

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

Via Electronic Mail

July 7, 2026

311741

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

ENTERED
 Office of Chief Counsel
 July 7, 2026
 Part of
 Public Record

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

Dear Judge Soulikias:

Union Pacific Corporation (“UPC”) and Union Pacific Railroad Company (“UP”) (collectively, “Union Pacific”) oppose the Motion of the Allied Rail Unions (collectively, “Union Movants”) to redesignate the Employee Impact Exhibits from “Highly Confidential” to “Public.”¹ The designated material includes granular, location-specific workforce information, which would enable competitors to target Applicants’ employees for recruitment. Union Movants have failed to demonstrate that public disclosure of the location-specific information is necessary, or that they are prejudiced by the current designation, particularly given the disclosures and access already provided. Specifically, outside counsel and consultants for any Participants may review that information subject to the Protective Order and applicable undertakings.

Applicants properly designated the location-specific information contained in the Employee Impact Exhibits as “Highly Confidential.” That designation is appropriate because the information is competitively sensitive, as it contains detailed workforce and operational data. The Employee Impact Exhibits identify the number of positions anticipated to be abolished, created, or transferred during the three-year implementation period, broken down by craft and location. Public disclosure of this granular information would therefore reveal Applicants’ operating plans and workforce strategies and could enable competitors to target Applicants’ employees for recruitment.

¹ Although Union Pacific submits this response on its own behalf, the Employee Impact Exhibits contain competitively sensitive information concerning the Applicants’ workforce and implementation plans.

COVINGTON

Hon. Jenifer J. Soulikias
July 7, 2026
Page 2

The definition of “Highly Confidential” included in the Protective Order also squarely addresses this type of information.² The Employee Impact Exhibits reveal Applicants' anticipated workforce deployment and operational implementation plans at a facility-specific level, information that is not publicly available and that could provide competitors valuable insight into Applicants' post-transaction operations. Although the public Application necessarily provides some operational insight, it does not disclose the same level of detailed workforce-planning information reflected in the Employee Impact Exhibits. This distinction matters. Unlike broader projections that can be disclosed publicly, the Employee Impact Exhibits contain granular, site-specific information. That level of detail creates distinct competitive concerns and warrants “Highly Confidential” treatment. Indeed, the Board has recognized that information may properly be designated highly confidential where disclosure would reveal competitively sensitive business information and provide competitors with insight into an applicant's future operations and strategic plans.³

To support its request, Union Movants point to the fact that parties in other merger proceedings elected to publicly disclose employee-impact information. But that fact alone does not establish that Applicants are required to do so here. Confidentiality determinations are necessarily fact-specific and depend on the nature of the information at issue and the competitive implications of its disclosure. The record also does not establish what considerations informed those decisions or whether the information at issue presented comparable competitive concerns. Without that context, those prior disclosures do not show that the same result is warranted for the Employee Impact Exhibits.

Nor have Applicants withheld the location-specific data from Union Movants altogether. Union Movants' outside counsel and consultants may review that information subject to the Protective Order and applicable undertakings. Importantly, the same framework that Union Movants challenge applies equally to Applicants when reviewing sensitive information produced by other parties in this proceeding. Applicants therefore face similar limitations when reviewing sensitive materials, and those limitations do not prevent meaningful participation. Union Movants have the information necessary to evaluate and comment on the Application, including through the non-confidential summary of the anticipated employee impacts provided in Table 15 of the Service

² See Protective Order, Decision No. 1 at 5 (defining “Highly Confidential” as “material containing shipper-specific rate or cost data or other *competitively sensitive* or proprietary information”) (emphasis added).

³ See *Canadian Pacific Kansas City Ltd.—Acquisition & Operation—Certain Rail Line of Meridian & Bigbee R.R.*, FD 36732, Decision No. 3, slip op. at 5–6 (STB served Dec. 6, 2023) (upholding Highly Confidential designations for non-shipper-specific traffic data because disclosure could create competitive harm and allow competitors to “connect the dots” regarding an applicant's business strategy).

COVINGTON

Hon. Jenifer J. Soulikias
July 7, 2026
Page 3

Assurance Plan.⁴ The only information withheld from public disclosure is the location-specific data that gives rise to the competitive concerns discussed above.

Moreover, Union Movants have not demonstrated why public disclosure of the location-specific information is necessary. The Board's procedures are designed to balance the public's interest in participation and transparency with the need to protect competitively sensitive information from broader disclosure. Here, that balance has been struck appropriately: the public has access to the overall employee impacts, while counsel and outside consultants for parties may review the location-specific information under the Protective Order. Applicants' approach therefore satisfies their obligations and is fully consistent with the Board's merger regulations.

Applicants do not dispute that Union Movants have an interest in understanding the anticipated impact of the transaction on their members. However, Union Movants have failed to demonstrate that public disclosure of the location-specific information is necessary for that purpose, or that they are prejudiced by the current designation, particularly given the disclosures and access already provided.

For the foregoing reasons, Union Pacific respectfully requests that the Board deny Union Movants' Motion.

Sincerely,

/s/ Laura Flahive Wu

Laura Flahive Wu
*Attorney for Union Pacific
Corporation and Union
Pacific Railroad Company*

cc: All Parties of Record
ALJ Soulikias

⁴ See Application Volume 2 at 860.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 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/ Travis F. Cabbell