on pulling together the 2019 train event data, which we hope to have to you later this week. We are also continuing to search for responsive documents and getting our document production database up and running.

Best,
Pratik

Pratik Agarwal

T +1 202 662 5977 | pagarwal@cov.com

From: Cyr, Marc-André O. <cym@sullcrom.com>
Sent: Monday, May 2, 2022 11:06 AM
To: Agarwal, Pratik <PAgarwal@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Cc: 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>; 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>; Paris, Adam S. <Parisa@sullcrom.com>
Subject: RE: FD 36500 UP's Responses and Objections

[EXTERNAL]

Hi Pratik,

Could you please provide an update today?

Many thanks,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Cyr, Marc-André O.
Sent: Thursday, April 28, 2022 5:19 PM
To: 'Agarwal, Pratik' <PAgarwal@cov.com>; Rosenthal, Michael <mrosenthal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Cc: 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>; 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>; Paris, Adam S.

<Parisa@sullcrom.com>

Subject: RE: FD 36500 UP's Responses and Objections

Thank you Pratik. Any updates?

Best,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Agarwal, Pratik <PAgarwal@cov.com>

Sent: Tuesday, April 26, 2022 12:59 PM

To: Cyr, Marc-André O. <cym@sullcrom.com>; Rosenthal, Michael <mrosenthal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Cc: 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>; 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>; Paris, Adam S. <Parisa@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36500 UP's Responses and Objections

Hi Marc-André,

Apologies for the delay. Much of the UP team has been tied up with another STB hearing. I will coordinate with Mike and we will get back to you as soon as possible.

Best,
Pratik

Pratik Agarwal

T +1 202 662 5977 | pagarwal@cov.com

From: Cyr, Marc-André O. <cym@sullcrom.com>

Sent: Monday, April 25, 2022 3:56 PM

To: Rosenthal, Michael <mrosenthal@cov.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Cc: 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>; 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>; Paris, Adam S. <Parisa@sullcrom.com>

Subject: RE: FD 36500 UP's Responses and Objections

[EXTERNAL]

Hi Mike and Pratik,

Following up on my email from Friday, are you able to commit to a first non-data production this week?

Thanks,

Marc-André Cyr
Sullivan & Cromwell LLP

From: Cyr, Marc-André O.

Sent: Friday, April 22, 2022 4:18 PM

To: 'Rosenthal, Michael' <mrosenthal@cov.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Cc: eglavich@bakerandmiller.com; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>

Subject: RE: FD 36500 UP's Responses and Objections

Thank you for the update, Mike. Considering that there is no search involved in getting the data prepared and produced, can't you work on both at the same time? We served our discovery requests over five weeks ago—I believe a first non-data production next week would be reasonable. Could you commit to that?

Best,

Marc-André Cyr

Sullivan & Cromwell LLP

T: (857) 209- 1986 | cym@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Friday, April 22, 2022 1:23 PM

To: Cyr, Marc-André O. <cym@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Cc: eglavich@bakerandmiller.com; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36500 UP's Responses and Objections

Marc-Andre,

We've been prioritizing data. We hope to produce train movement data next week. We may be able to start producing other material next week, as part of our rolling production.

Regards,

Mike

From: Cyr, Marc-André O. <cym@sullcrom.com>

Sent: Thursday, April 21, 2022 7:29 PM

To: Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; Rosenthal, Michael <mrosenthal@cov.com>

Cc: eglavich@bakerandmiller.com; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>; Orlich, Frank P. <orlichf@sullcrom.com>

Subject: RE: FD 36500 UP's Responses and Objections

[EXTERNAL]

Hi Mike and Pratik,

Thank you for sending the car and container event data earlier today. Are you expecting being able to send us your first non-data production this week? If not, when can we expect it?

Many thanks,

Marc-André Cyr

From: Agarwal, Pratik <PAgarwal@cov.com>
Sent: Thursday, April 21, 2022 10:27 AM
To: Cyr, Marc-André O. <cyrm@sullcrom.com>; Lu, Alisa Y. <lua@sullcrom.com>; Rosenthal, Michael <mrosenthal@cov.com>; Orlich, Frank P. <orlichf@sullcrom.com>
Cc: eglavich@bakerandmiller.com; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>
Subject: [EXTERNAL] RE: FD 36500 UP's Responses and Objections

Hi Marc-André,

Can you let me know who all should receive the car event data so I can add them to the FTP site?

Thanks,
Pratik

Pratik Agarwal

T +1 202 662 5977 | pagarwal@cov.com

From: Agarwal, Pratik
Sent: Friday, April 8, 2022 4:51 PM
To: 'Cyr, Marc-André O.' <cyrm@sullcrom.com>; Lu, Alisa Y. <lua@sullcrom.com>; Rosenthal, Michael <mrosenthal@cov.com>; Orlich, Frank P. <orlichf@sullcrom.com>
Cc: eglavich@bakerandmiller.com; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>
Subject: RE: FD 36500 UP's Responses and Objections

Hi all,

You should be receiving an FTP link to download the UP traffic tape data. Please let me know if you have any issues accessing, or if anyone else needs to be able to download.

Thanks,
Pratik

Pratik Agarwal

T +1 202 662 5977 | pagarwal@cov.com

From: Cyr, Marc-André O. <cyrm@sullcrom.com>
Sent: Friday, April 8, 2022 12:18 PM
To: Lu, Alisa Y. <lua@sullcrom.com>; Rosenthal, Michael <mrosenthal@cov.com>; Agarwal, Pratik <PAgarwal@cov.com>; Orlich, Frank P. <orlichf@sullcrom.com>
Cc: eglavich@bakerandmiller.com; 'nathaniel.zebrowski@fticonsulting.com' <nathaniel.zebrowski@fticonsulting.com>
Subject: RE: FD 36500 UP's Responses and Objections

[EXTERNAL]
Pratik,

One you have the traffic tape data, could you send the link to the FTP portal to me, Erin and Nathan (cc'ed).

Thanks,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

-----Original Appointment-----

From: Lu, Alisa Y. <lua@sullcrom.com>

Sent: Wednesday, April 06, 2022 7:24 PM

To: Lu, Alisa Y.; 'Rosenthal, Michael'; Agarwal, Pratik; WMullins@bakerandmiller.com; eglavich@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S.; Hynes, Samantha F.; Sarnoff, Zachary A.; Heflin, Jason O.; Cyr, Marc-André O.; Orlich, Frank P.

