

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

ENTERED
Office of Proceedings
August 25, 2023
Part of
Public Record

COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP.
UNDER 49 U.S.C. § 24308(f) FOR SUBSTANDARD PERFORMANCE OF
AMTRAK'S SUNSET LIMITED TRAINS 1 AND 2

**UNION PACIFIC RAILROAD COMPANY'S REPLY
TO ORDER TO SHOW CAUSE**

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Union Pacific Railroad Company ("Union Pacific") hereby responds to the Board's August 18, 2023 order requiring Union Pacific to show cause for designating certain information as confidential in its submission in response to Appendix A, Part II of the Board's July 2023 decision in this matter.

Union Pacific designated the information "Confidential" for two main reasons. First, it identifies the precise locations of critical infrastructure elements along the *Sunset Limited* route that, if compromised or exploited, could result in significant operational disruption to Union Pacific. Preventing widespread circulation of such information helps protect Union Pacific and other freight railroads operating on parts of the *Sunset Limited* route, passengers on *Sunset Limited* trains, and the communities along the *Sunset Limited* route, which include three High-Threat Urban Areas.¹

Second, Union Pacific consistently treats detailed, compiled information about its specific network infrastructure as confidential, both for safety and commercial reasons,

¹ The factual statements in this paragraph are verified by Richard Holmes, Union Pacific's Assistant Vice President & Chief Information Security Officer.

Not all the redacted information relates to the critical infrastructure elements described in this paragraph, but redacting less information would pinpoint the locations of those critical elements.

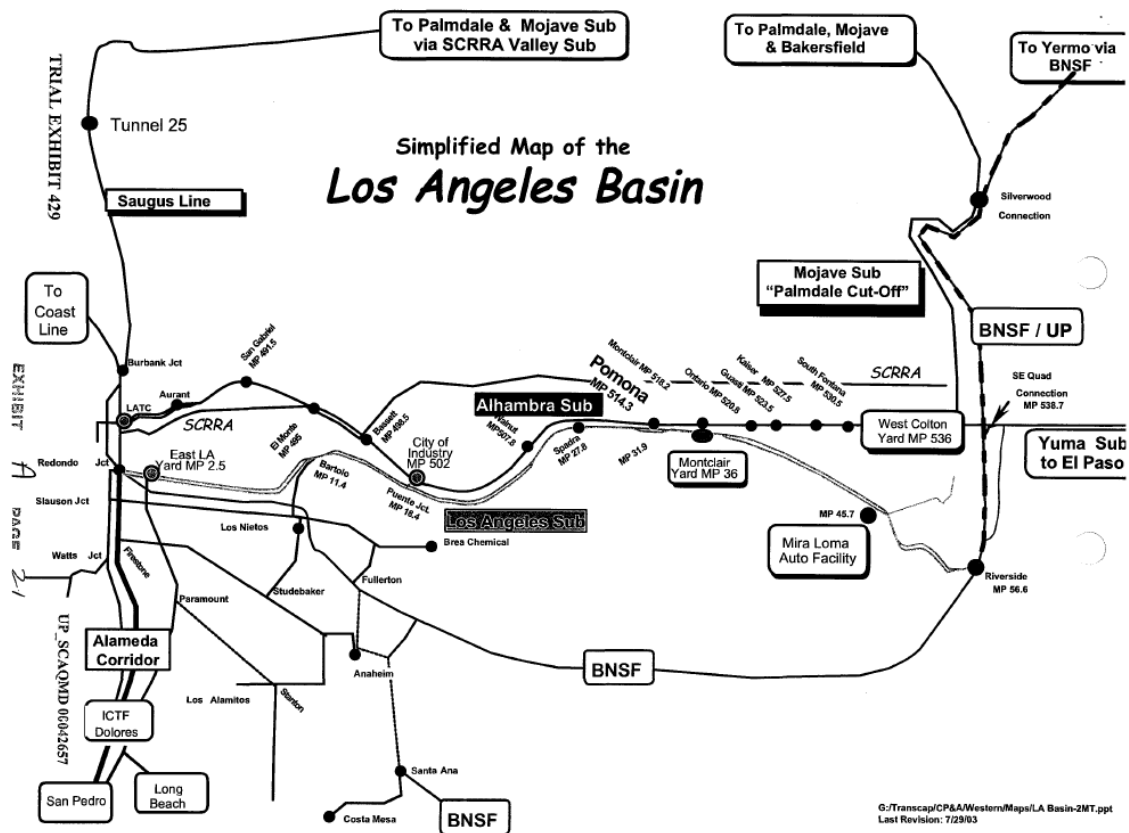
in the normal course of its business. *Cf. Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019) (holding material is “confidential” within the meaning of FOIA Exemption 4 when it “is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy”).

