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BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

MOTION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS-MECHANICAL DIVISION; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT #19; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND TRANSPORTATION COMMUNICATIONS UNION/IAM TO RE-DESIGNATE THE EMPLOYEE IMPACT EXHIBITS AS PUBLIC

Pursuant to Paragraph 10 of the Protective Order in this proceeding,[1] the unions participating as the Allied Rail Unions ("ARU"): Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; International Association of

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[1] The Board entered a protective order in this proceeding on August 5, 2025. *See* Decision No. 1, FD 36873 (STB served Aug. 5, 2025) [hereinafter "Protective Order"].

Machinists and Aerospace Workers District #19, and Transportation Communications Union/IAM; and the Brotherhood of Locomotive Engineers and Trainmen, and International Brotherhood of Electrical Workers, (collectively "Union Movants") respectfully request an Order re-designating as "Public" certain exhibits included in the Application in the above-captioned proceeding[2] that were designated by the Applicants[3] as "Highly Confidential". Specifically, Union Movants request that the Board re-designate the employee impact exhibits, found in Electronic Appendices A and B of the Application ("Employee Impact Exhibits")[4], from Highly Confidential to Public. Applicants have improperly designated the Employee Impact Exhibits, which do not include commercially sensitive information, as Highly Confidential, even though the designation does not meet the standards for the designation set forth in the Protective Order.

In their Application, Applicants provided the Employee Impact Exhibits, which demonstrate the anticipated effects of the proposed merger on Union Pacific and Norfolk Southern craft union represented employees and management employees. The Employee Impact Exhibits provide the job classification, current job locations, numbers of positions abolished, created, or designated as "transferred" because of the proposed merger, along with the job "transfer" locations for current union-represented and management positions at both Union Pacific and Norfolk Southern. The Employee Impact Exhibits do not include any competitively

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[2] The Application means the amended application filed on April 30, 2026. *See* UP-39/NS-37, FD 36873 (filed Apr. 30, 2026) [hereinafter "the Application"].

[3] Applicants refers collectively to Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP") (collectively, "Union Pacific") and Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NS") (collectively, "Norfolk Southern").

[4] "Employee Impact Exhibit – Craft Employees," Electronic Appendix A, UP-39/NS-37, FD 36873; "Employee Impact Exhibit – Management Employees," Electronic Appendix B, UP-39/NS-37 FD 36873.

sensitive or personal information such as individual employee names or identifying information, or information about employee wages or benefits.[5]

By emails with counsel for Applicants on January 1, 2026 and June 9, 2026, counsel for Union Movants requested that Applicants re-designate the Employee Impact Exhibits as Public. In emails dated January 13, 2026 and June 23, 2026, Applicants declined Union Movants' request and insisted that the Employee Impact Exhibits remain Highly Confidential. A copy of the email exchanges between counsel for Movant Unions and counsel for Applicants is submitted along with this motion.

Under the Protective Order, any party "may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information*,* as Highly Confidential."[6] The Employee Impact Exhibits do not include information deemed Confidential or Highly Confidential under the Protective Order. Accordingly, Union Movants respectfully request that the Employee Impact Exhibits be re-designated as Public.

ARGUMENT

I. Applicants Have Improperly Designated the Employee Impact Exhibits as Highly Confidential.

Per the Protective Order, any party may designate papers filed or served in these proceedings that contain Confidential Information as Confidential.[7] Confidential Information includes "traffic data (including but not limited to waybills, abstracts, study movement sheets,

[5] The Protective Order does not contemplate confidentiality protections for personal or personally identifying information. Nevertheless, the Movant Unions do not seek to treat as public any document that includes personal or personally identifying information.

[6] *See* Protective Order, Decision No.1 at 4.

[7] *Id.* at 4.

and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information."[8] For filings that include types of Confidential Information that are particularly sensitive, specifically "material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information," a party may designate papers as Highly Confidential.[9] Confidential information may be accessed by parties who have executed the Protective Order. Highly Confidential information may be viewed only by a party's outside counsel or outside consultants that have executed the Protective Order. No unions, shippers, interested parties, or members of the public may view or analyze information that has been designated Highly Confidential.

The careful application of confidentiality designations is crucial because "the general public has an interest in Board proceedings being as open and transparent as possible."[10] In merger proceedings, the Board bears a significant responsibility in determining whether a transaction serves the public interest, including consideration of a proposed transaction's effect on rail carrier employees.[11] Public comments from other parties assist the Board in making this

[8] *Id.* at 3.

[9] *Id.* at 4.

[10] *Urgent Issues in Freight Rail Serv.—R.R. Reporting*, EP 770 (Sub-No. 1), slip op. at 6 (STB served Mar. 14, 2024).