Subject: FD 36500 UP's Responses and Objections

When: Friday, April 08, 2022 10:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: <https://sullcrom.zoom.us/j/95864150948?pwd=ZmE4Rk5tNFMrTmdlWXN1SHNNODZMdz09>

Alisa Lu is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://sullcrom.zoom.us/j/95864150948?pwd=ZmE4Rk5tNFMrTmdlWXN1SHNNODZMdz09>

Meeting ID: 958 6415 0948

Passcode: 089415

One tap mobile

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Dial by your location

+1 312 626 6799 US (Chicago)

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+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

833 548 0276 US Toll-free

833 548 0282 US Toll-free

877 853 5247 US Toll-free

888 788 0099 US Toll-free

+44 203 481 5237 United Kingdom

+44 203 481 5240 United Kingdom

+44 203 901 7895 United Kingdom

+44 208 080 6591 United Kingdom

+44 208 080 6592 United Kingdom

+44 330 088 5830 United Kingdom

+44 131 460 1196 United Kingdom

0 800 031 5717 United Kingdom Toll-free

0 800 260 5801 United Kingdom Toll-free

0 800 358 2817 United Kingdom Toll-free

0 800 456 1369 United Kingdom Toll-free

+61 7 3185 3730 Australia

+61 8 6119 3900 Australia

+61 8 7150 1149 Australia

+61 2 8015 6011 Australia
+61 3 7018 2005 Australia
1800 893 423 Australia Toll-free
1800 945 157 Australia Toll-free
1800 317 562 Australia Toll-free
+32 2 788 0172 Belgium
+32 2 788 0173 Belgium
+32 1579 5132 Belgium
+32 2 290 9360 Belgium
+32 2 585 5574 Belgium
+32 2 588 4188 Belgium
0 800 294 51 Belgium Toll-free
0 800 800 99 Belgium Toll-free
0 800 293 46 Belgium Toll-free
+86 10 5387 6330 China
+86 10 8783 3177 China
400 616 8835 China Toll-free
400 669 9381 China Toll-free
400 182 3168 China Toll-free
+33 1 7095 0103 France
+33 1 7095 0350 France
+33 1 8699 5831 France
+33 1 7037 2246 France
+33 1 7037 9729 France
0 800 944 049 France Toll-free
0 805 543 065 France Toll-free
0 800 940 415 France Toll-free
+49 695 050 2596 Germany
+49 69 7104 9922 Germany
+49 69 3807 9883 Germany
+49 69 3807 9884 Germany
+49 69 5050 0951 Germany
+49 69 5050 0952 Germany
0 800 000 1590 Germany Toll-free
0 800 000 6954 Germany Toll-free
0 800 1800 150 Germany Toll-free
0 800 588 9791 Germany Toll-free
+852 5803 3730 Hong Kong SAR
+852 5803 3731 Hong Kong SAR
+852 5808 6088 Hong Kong SAR
+852 3008 3297 Hong Kong SAR
800 931 189 Hong Kong SAR Toll-free
800 931 645 Hong Kong SAR Toll-free
800 906 780 Hong Kong SAR Toll-free
+81 3 4579 0545 Japan
+81 363 628 317 Japan
+81 524 564 439 Japan
+81 3 4578 1488 Japan
+81 3 4579 0432 Japan
0 120 829 768 Japan Toll-free
0 120 836 177 Japan Toll-free
00 663 381 4092 Japan Toll-free
0 800 100 5040 Japan Toll-free
+853 6262 1604 Macau SAR
0 800 191 Macau SAR Toll-free
0 800 910 Macau SAR Toll-free

+64 4 886 0026 New Zealand
+64 9 884 6780 New Zealand
+64 3 659 0603 New Zealand
0 800 307 929 New Zealand Toll-free
0 800 527 544 New Zealand Toll-free

Meeting ID: 958 6415 0948

Passcode: 089415

Find your local number: <https://sullcrom.zoom.us/j/95864150948>

Join by SIP

95864150948@zoomcrc.com

Join by H.323

162.255.37.11 (US West)

162.255.36.11 (US East)

221.122.88.195 (China)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

209.9.211.110 (Hong Kong SAR)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 958 6415 0948

Passcode: 089415

Join by Skype for Business

<https://sullcrom.zoom.us/j/95864150948>

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

****This is an external message from: PAgarwal@cov.com ****

Exhibit J

From: Cyr, Marc-André O.
Sent: Wednesday, May 4, 2022 4:52 PM
To: 'Rosenthal, Michael'
Cc: Orlich, Frank P.; 'WMullins@bakerandmiller.com'; Paris, Adam S.; Hynes, Samantha F.; Sarnoff, Zachary A.; Heflin, Jason O.; 'Agarwal, Pratik'; Lu, Alisa Y.; 'david@meyerlawdc.com'
Subject: RE: FD 36500 - UP discovery responses

Hi Mike,

Do you have any comments on the below?

Thanks,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Cyr, Marc-André O.
Sent: Monday, May 02, 2022 6:36 PM
To: 'Rosenthal, Michael' <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>
Subject: RE: FD 36500 - UP discovery responses

What we proposed on April 12 is below, but I am recopying it here for convenience.

Regards,

Marc-André

* * * * *

Mike,

Thank you for speaking with us on Wednesday, April 6 and Friday, April 8 regarding UP's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests. Please find the categories of the requests we discussed below, with a summary of UP and Applicants' discussions and next steps. Applicants also understand UP as agreeing to produce documents it had agreed to produce in its R&Os, and that it will produce documents on a rolling basis, irrespective of the STB's decision to suspend the procedural schedule. Unless otherwise stated, UP and Applicants agree to continue to meet and confer regarding these Requests if needed.

Category 1: Data Requests

- Req. No. 54

Request No. 54 from Applicants' Second Set of Discovery Requests asks for certain system-wide car and container event data. UP continues to object to producing this data on grounds of lack of relevancy. Applicants and UP agreed to discuss this issue further.

