

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

311576

ENTERED
Office of Chief Counsel
June 9, 2026
Part of
Public Record

By E-Filing

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

June 9, 2026

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

Dear Judge Soulikias:

Applicants, the parties who have served formal discovery requests in this proceeding to date, and certain other interested parties submit the following brief description of the issues to be resolved at the June 12, 2026, discovery conference and list of attendees for each party.

I. Issues to be Resolved

A. Discovery Guidelines

On May 4, 2026, Applicants proposed a set of comprehensive discovery guidelines and moved for their entry. (UP-45/NS-43). Following discussions with other interested parties, Applicants filed a proposed set of amended discovery guidelines on May 7, 2026. (UP-48/NS-46). On May 12, 2026, the non-Applicant Class I railroad parties to this proceeding filed a competing motion to enter their own set of proposed discovery guidelines. (BNSF-25/CKPC-20/CSXT-8/CN-16).

Your Honor has requested that the parties be prepared to address the following issues with respect to the discovery guidelines:

1. Whether any changes might be warranted for requested non-party discovery pursuant to 49 U.S.C. § 1321,¹ and
2. Whether Applicants' request to limit the number of discovery requests to 50 written discovery requests is warranted considering the number of issues, including those properly regarding the Transaction's merits, outlined by the Board's Decision No. 21,

¹ This section was previously found at 49 U.S.C. § 721 but renumbered in 2015. See Pub. L. 114-110.

COVINGTON

Hon. Jenifer J. Soulikias
Administrative Law Judge
June 9, 2026
Page 2

11-17 (served May 28, 2026). If the Board stated that the matter is one for the merits, then generally, the issue is subject to discovery. See 49 C.F.R. § 1114.21(a)(1).

In addition to the above issues, the parties wish to address the following disputed issues with respect to the discovery guidelines:

1. The scope of discovery. § A.1.²
2. Limitations on who may be deposed. § C.2.a.
3. The ability to recall witnesses. § C.2.b.
4. The length of expert depositions. § C.2.c.
5. Procedure for scheduling depositions. § C.4.a.
6. Disclosure of deposition exhibit sets 24 hours before depositions. § C.8 (deleted in redline).
7. Access to deposition transcripts. § C.8 (added in redline).
8. Timeline to meet and confer regarding disputes. § F.1.
9. Page limits for expedited letter briefing. § F.1.a-c.

B. BNSF's 2nd Motion to Compel

On May 15, 2026, BNSF filed a motion to compel the production of certain categories of documents: (i) Committed Gateway Pricing, (ii) integration planning and risks, (iii) pre- and post-merger pricing strategy, and (iv) modeling of synergies and efficiencies. (BNSF-28). Applicants replied on May 20, 2026, asserting that the motion should be denied because Applicants agreed to produce the documents sought consistent with the parties' negotiation of a comprehensive custodial production framework. (UP-58/NS-56).

C. CPKC's Motion to Compel

On May 28, 2026, after service of Decision No. 22, CPKC filed a motion to compel responses to 21 discovery requests from its first set concerning merger analysis and potential downstream effects, pricing strategies, growth strategies, interline initiatives, and service and operations. (CPKC-24). Applicants replied on June 9, 2026. (UP-64/NS-62).

² Non-Applicant Class I railroads' modifications to Applicants' amended guidelines are shown in the redline attached as Appendix B to BNSF-25/CKPC-20/CSXT-8/CN-16.

COVINGTON

Hon. Jenifer J. Soulikias
Administrative Law Judge
June 9, 2026
Page 3

II. List of Attendees

A. Union Pacific

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

B. Norfolk Southern

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

C. BNSF

1. Daniel Donovan
2. McClain Thompson

D. CPKC

1. Joseph J. Matelis
2. David L. Meyer
3. Dylan Aluise

E. CN

1. Sara Razi
2. Abram Ellis
3. Avia Gridi
4. Valerie Quinn

F. CSX

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

G. American Chemistry Council, Alliance for Chemical Distribution, American Fuel and Petrochemical Manufacturers, National Industrial Transportation League, The Fertilizer Institute

1. Jason Tutrone

COVINGTON

Hon. Jenifer J. Soulikias
Administrative Law Judge
June 9, 2026
Page 4

Sincerely,

/s/ Matthew J. Warren
Matthew J. Warren
Stephen S. Laudone
William A. Mullins
Spencer M. Naake
*Attorneys for Norfolk Southern
Corporation and Norfolk
Southern Railway Company*

/s/ David L. Meyer
David L. Meyer
Joseph J. Matelis
Dylan Aluise
*Counsel for Canadian
Pacific Railway Co.*

/s/ Sara Y. Razi
Sara Y. Razi
Counsel for CN

/s/ Jason Tutrone
Jason Tutrone
*Counsel for American Chemistry
Council, Alliance for Chemical
Distribution, American Fuel and
Petrochemical Manufacturers,
National Industrial Transportation
League, and The Fertilizer Institute*

/s/ Laura Flahive Wu
Laura Flahive Wu
Kevin M. Kelly
*Attorneys for Union Pacific
Corporation and Union
Pacific Railroad Company*

/s/ Daniel T. Donovan
Daniel T. Donovan
Counsel for BNSF Railway Co.

/s/ Eric Enson
Eric Enson
Counsel for CSX Transportation, Inc.

cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of June, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Daniel Damitio