[11] 49 U.S.C. § 11324(b) (directing the Board to consider "the interest of rail carrier employees affected by the proposed transaction").

determination.[12] It is important that only information that is genuinely commercially sensitive and proprietary be designated as Highly Confidential; otherwise, interested parties may be limited in taking full advantage of their rightful opportunity to comment.[13] To encourage fulsome participation by all interested parties, the Board should provide parties with a full opportunity to review evidence concerning the impact of the proposed merger, including evidence of the merger's impact on labor and rail employees.[14]

In evaluating confidentiality designations, the Board has made it clear that it must strike a balance between legitimate access and legitimate protection.[15] Maintaining that balance here requires that the Employee Impact Exhibits be re-designated as Public. As stated above, the Employee Impact Exhibits provide the job classification, current job location, number of positions abolished, created, or described as "transferred" because of the proposed merger, and the job "transfer" location for current management and craft employment positions at both Union Pacific and Norfolk Southern. They do not contain shipper-specific rate or cost data or competitively sensitive or proprietary information; nor do they contain information such as employee identifying information, employee wages, or benefits. Therefore, they cannot be

[12] *See* 49 U.S.C. §§ 11324, 11325; *see also* 49 C.F.R. § 1180.1(m) ("To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties.").

[13] *See Central Oregon & Pac. R.R., Inc. – Abandonment, and Discontinuance of Service - In Coos, Douglas, and Lane Counties. OR*, AB 515 (Sub-No. 2), slip op. at 3 (STB served Aug. 15, 2008) (recognized that maintaining an inappropriate Highly Confidential or Confidential designation imposes unnecessary costs on all interested parties using that information).

[14] *See* 49 C.F.R. § 1180.1(m) (encouraging public participation of affected rail labor parties in merger proceedings to facilitate development of a full record on the effects of the proposed merger).

[15] *Id.* at 4.

properly designated as Highly Confidential by the terms of the Protective Order.[16] These exhibits also cannot be properly designated as Confidential because they do not contain traffic data or other confidential or proprietary business information. In fact, employee impact exhibits have been classified as Public in previous STB rail merger proceedings.[17] This demonstrates that these exhibits do not contain information that is legitimately confidential or proprietary business information and should therefore be re-designated as Public.

In their most request for re-designation to the Applicants, the Movant Unions, said:

> We continue to believe that the designation is improper. Your email below states that the applicants believe the unions have not shown why they need the location specific information to be public, and thus shareable with our clients, and why the gross numbers would not be sufficient. But the real question is whether there is a valid basis for applicants to designate this information Highly Confidential. We do not believe applicants have [a] valid [] basis for that designation. And, although we do not believe we need to articulate a justification for having this information deemed Public so it can be shared with our clients, I note that in order to consult with our clients regarding the positions they will take on the application, to assess applicants claims as to the nature of employee impacts and as to any potential conditions they may seek in the event the merger is approved, our clients will want to know how their members will actually be impacted and where they will be impacted. But regardless, we just believe that the designation is plainly improper, that it is not the sort of information that a confidentiality order is designed to protect, and that the designation is not consistent with prior applications.

In response to that request, Applicants responded:

> The Applicants have not changed their view that the Employee Impact Exhibit is properly designated as "Highly Confidential" for the reasons provided in my email of January 13 – that is, public disclosure of the location-specific information in the Exhibit would reveal competitively sensitive operating plans and workforce strategies, and competitors could also use the information to target Applicants' employees for

[16] *See* Protective Order at 4.

[17] In the Labor Impact Exhibit included as part of their Operating Plan, CP/KCS designated as Public the same information UP/NS seeks to designate as Highly Confidential here. *See* CP-26/KCS-14, *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 at App. Vol. 2, pg. 350-61 (filed Oct. 29, 2021); *see also* CN-2, *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company*, FD. 35087 at 248 (filed Oct. 30, 2007) (Labor Impact Exhibit included in the Application as a Public attachment to the Operating Plan).

> recruitment, which could disrupt merger implementation and place Applicants at a further competitive disadvantage.
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> As I also noted in January, Applicants provided a non-confidential version of all the information you requested, except the location-specific level of detail that gives rise to competitive concerns, in Table 15 of Applicants' Service Assurance Plan (at page 979 of Volume 2 of the Amended Application).

The Movant Unions submit that Applicants' designation of the Employee Impact exhibit as Highly Confidential is not justified on its face, and that Applicants' stated reasoning for declining re-designation are inadequate.