Category 2: Capacity/Operations Since 2018

- Interrogatory No. 2
- Req. Nos. 20, 39, 48

Applicants and UP discussed these requests about changes in operations in the Houston area in the time period corresponding to UP's implementation of PSR. Applicants request documents dating back to 2018. UP will confer about the reasonableness of this request but will simultaneously search for documents, as defined in Applicants' requests, on "studies, gateways, operations in the Houston area," including documents that relate to closing the Pine Bluff Hump Yard and shifting work to Kansas City and Houston, and any retrospective analysis UP has performed evaluating those decisions.

Category 3: Gateways/Foreclosure

- Req. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 29.

Applicants and UP discussed these requests relevant to UP's assertions of foreclosure generally and that Ferromex service via the Eagle Pass Gateway cannot provide an effective substitute to KCSM service via the Laredo Gateway. Applicants request documents dating back to 2004. UP offered to search for "studies or analyses UP has performed regarding volume increases or efficiency improvements at the Eagles Pass Gateway" and "studies or analyses UP has performed regarding shifts of traffic from Laredo to Eagle Pass and El Paso."

Category 4: Capacity in general

- Interrogatory Nos. 1, 3
- Req. Nos. 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 52, 53

Applicants agreed to consolidate these requests and provide definitive time periods and geographic scopes for these requests, and have done so below.

- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of rail lines and facilities owned by Applicants over or across which UP operates, such as the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision, from January 1, 2018 to present.
 - Geographic region: the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision
- Produce all Documents prepared by UP, or otherwise in UP's possession (for example, Documents resulting from studies commissioned or reviewed by UP regarding capacity), analyzing capacity of or potential capital investments in rail lines and facilities owned by UP or formerly owned by HBT, including plans or projects to alter the capacity of these rail lines or facilities, over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont), from January 1, 2018 to present.
 - Geographic region: Rail lines and facilities owned by UP over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont)
- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements

to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here, Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.

- Geographic region: Houston terminal area, as UP defines it in its comments
- Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

Category 5: Mexican Regulatory

- Req. Nos. 26, 27

Applicants and UP discussed the requests for documents or communications with third parties (such as Mexican agencies ARTF, COFECE) and internal studies or analyses regarding the possibility of UP obtaining a Mexican rail concession. Applicants request documents dating back to 2010. UP will investigate whether there are any responsive documents and the burden associated with collecting and producing these documents, while reserving its right to object to the relevancy of these two requests.

Category 6: Executive Documents

- Req. Nos. 28, 51

Applicants and UP discussed the requests for documents provided by UP to members of its management (directors and officers) and minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors, related to the issues in this proceeding. UP objected to Request 28 based on scope, burden, and relevance but agreed to search for responsive documents.

Applicants confirm that this request is limited to "issues in this proceeding," as defined as issues related to any of the other document requests, and that they are particularly interested in "documents analyzing or evaluating decisions made as a result of this proposed transaction" with a focus on "capacity investment and competition." Applicants also confirm that they will only request documents dating to 2018 and that UP need only search for documents that are "easily accessible."

Category 7: Merger-related Documents

- Req. Nos. 30, 31, 32, 33, 34, 35, 50

Applicants and UP discussed these requests that concern documents related to Class 1 rail mergers generally or the CP-KCS Transaction. UP agreed to search for documents responsive to these requests that are "reasonably available" if Applicants named the proceeding(s) they are interested in. Applicants confirm that the proceedings they are interested in are the Union Pacific and Missouri Pacific and Western Pacific, Union Pacific and Missouri-Kansas-Texas, and/or Union Pacific and Chicago and North Western mergers. Applicants and UP also specifically discussed Request No. 50 from Applicants' Second Set of Discovery Requests, which asks for communications between UP and NS regarding the Meridian Speedway. UP objected based on scope but agreed to check for responsive communications, as defined in Applicants' requests.

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@nullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Monday, May 02, 2022 6:27 PM

To: Cyr, Marc-André O. <cyrm@sullcrom.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>

Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

Thanks for your note. I'll go back and review your note from April 12.

Regards,

Mike

From: Cyr, Marc-André O. <cyrm@sullcrom.com>

Sent: Monday, May 02, 2022 5:43 PM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'david@meyerlawdc.com' <david@meyerlawdc.com>

Subject: FW: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

In reviewing our correspondence, we noticed you said you would have some comments on my note from April 12, which we never received. Considering we have not received any non-data production from UP so far and it still seems unclear when we are going to receive the first one, we just wanted to confirm that you were ok with my note from April 12. If not, let's schedule a call to discuss.

Many thanks,

Marc-André

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Thursday, April 14, 2022 6:43 PM

To: Cyr, Marc-André O. <cyrm@sullcrom.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>

Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Marc-Andre,

Thanks for your confirmation with regard to train event data. I'm hoping we'll have car event data ready for production early next week. We're in the process of searching for other information. I'll have some comments on your note from April 12, but that isn't holding up efforts to search for and produce material where we are in agreement about discovery.

Regards,

Mike

From: Cyr, Marc-André O. <cym@sullcrom.com>
Sent: Wednesday, April 13, 2022 7:54 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmilller.com' <WMullins@bakerandmilller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>
Subject: RE: FD 36500 - UP discovery responses

EXTERNAL

Mike,

During our meet-and-confer on April 8, 2022, you represented that UP would be unable to produce two of the fields ("Trailing net tons" and "Direction of travel") Applicants requested in RFP No. 1, which asks for train event data, because the information is not kept in the ordinary course of business. We said we would check if there were any fields that could serve as a substitute. We are confirming that producing train event data without these two fields, but with the other information requested in RFP No. 1, is sufficient.

Separately, can you confirm that you will be able to produce system-wide car and container event data or, alternatively, the seven fields I identified in my email from yesterday?

Last, do you have an idea as to when we can be expecting your next production of documents?