In its Show Cause Order, the Board says the information it requested involves “station names,” and “station names are generally publicly accessible.” Order at 5–6. However, the Board’s July decision broadly defined “Station” to mean “any named place on the railroad including control points, passenger stations, at-grade railroad crossings, junctions with another railroad, passing sidings, side-tracks, and locations in yards (e.g., throat, bowl, West hump, etc.).” July 2023 Decision at 21. As stated above, Union Pacific does not make information about the precise locations of all the requested elements of its network infrastructure publicly accessible. To the contrary, Union Pacific consistently designates materials containing the type of detailed information requested—such as track profiles and timetables—“Confidential” in Board proceedings.

The Board says in its Show Cause Order that Union Pacific “has included station names in public filings in other dockets before the Board.” Order at 6 n.8. However, neither of the filings to which the Board cited contain the detailed information the Board required Union Pacific to produce in this matter.

The first filing cited by the Board included a “Simplified Map” that identifies the locations of certain stations (defined more narrowly than the definition in this matter) and yards in the Los Angeles Basin. A copy is provided below. The information on the map is far less detailed than the information requested in this matter. By way of illustration, the Union Pacific submission in this matter identifies 17 “Stations” that

correspond to the segment on the “simplified map” between Ontario (MP 520.8) and Pomona (MP 514.3), rather than the single station identified on the “simplified map.”



The second cited filing is a page from Union Pacific’s settlement agreement with BNSF Railway in connection with the Union Pacific/Southern Pacific merger. A copy is provided below. The information in the settlement agreement simply defines the limits of certain trackage rights by reference to mileposts. It does not contain the level of detail the Board required Union Pacific to produce in this matter.

- SP's line between Beaumont and Port Arthur, TX;
- SP's line between Dayton and Baytown and East Baytown, TX;
- SP's Channelview Spur which connects to the SP's line between Houston and Iowa Junction near Sheldon, TX for the purpose, inter alia, of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;
- SP's line between Mallard Junction and Harbor, LA;
- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, LA intermodal facility (approximately UP MP 9.2).

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement,

The Board also cited a Safety Map produced by the Federal Railroad Administration ("FRA") as a public source of rail station names and milepost numbers. *See* Order at 6 n.8. However, the FRA's Safety Map identifies only road crossings using specific mileposts. And Union Pacific did *not* treat that information as Confidential: its public submission identifies road crossings and their corresponding milepost numbers. With regard to stations (as the term is typically used), the FRA's Safety Map shows their

location between mileposts and provides FSAC and SPLC information, but not specific milepost numbers. Moreover, the Safety Map does not include information about other “Stations” using the broader definition established in this matter.²

Finally, the Board states that no other party redacted the type of information at issue. *See* Order at 6. However, it must be noted that some of the other parties appear to have interpreted “Station” to exclude certain information Union Pacific believes must be included given the Order’s language. Regardless of the other interpretations of the Board’s Order, it is Union Pacific’s considered and consistent judgment that detailed information about specific network infrastructure should remain confidential.

Respectfully submitted,

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² If the level of detail provided in the Safety Map is sufficient for this matter, the Show Cause Order may be mooted through the use of FRA data.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2023, I caused a copy of the foregoing document to be served by email on Administrative Law Judge McCarthy and all parties of record in Docket No. NOR 42175.

/s/ Michael L. Rosenthal

VERIFICATION
OF
RICHARD HOLMES

I, Richard Holmes, Assistant Vice President & Chief Information Security Officer of Union Pacific Railroad Company, declare under penalty of perjury that I have read the foregoing Reply to Order to Show Cause and that the facts stated in the second paragraph are true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on August 25, 2023.

/s/ Richard Holmes