The Board has previously explained that "a party must do more than simply assert a desire to keep a document confidential" to justify a confidentiality designation.[18] A party must assert a commercial or competitive disadvantage that would occur if the information were made public – the fact that the information is non-public internal business information is not enough.[19] And simply saying that "public disclosure of the location-specific information in the Exhibit would reveal competitively sensitive operating plans and workforce strategies, and competitors could also use the information to target Applicants' employees for recruitment, which could disrupt merger implementation and place Applicants at a further competitive disadvantage" is not enough. Applicants have provided no explanation or support for those claims. And, the assertion that disclosure of the information designated as highly confidential would allow competitors to recruit away employees from certain locations is fundamentally specious when major employee benefits (*e.g.* the National Health and Welfare Plan) are the same for all the Class I railroads (other than one small portion of CPKC), Railroad Retirement is statutory, wage rates do not differ dramatically among the Class I's, and employees leaving UP and NSR would forfeit

[18] *Stagecoach Group PLC & Coach USA, Inc., et al.—Acquis. of Control—Twin Am., LLC,* MCF 21035, slip op. at 6 (STB served Feb. 8, 2011).

[19] *Id.*

extremely valuable seniority rights to enter at the bottom of a roster on another railroad. Frankly, this argument seems like one devised by someone without actual experience with railroad employment.

Furthermore, the Board has stated that information which is not competitively sensitive by itself does not warrant a Highly Confidential designation.[20] In *TPI*, the Board agreed with CSX that certain improperly designated information did not constitute Highly Confidential material under the definition in the protective order adopted for the proceeding (*i.e.*, "specific rate, traffic, or cost data or other competitively sensitive information") because the information, standing alone, would not be considered competitively sensitive.[21] In this case, the information in the Employee Impact Exhibits, standing alone, is not competitively sensitive, therefore a Highly Confidential designation is not justified. [22]

II. Union Movants and Other Parties Would Be Prejudiced Absent the Board Granting the Motion.

Union Movants and other parties with an interest in rail labor protections and post-merger staffing would be prejudiced absent a ruling re-designating these materials as Public.

In order to formulate positions on the proposed transaction and to develop potential requests for conditions in the event that the transaction is approved, unions need to understand the anticipated actual impact of the transaction on their members; but they will be hindered in doing so if their counsel have access to information that cannot be shared with the unions

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[20] *See Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, NOR 42121, slip op. at 4 (STB served July 15, 2011).

[21] *See id.*

[22] It must also be recognized that the unions are not competitors with UP and NSR, they are representatives of employees of those railroads who will be impacted if the transaction is authorized.

themselves. The Employee Impact Exhibits that are the subject of this motion contain information about the effect of the proposed merger on employees of both Norfolk Southern and Union Pacific, but, there is no way for Union Movants to access the information contained in the Employee Impact Exhibits that are currently classified as Highly Confidential, and therefore no way for Union Movants to adequately assess the full impacts of the proposed merger on their members. Consideration of a proposed merger's impact on labor is an important part of the Board's public interest analysis.[23] The Board is statutorily obligated to require the rail carriers involved in a proposed merger to provide a fair arrangement that is protective of their employees – the "arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board"[24] (6 years under the *New York Dock* conditions). In order to address the issue of the impact approval of the transaction would have on employees, and to negotiate a fair labor protection arrangement, interested rail labor parties must have access to information about the proposed merger's actual effects on rail employees.

Additionally, the quality of service that may be provided by a post-merger carrier, is affected by the number of employees available to provide the service.[25] Safety of service

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[23] *See Canadian National Railway Corp., et al. – Control – Illinois Central Corp., et al.*, 4 S.T.B. 122 (1999) (Commissioner Burkes, commenting) ("Not lost in this should be the interests of rail-labor. From my point of view, a finding of the public interest must include a determination of fair working conditions, wages, and enhanced job security."); *see also* 49 C.F.R. § 1180.1(m) (encouraging the participation of rail labor parties to ensure a full record on the proposed consolidation's effects).

[24] 49 U.S.C. §§ 11324(b) (4) and 11326.

[25] *See*, *Urgent Issues In Freight Rail Service—Railroad Reporting*, Ex Parte No. 770 (Sub No. 1), May 5, 2022.

provided post-merger will also be affected by staffing levels. Interested parties, such as shippers, and members of the public who have concerns about post-merger quality of service and safety have an interest in Applicants' post-merger staffing plans, but they cannot access information that has been designated as Highly Confidential – as this information is only accessible by outside counsel and outside consultants that have undertaken the proceeding's Protective Order.

CONCLUSION

For the reasons set forth herein, Union Movants respectfully request that Applicants be ordered to re-designate the Employee Impact Exhibits from Highly Confidential to Public.

Respectfully submitted,

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July 1, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Motion to be served to representatives of all Parties of Record as of the date of this filing, and to Administrative Law Judge Jenifer Soulikias by email using the addresses on the service list for this proceeding.

/s/Richard S. Edelman

Date: July 1, 2026 Richard S. Edelman