Many thanks,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Cyr, Marc-André O.
Sent: Tuesday, April 12, 2022 7:03 PM
To: 'Rosenthal, Michael' <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; 'WMullins@bakerandmilller.com' <WMullins@bakerandmilller.com>; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; 'Agarwal, Pratik' <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>
Subject: RE: FD 36500 - UP discovery responses

Mike,

As an update to the below and in light of our phone conversation, you represented to me that in a spirit of collaboration, UP will agree to produce system-wide car and container event data for 2019 if we can find a way to make the data collection and production not too burdensome. Applicants are certainly willing to compromise and work to limit such burden. For example, Applicants would agree to substantially narrowing the "width" of the car event data requested. As to "width," Applicants would only require the following seven fields:

1. Location
2. Event code
3. Loaded/Empty Status

4. Time stamp
5. Car/Container initial
6. Car/Container number
7. The railroad reporting the event

Applicants can also substantially reduce the “length” of this data, by agreeing to exclude the “passing stations” event type, if UP agrees to produce data which effectively links individual waybill movements to the different trains as they travel on between origin and destination (we understand that some railroads refer to this as “Train Denorm” data). We remain open to discussing other alternatives and are available to arrange a call between Applicants’ consultants and UP’s consultants in the very near term, if you need further explanation or details and if this can help speed things up.

Best,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Cyr, Marc-André O.

Sent: Tuesday, April 12, 2022 5:51 PM

To: 'Rosenthal, Michael' <mrosenthal@cov.com>; David Meyer <david@meyerlawdc.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>;

Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O.

<heflinj@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Subject: RE: FD 36500 - UP discovery responses

Mike,

Thank you for speaking with us on Wednesday, April 6 and Friday, April 8 regarding UP’s Responses and Objections to Applicants’ First Set of Interrogatories and Second Set of Discovery Requests. Please find the categories of the requests we discussed below, with a summary of UP and Applicants’ discussions and next steps. Applicants also understand UP as agreeing to produce documents it had agreed to produce in its R&Os, and that it will produce documents on a rolling basis, irrespective of the STB’s decision to suspend the procedural schedule. Unless otherwise stated, UP and Applicants agree to continue to meet and confer regarding these Requests if needed.

Category 1: Data Requests

- Req. No. 54

Request No. 54 from Applicants’ Second Set of Discovery Requests asks for certain system-wide car and container event data. UP continues to object to producing this data on grounds of lack of relevancy. Applicants and UP agreed to discuss this issue further.

Category 2: Capacity/Operations Since 2018

- Interrogatory No. 2
- Req. Nos. 20, 39, 48

Applicants and UP discussed these requests about changes in operations in the Houston area in the time period corresponding to UP’s implementation of PSR. Applicants request documents dating back to 2018. UP will confer about the reasonableness of this request but will simultaneously search for documents, as defined in Applicants’ requests, on “studies, gateways, operations in the Houston area,” including documents that relate to closing the Pine Bluff Hump Yard and shifting work to Kansas City and Houston, and any retrospective analysis UP has performed evaluating those decisions.

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Category 4: Capacity in general

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- Req. Nos. 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 52, 53

Applicants agreed to consolidate these requests and provide definitive time periods and geographic scopes for these requests, and have done so below.

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 - Geographic region: the KCS Neches River Bridge, the Polo Line, trackage in Clinton, IA and St. Paul, MN, the Shreveport, LA area, and CP's Davenport Subdivision
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 - Geographic region: Rail lines and facilities owned by UP over which KCS operates between Laredo, Texas and Shreveport, Louisiana (e.g., UP's rail lines between Robstown and Victoria, and UP's rail lines between Rosenberg and Beaumont)
- Produce all Documents created since 1997 studying or analyzing plans or recommendations for improvements in capacity on lines owned by UP in the Houston Terminal area. To the extent not captured by the preceding sentence, produce all Documents created since 1997 studying or analyzing recommendations on improvements to yard capacity, yard operations, and main line operating capacity in the Houston Terminal area. Here, Applicants are interested in Documents showing the plans or recommendations UP reviewed or considered, and then which plans they executed and which plans they did not.
 - Geographic region: Houston terminal area, as UP defines it in its comments
- Produce, for each line segment on UP's network, maps or other Documents sufficient to reflect the line capacity (in terms of maximum and/or sustainable number of trains as calculated by UP), the actual levels of traffic (in terms of numbers of trains), and the relationship between train counts and available capacity covering each year from 2004 to present.

Category 5: Mexican Regulatory

- Req. Nos. 26, 27

Applicants and UP discussed the requests for documents or communications with third parties (such as Mexican agencies ARTF, COFECE) and internal studies or analyses regarding the possibility of UP obtaining a Mexican rail concession. Applicants request documents dating back to 2010. UP will investigate whether there are any responsive documents and the burden associated with collecting and producing these documents, while reserving its right to object to the relevancy of these two requests.

Category 6: Executive Documents

- Req. Nos. 28, 51

Applicants and UP discussed the requests for documents provided by UP to members of its management (directors and officers) and minutes of meetings of the UP Board of Directors and any materials provided to the UP Board of Directors, related to the issues in this proceeding. UP objected to Request 28 based on scope, burden, and relevance but agreed to search for responsive documents.

Applicants confirm that this request is limited to “issues in this proceeding,” as defined as issues related to any of the other document requests, and that they are particularly interested in “documents analyzing or evaluating decisions made as a result of this proposed transaction” with a focus on “capacity investment and competition.” Applicants also confirm that they will only request documents dating to 2018 and that UP need only search for documents that are “easily accessible.”

Category 7: Merger-related Documents

- Req. Nos. 30, 31, 32, 33, 34, 35, 50

Applicants and UP discussed these requests that concern documents related to Class 1 rail mergers generally or the CP-KCS Transaction. UP agreed to search for documents responsive to these requests that are “reasonably available” if Applicants named the proceeding(s) they are interested in. Applicants confirm that the proceedings they are interested in are the Union Pacific and Missouri Pacific and Western Pacific, Union Pacific and Missouri-Kansas-Texas, and/or Union Pacific and Chicago and North Western mergers. Applicants and UP also specifically discussed Request No. 50 from Applicants’ Second Set of Discovery Requests, which asks for communications between UP and NS regarding the Meridian Speedway. UP objected based on scope but agreed to check for responsive communications, as defined in Applicants’ requests.

Best,

Marc-André

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cym@sullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Thursday, April 07, 2022 9:23 AM

To: David Meyer <david@meyerlawdc.com>

Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cym@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>

Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

David,

Either you misunderstood my email, or you are intentionally misrepresenting what I said. In any event, we can save the discussion for the continuation of our meet and confer on Friday. I don't think further emails will be productive.

Regards,

Mike

From: David Meyer <david@meyerlawdc.com>
Sent: Thursday, April 07, 2022 9:16 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Orlich, Frank P. <orlichf@sullcrom.com>; WMullins@bakerandmiller.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: Re: FD 36500 - UP discovery responses

[EXTERNAL]

Mike

Thank you for confirming that there was no data underlying Mr. Haley's testimony, but that is irrelevant to our entitlement to test assertions about the inherent superiority of UP's routes and service, which underlie (false) assertions that CPKC will be compelled to foreclose UP in order to win. Our request stands.

David

Sent from my iPhone

On Apr 7, 2022, at 9:12 AM, Rosenthal, Michael <mrosenthal@cov.com> wrote:

Frank,

Thank you for your email. Now that I understand the basis for Applicants' Request No. 54, I ask that you withdraw the request. Assuming the UP witness you are referencing is Mr. Haley, you are not accurately characterizing his statement. More important for discovery purposes, Applicants are incorrect in believing that the car movement data they are seeking in Request No. 54 are "data underlying" Mr. Haley's statement (without regard to your mischaracterization of his statement). Stated differently, Mr. Haley did not present data regarding actual transit times that were drawn from car movement data or other sources. Finally, with respect to your experts, they're not in a position to determine what would be more burdensome to UP -- but given your misunderstanding about UP's use of the data in its evidence, there now does not appear to be any basis for producing the data, regardless of geographic limitation, especially given the context of this proceeding.

Regards,

Mike

From: Orlich, Frank P. <orlichf@sullcrom.com>
Sent: Wednesday, April 06, 2022 11:27 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>; Lu, Alisa Y. <lua@sullcrom.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

As agreed during the meet-and-confer, we are following up on whether we would agree to narrow Req. No. 54 geographically to Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Texas, and Wisconsin. After consulting with our experts, it appears that narrowing this request to a subset of states will be more burdensome for UP and less helpful for Applicants. Therefore, we will maintain Req. No. 54 as currently drafted.

UP's witnesses claim that having the shortest transit time, as determined by who has the shortest route length, is the "merit" that wins a shipper's business, free of rate reduction or foreclosure. Applicants are seeking the data underlying this assertion. In order to properly evaluate this claim, Applicants require all railroad traffic patterns, not just those limited to, for example, Laredo to Chicago. For example, auto shippers in Mexico may exhibit patterns regarding railroad choice, route length, and transit time to move traffic to the West Coast, which would show how they weigh these factors.

Best,
Frank

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Tuesday, April 5, 2022 9:55 AM
To: Lu, Alisa Y. <lua@sullcrom.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Sorry - 12:00-12:30 and 3:00-4:00 won't work, but other times are still open tomorrow.

From: Lu, Alisa Y. <lua@sullcrom.com>
Sent: Tuesday, April 05, 2022 9:44 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>
Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

We are available to meet at 3 p.m. ET tomorrow, April 6. Please let us know if that time works for you and we can circulate a Zoom link.

Thank you,
Alisa

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, April 4, 2022 5:37 PM
To: Lu, Alisa Y. <lua@sullcrom.com>
Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin,

Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>; Agarwal, Pratik <PAgarwal@cov.com>

Subject: [EXTERNAL] RE: FD 36500 - UP discovery responses

Alisa,

We'd be happy to talk on Wednesday or Friday of this week.

Regards,

Mike

From: Lu, Alisa Y. <lua@sullcrom.com>

Sent: Monday, April 04, 2022 10:54 AM

To: Rosenthal, Michael <mrosenthal@cov.com>

Cc: WMullins@bakerandmiller.com; david@meyerlawdc.com; Paris, Adam S. <Parisa@sullcrom.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Heflin, Jason O. <heflinj@sullcrom.com>; Cyr, Marc-André O. <cyrm@sullcrom.com>; Orlich, Frank P. <orlichf@sullcrom.com>

Subject: RE: FD 36500 - UP discovery responses

[EXTERNAL]

Mike,

Please let us know when you are available this week to meet-and-confer regarding the timing of UP's production of its traffic tape data and UP's Responses and Objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests.

Thanks,

Alisa

From: Michael Rosenthal <mrosenthal@cov.com>

Date: Thursday, March 31, 2022 at 7:31 PM

To: Michael Rosenthal <mrosenthal@cov.com>

Subject: FD 36500 - UP discovery responses

To parties on the STB service list for FD 36500:

Attached please find a service copy of UP's responses and objections to Applicants' First Set of Interrogatories and Second Set of Discovery Requests to Union Pacific.

Regards,

Mike Rosenthal

Michael L. Rosenthal

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<image001.jpg>

****This is an external message from: david@meyerlawdc.com ****

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Exhibit K

51200
EB

SERVICE DATE – APRIL 27, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500

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

—CONTROL—

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

Docket No. FD 36500 (Sub-No. 1)

ILLINOIS CENTRAL RAILROAD COMPANY—ACQUISITION OF A LINE OF
RAILROAD BETWEEN KANSAS CITY, MO., AND SPRINGFIELD AND EAST ST. LOUIS,
ILL.—KANSAS CITY SOUTHERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 2)

ILLINOIS CENTRAL RAILROAD COMPANY—TRACKAGE RIGHTS BETWEEN
AIRLINE JUNCTION, MO., AND GRANDVIEW, MO.—
KANSAS CITY SOUTHERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD
COMPANY—CONTROL—GATEWAY EASTERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 4)

ILLINOIS CENTRAL RAILROAD COMPANY—ASSIGNMENT OF KCS TRACKAGE
RIGHTS BETWEEN ROCK CREEK JUNCTION, MO., AND AIRLINE JUNCTION, MO.—
UNION PACIFIC RAILROAD COMPANY

Docket No. FD 36500 (Sub-No. 5)

NORFOLK SOUTHERN RAILWAY COMPANY—TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN

Decision No. 17

Digest:¹ The Board finds that the environmental analysis shall be conducted using the baseline traffic density data to be resubmitted by applicants; directs applicants to file an amended Exhibit 13 to the application and to resubmit the underlying workpapers; and permits other parties to file amended comments and responsive applications. The procedural schedule will resume, as modified, upon filing of amended comments and responsive applications.

Decided: April 27, 2022

On October 29, 2021, Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants), filed an application (Application) seeking Board approval for the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corporation, of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates (Transaction).

By decision served March 16, 2022, the Board directed Applicants to explain further an apparent inconsistency between the 2019 baseline gross ton-miles per mile of road (GT/M) data in Exhibit 14 of the Application² and the 2019 baseline GT/M data contained in the “Master Segment Table” submitted to the Board’s Office of Environmental Analysis (OEA),³ and to indicate which 2019 baseline data should be used in analyzing the environmental and transportation impacts of the Transaction, and the reasons why that data should be used.

On March 21, 2022, Applicants submitted a response to the Board’s decision, explaining that the appropriate density information to use in assessing the transportation and environmental impacts of the Transaction is set forth in the 2019 “Base” data (Operating Plan Base Densities) reflected both in the Master Segment Table provided to OEA and a workpaper (Density Workpaper) underlying Exhibit 13 (Operating Plan) to the Application, and not the 2019 density data in Exhibit 14 to the Application. (Applicants Response 2-4, Mar. 21, 2022.) Applicants state that all comparisons between pre-Transaction (base year 2019) traffic levels and post-Transaction traffic levels should begin with the Operating Plan Base Densities. (Id. at 2.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² (See Appl. Vol. II, Ex. 14 at 462-516.)

³ (See CP Response to OEA Information Request No. 1, Master Segment Table, Oct. 28, 2021.)

Applicants explain that the density values in Exhibit 14 “were generated separately by CP and KCS in the ordinary course using the different methodologies” that CP and KCS used to calculate gross ton-miles, assign gross ton-miles to individual segments, and calculate the GT/M statistics reported in the Application maps and tables, but that this data “did not provide a reliable baseline for isolating the effects of Transaction-related traffic gains and operational changes.” (Id. at 4-5.) Further, Applicants state that the Operating Plan Base Densities “were developed in connection with the preparation of the Operating Plan based on methodologies that calculated densities consistently for the CP and KCS networks both pre- and post-Transaction.” (Id. at 5.)⁴

On March 28, 2022, Canadian National Railway Company and its rail operating subsidiaries (collectively, CN) filed a reply to Applicants’ response, asserting that the Operating Plan Base Densities are not a full calendar year of 2019 traffic data, but “rather a constructed data set based on a single month from a different year—October of 2020” and thus do not conform to the Board’s requirements for a full calendar year of base year density data. (CN Reply 6.) CN further asserts that other components of the Operating Plan and Application, including the base year trains per day reported to OEA, are not based on 2019 traffic data. (Id. at 7-8.) CN argues that, because the Operating Plan Base Densities are not an “accurate or reliable source for segment-specific line density values for the base year of 2019,” the Board should use the 2019 traffic density data in Exhibit 14 in evaluating the transportation and environmental impacts of the proposed Transaction. (Id. at 9, 14-15.)

Also on March 28, 2022, Norfolk Southern Railway Company (NSR) filed a reply to Applicants’ response, asserting that “Applicants are disregarding the baseline data presented in the Application and instead now are suggesting that the correct data is buried in a work paper that was provided after the Application was filed.” (NSR Reply 3.) NSR expresses concern regarding the extent to which Applicants relied on the 2019 baseline data in Exhibit 14 throughout the Application, which “cites Exhibit 14 extensively as the source underlying claimed traffic changes.” (Id.) In light of the Application’s extensive reliance on the Operating Plan and underlying data, NSR requests that the Board “require Applicants to affirm to the accuracy of all information and data contained in the Application.” (Id. at 5.) If the Board accepts Applicants’ revisions to the Application, NSR requests that the Board provide 20 days for NSR to amend its responsive application and comments and request for condition to account for the revised Application. (Id. at 6-7.)

On March 29, 2022, Applicants filed a reply to address the procedural implications of CN’s and NSR’s filings, asserting that neither warrants further suspension of the procedural schedule.

⁴ To account for the suspension of the procedural schedule, Applicants propose that the Board allow for 10 additional days for the filing of responses to comments and requests for conditions, rebuttal in support of the Application, and responses to responsive/inconsistent applications (from April 22, 2022, to May 2, 2022), and 10 additional days for rebuttals in support of the responsive applications (from May 23, 2022, to June 2, 2022). (Applicants Response 12-13, Mar. 21, 2022.)

On April 18, 2022, CN submitted a letter to OEA reiterating its argument that Applicants' 2019 baseline data are inconsistent and unreliable.

DISCUSSION AND CONCLUSIONS

Choice of Baseline Densities. A key issue at this early stage of the proceeding is which set of baseline traffic density numbers OEA should use to conduct its environmental review of the primary and responsive applications. CN argues that the Board should use the raw historical density numbers in Exhibit 14 of the Application, which, per Board regulation, must contain a “full calendar year” of baseline density data. But Applicants consider the raw data in Exhibit 14 to be flawed because of differences in how CP and KCS collected traffic density data in their ordinary courses of business, as well as for other reasons. (Applicants Response 4-5, 7, Mar. 21, 2022.)⁵ Instead, they explain, the Operating Plan in the Application is based on a different set of baseline data: the values in the Density Workpaper that are the same as the values in the Master Segment Table submitted to OEA. (*Id.* at 5-6.) According to Applicants, the Density Workpaper represents Applicants' attempt to model baseline 2019 traffic densities using data from other appropriate sources. (*See id.* at 5-6, 9.) Applicants further explain that the Operating Plan Base Densities reported in the Master Segment Table and the Density Workpaper “were generated using the same methodologies used to develop all other density data,” including the “Merger Related Growth” densities reported in the Master Segment Table, and that these consistently generated density comparisons “provide a reliable basis for assessing the Transaction's impact on traffic levels for the Board's environmental and transportation review.” (*Id.* at 12.) Applicants state that the 2019 baseline data in the Density Workpaper should be used as the basis for any comparison of pre- and post-Transaction traffic densities. (*Id.* at 2, 3.)

The Board finds that, for the sake of consistency, analysis of the Transaction's impacts, as well as analysis presented regarding the impacts of any responsive applications, should be assessed using the modeled baseline data from the Density Workpaper (to be resubmitted, as discussed below), rather than the raw historical data from Exhibit 14. According to Applicants, the modeled baseline data is reflected both in the Master Segment Table provided to OEA and in the Density Workpaper underlying Applicants' Operating Plan. Keeping consistent baselines across parties' analytical models is necessary to permit meaningful comparison. And because the Operating Plan may become the basis of the Board's findings if the Board ultimately approves the Transaction, having the Operating Plan and other models submitted by the parties use the same baseline density numbers best serves the goal of internally consistent decision-making.

⁵ Specifically, Applicants identify three perceived flaws in Exhibit 14 vis-à-vis the Density Workpaper: (1) the Exhibit 14 values include locomotive tons, whereas the Density Workpaper values exclude them; (2) the Density Workpaper values assign gross-ton mileage “based on the number of miles that a gross ton is moved across the segment, whereas for [the Exhibit 14 values for KCS] any tons touching the segment were treated as if they traversed the entire segment”; and (3) the Exhibit 14 values for certain KCS segments “reflected anomalous assignments of tonnage to particular segments that made their use problematic for purposes of pre- and post-Transaction comparisons.” (Applicants Response 4-8, Mar. 21, 2022.)

Accordingly, OEA will use the baseline density values from the resubmitted Density Workpaper in conducting its environmental review of the Transaction. OEA will also conduct any necessary environmental review for the responsive applications filed by CN and NSR using the Density Workpaper baselines, so parties should use those values when resubmitting their environmental information.

Although Applicants have provided sufficient specific information for why the raw historical data from Exhibit 14 was not used for the Operating Plan Base Densities, as discussed further below, this decision should not be interpreted as a determination by the Board on the validity of the methodology used by Applicants to generate their baseline traffic density values. Rather, the Board has determined that the same set of baseline traffic density values should be used for assessing the impacts of the primary application and responsive applications to ensure consistency of analysis. Parties remain free to argue that Applicants' data and methods are inappropriate such that Applicants cannot meet their burden to show that the Transaction would be in the public interest. See 49 U.S.C. § 11324(b), (c); 49 C.F.R. § 1180.1(b), (c) (2000).

CN's arguments do not persuade us to reject using the Density Workpaper for purposes of baseline analysis at this stage of the proceeding. CN makes two arguments: (1) that the Density Workpaper, which attempts to estimate 2019 densities from data from later years, is not an accurate or reliable estimate (notwithstanding that it has been calibrated to match the Exhibit 14 densities on a systemwide basis) ; and (2) that its use violates the regulatory requirement that "[d]ata shown in the density chart shall be for [a] full calendar year," 49 C.F.R. § 1180.8(a)(5) (2000). (See CN Reply 6-9, 9-16.) The first argument will not be addressed at this stage of the proceeding. As explained above, it implicates the Application's merits and will be addressed on a complete record at the merits stage, as appropriate. The second argument is unavailing. The Board's regulations require inclusion of a full calendar year of data in Exhibit 14; they do not require that applicants use those data to construct their projections in their Operating Plan. Nor do they prohibit applicants from basing the Operating Plan on modeled values rather than raw data or prohibit applicants from basing such a model on data from years other than the base year. The regulations instead give applicants "the greatest leeway" to develop evidence as appropriate in context, 49 C.F.R. § 1180.7, and relevantly require only that the Operating Plan include, among other things, "the anticipated traffic density and general categories of traffic (including numbers of trains) on all main and secondary lines in the system," 49 C.F.R. § 1180.8(a)(1). Absent more specific controlling language about how those density values must be determined, the Board cannot say that use of a "full calendar year" of raw density data from the base year, rather than estimating the data with a model, is mandatory in all operating plans or in all instances of environmental review. The Board's environmental regulations likewise do not require a specific methodology when providing rail traffic estimates to OEA. 49 C.F.R. § 1105.7(e)(5).

Procedural Next Steps. The Density Workpaper is now understood to be an important component in the analysis underlying the Operating Plan, yet it is not directly cited in that document. It is also subject to certain technical issues that should be addressed, as are the other workpapers associated with the Operating Plan. Therefore, to ensure that all parties understand Applicants' modeling approach and are provided a meaningful opportunity to comment, the Board is ordering the following additional procedural modifications.

Applicants will be required to amend their Operating Plan to include: (1) an explicit identification of the baseline traffic density values used in the Operating Plan calculations and to be used in the environmental review; (2) a comprehensive explanation of how those values were generated; and (3) a comprehensive explanation of the rationale underlying those methodological choices. Given the issues presented in the record to date, the Board will also require that Applicants support data claims in the Operating Plan with specific citations to relevant portions of any supporting workpapers. Applicants' amendment should include the supplemental information from their March 21, 2022 response⁶ and should take further additional steps as appropriate to fill in any identifiable gaps that remain.

Applicants will also be required to revise as necessary and resubmit all workpapers associated with their Operating Plan. The previously submitted workpapers contain technical errors that could limit their utility. For example, Applicants have at different times designated differently named files as the Density Workpaper that should be used instead of Exhibit 14.⁷ It is critical that parties and the Board know precisely which file contains the relevant data. In addition, many of the submitted workpapers rely heavily on "embedded" PDFs and spreadsheets within the same document, but those embedded documents were not provided. Similarly, many submitted spreadsheets "link" to source data spreadsheets that were not provided. Therefore, in resubmitting the workpapers, Applicants must ensure that (1) each workpaper is given a precise, descriptive name and consistently referred to by that name, and (2) any files linked to or embedded within any submitted workpapers are also submitted to the Board.

Although the Board expects that the baseline traffic density values in the amended Operating Plan and workpapers will be essentially the same as those previously submitted to OEA, the Board recognizes the possibility that database contents can change over time such that recreated workpapers may not return exactly the same results. Applicants should be prepared to explain the reasons for any significant differences in values between the original and resubmitted workpapers. Applicants should also amend, through the appropriate use of errata, any portions of the Application that depend on values that have changed. Applicants' amended Application and resubmitted workpapers shall be due no later than May 27, 2022.

Parties that filed comments and/or responsive applications will be permitted to file amended comments and/or responsive applications that address the new information in the amended Application and use the modeled traffic density data in the resubmitted Density Workpaper, rather than the raw historical data from Exhibit 14, as explained above. Consistent

⁶ Applicants have supplemented Exhibit 14 with a set of density tables and maps that reflect the Operating Plan Base Densities, (Applicants Response, App. A, Mar. 21, 2022), as well as a table that summarizes the pertinent segment-level density data, (*id.*, App. B).

⁷ (Compare Applicants Response 2, n.3, Mar. 21, 2022 (citing "2.1.1.9.4 – FD36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles. 2021.10.22 – Working Copy with Haz Breakdown.xlsx"), with Applicants Reply to CN Responsive Appl. 9, n.8, Jan. 28, 2022 (citing "FD 36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx"); see also Applicants Response 2, n.3, Mar. 21, 2022 (citing a workpaper titled, "Trains Per Day, Gross Ton Miles, Train Miles and Train Weights - 2021.10.21.xlsx," in response to Union Pacific Railroad Company's discovery request).)

with the suggestion from NSR, amended comments and responsive applications will be due no later than 20 days following Applicants' submission.

Upon the filing of amended comments and responsive applications, the procedural schedule in this proceeding will resume as further modified below. Because the deadlines in the procedural schedule will depend on when Applicants submit their amended Application and resubmitted workpapers, the Board will publish an updated procedural schedule with specific dates upon receipt of Applicants' amended Application and resubmitted workpapers. The procedural schedule will be as follows: Responses to comments, responses to responsive applications, and the rebuttal in support of the Application, will be due 60 days from submission of Applicants' amended Application and resubmitted workpapers.⁸ Rebuttals in support of responsive applications will be due 90 days from submission of Applicants' amended Application and resubmitted workpapers. Final briefs will be due 130 days from submission of Applicants' amended Application and resubmitted workpapers.

OEA will continue to conduct the environmental review of the Transaction, as appropriate, while the procedural schedule remains suspended. However, in order to ensure that the environmental review appropriately considers Applicants' amendments to the Application and any revisions to the workpapers, OEA will not issue a Draft Environmental Impact Statement in this proceeding until after the procedural schedule resumes, as indicated above.

It is ordered:

1. Applicants shall file the specified amendments to the Application and revised workpapers, as described above, by May 27, 2022.
2. Parties may file amended comments and responsive applications, as described above, by 20 days from submission of Applicants' amended Application and resubmitted workpapers.
3. Responses to comments, responses to responsive applications, and the rebuttal in support of the Application, will be due 60 days from submission of Applicants' amended Application and resubmitted workpapers. Rebuttals in support of responsive applications will be due 90 days from submission of Applicants' amended Application and resubmitted workpapers. Final briefs will be due 130 days from submission of Applicants' amended Application and resubmitted workpapers.
4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

⁸ Applicants originally requested 25 days following the publication of the Board's notice of the Application in the Federal Register. (Applicants Pet. 7, Mar. 22, 2021.) The Board finds this amended deadline would allow sufficient time for responses and rebuttal while minimizing overall delay in the procedural schedule.

Exhibit L

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36500

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

—CONTROL—

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

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

Pursuant to 49 C.F.R. §§ 1114.21-.31, Union Pacific Railroad Company requests that Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Main & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”) respond to the following discovery requests in accordance with the Surface Transportation Board’s rules and the definitions and instructions set forth below.

Responses should be served as soon as possible, and in no event later than November 23, 2021, unless otherwise agreed to by the parties. Applicants are requested to contact the undersigned promptly to discuss any objections or questions regarding

these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS

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

12. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained.
13. “FXE” means Ferrocarril Mexicano SA de CV.
14. “IFT” means Instituto Federal de Telecomunicaciones.
15. “KCS” means Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company
16. “KCSM” means Kansas City Southern de México, S.A. de C.V. and its predecessors, including TFM, S.A. de C.V.
17. “KCSR” means The Kansas City Southern Railway Company and its U.S. rail carrier subsidiaries.
18. “KCS-TM-TFM Transaction” means KCS’s combination with TM and TFM in 2005, as described on pages 16–17 of the Verified Statement of Keith Creel.
19. “Laredo Bridge” means the International Rail Bridge over the Rio Grande River at Laredo/Nuevo Laredo.
20. “Majure VS” means the Verified Statement of W. Robert Majure contained in the Application.
21. “Ottensmeyer VS” means the Verified Statement of Patrick J. Ottensmeyer contained in the Application.
22. “Produce” means to make legible, complete, and exact copies of responsive documents and send them by expedited delivery to the undersigned counsel.

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

INSTRUCTIONS

1. References to railroads, shippers, consultants, or companies (including Applicants) include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.
2. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.
3. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable: (a) identify the type of document (*e.g.*, letter, memorandum, report, chart); identify the author, each addressee and each recipient; state the number of pages, title and date of the document, and (b) state the basis for the claim that it is privileged or otherwise not discoverable.
4. To the extent materials called for herein are confidential, UP will treat them in accordance with the Protective Order entered in this proceeding in the Decision served April 2, 2021.

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

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

REQUESTS

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

2. Produce all workpapers for the Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43. Describe in detail any conditions that Applicants are proposing to enhance competition to offset potential harms from transitional service disruptions.
44. Produce all documents studying, discussing, or analyzing whether sufficient capacity exists on KCS's line between Baton Rouge and New Orleans to accommodate Amtrak passenger service on that line. *See Creel VS*, page 20.
45. Produce all studies, analyses, and reports supporting the assertions on page 27 of the *Creel VS* that a CP-KCS combination will "dampen the likelihood" and "remove the incentives" for other Class I railroad combinations and "carries no realistic risk that other Class I railroads will be compelled to respond with their own consolidations."
46. Produce all studies, analyses, and reports that KCS relied on in evaluating CP's initial offer to acquire KCS.
47. Produce all studies, analyses, and reports that KCS relied on in evaluating CN's offer to acquire KCS.
48. Produce all studies, analyses, and reports that KCS relied on in evaluating CP's enhanced offer to acquire KCS after the Surface Transportation Board denied approval of the voting trust proposed by CN.
49. Describe in detail the cost and operating efficiencies achieved (*e.g.*, lower costs, reduced cycle times, improved service reliability) for KCS/KCSM traffic moving via the Laredo gateway as a result of the KCS-TM-TFM Transaction.
50. Produce all documents studying, analyzing, or discussing the cost and operating efficiencies achieved (*e.g.*, lower costs, reduced cycle times, improved service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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November 8, 2021

CERTIFICATE OF SERVICE

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

/s/ Michael L. Rosenthal