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SERVICE DATE – JULY 22, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

Digest:[1] The Board is granting a motion jointly filed by a number of labor organizations and ordering the applicants to redesignate certain employee data as public. The Board also reminds parties that, to ensure that its processes are fair, transparent, and open to all stakeholders, retaliation will not be tolerated.

Decision No. 28

Decided: July 22, 2026.

In a decision served on May 28, 2026, the Board accepted for consideration the revised, primary application filed on April 30, 2026 (the Revised Application), by Union Pacific Corporation (UPC), Union Pacific Railroad Company (UP) (collectively, Union Pacific), Norfolk Southern Corporation (NSC), and Norfolk Southern Railway Company (NS) (collectively, Norfolk Southern) (Union Pacific and Norfolk Southern collectively, Applicants). See Union Pac. Corp.—Control—Norfolk S. Corp., FD 36873 et al., slip op. at 1 (STB served May 28, 2026).[2] The Revised Application seeks Board approval for (i) the acquisition of control by UPC of NSC, and through NSC of NS and NS's rail carrier subsidiaries, and (ii) the resulting common control by UPC of UP and NS and the consolidation of the rail operations of UP and NS. Id. This proposal is referred to as the Transaction.

In the May 28 decision, the Board held the proceeding in abeyance pending further Board order and sought supplemental information from Applicants. Id.[3] The Board stated that abeyance does not affect discovery. See id. at 1, 19.

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[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 Board also accepted a related application in Union Pacific Corp.—Control—Peoria & Pekin Union Railway, Docket No. FD 36873 (Sub-No. 1).

[3] Applicants filed certain responsive information on July 7, 2026, and indicated that they intend to file the remainder of their responses on or before July 27, 2026.

A number of unions (Union Movants)[4] jointly filed a motion on July 2, 2026,[5] requesting that Applicants be ordered to redesignate as public the employee impact exhibits included in Electronic Appendices A and B of the Revised Application (the Employee Impact Exhibits). (Union Movants Mot. 1-2, July 2, 2026.) Applicants submitted these exhibits under seal with the April 30, 2026 filing and designated them as "Highly Confidential" under the protective order imposed in Union Pacific Corporation—Control—Norfolk Southern Corporation (Decision No. 1), FD 36873 (STB served Aug. 5, 2025). Union Pacific, on its own behalf, filed a reply opposing Union Movants' motion on July 7, 2026. Norfolk Southern did not submit a reply.

## DISCUSSION AND CONCLUSIONS

*Motion to Redesignate.* Although this proceeding is in abeyance, the Board has permitted discovery to continue. Union Movants' motion addresses access to materials and Board processes and is therefore appropriate to address at this time. As discussed below, the Board will grant the motion.

The terms of the protective order in this case allow a party to designate in good faith, "particular Confidential Information" as Highly Confidential, "such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information." Decision No. 1, FD 36873, slip op. at 4. Any party to these proceedings may challenge the designation by any other party of information or documents. Id. at 5.

In reviewing a designation under a protective order, the Board considers "the appropriate balance between legitimate access and legitimate protection." Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—in Coos, Douglas, & Lane Cntys., Or., AB 515 (Sub-No. 2) (Decision ID No. 39280), slip op. at 4 (STB served Aug. 15, 2008); see Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, slip op. at 2 (STB served Aug. 27, 2025) (ALJ order) (balancing the public's right to view the material with the party's right to protect its sensitive and confidential information).

The Board typically allows companies to protect from public disclosure certain proprietary and commercially sensitive information because of the risk that release of such information could have commercial and competitive consequences. Stagecoach Group PLC—Acquis. of Control—Twin America LLC, MCF 21035, slip op. at 6 (STB served Feb. 8, 2011), citing Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—in Coos, Douglas, & Lane Cntys., Or., AB 515 (Sub No. 2) (Decision ID No. 39245), slip op. at 3 (STB served Aug. 1,

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[4] The motion was filed by "the unions participating as the Allied Rail Unions ('ARU'): Brotherhood of Maintenance of Way Employes Division/IBT; the 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, and the Transportation Communications Union/IAM; and the Brotherhood of Locomotive Engineers and Trainmen, and International Brotherhood of Electrical Workers." (Union Movants Mot. 1-2, July 2, 2026.)

[5] Union Movants submitted their motion on July 1, 2026, and filed an amended version on July 2, 2026.

2008). To obtain confidential status, however, a party must do more than simply assert a desire to keep a document confidential. Stagecoach Group PLC, MCF 21035, slip op. at 6.

Here, the Employee Impact Exhibits sought by Union Movants catalog how the Transaction would affect craft and management employees. (Union Movants Mot. 2, July 2, 2026.) Specifically, the exhibits provide the job classification, current job locations, and numbers of positions that would be 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. (Id.)

Union Movants assert that the Employee Impact Exhibits are improperly designated by Applicants as Highly Confidential because they do not contain (1) shipper-specific rate or cost data; (2) competitively sensitive or proprietary information; or (3) information such as employee identifying information, employee wages, or benefits. (Id. at 5.) As such, Union Movants argue that the exhibits do not include Highly Confidential information under the terms of the protective order. (Id. at 6); Decision No. 1, FD 36873, slip op. at 4.

Union Movants add that their members would be prejudiced without the information. They explain that because the exhibits are designated Highly Confidential, they may only be viewed by a party's outside counsel or outside consultants that have executed the protective order. (Union Movants Mot. 4, July 2, 2026.) Union Movants' members therefore do not have access to the exhibits. Union Movants argue that if only the member unions' counsel have access to the potential impacts on employees, the member unions would have difficulty formulating positions. (Id. at 8-9.)

Union Pacific responds that the Highly Confidential designation is appropriate because the information is "competitively sensitive" under the protective order. (Union Pac. Reply 1, July 7, 2026.) It explains that the exhibits reveal Applicants' anticipated workforce deployment and operational implementation plans at a facility-specific level. (Id. at 2.) According to Union Pacific, facility-specific information is not publicly available and could provide competitors with insight into Applicants' post-Transaction operations. (Id.) Union Pacific is also concerned that public disclosure of the granular employment information could enable competing railroads to target Applicants' employees for recruitment. (Id. at 1-2.)

Union Pacific acknowledges that parties in other merger proceedings chose to publicly disclose employee impact information, but it claims that that fact alone does not establish that Applicants are required to do so in this case. (Id. at 2.) Union Pacific also asserts that Union Movants' members are not prejudiced by not having the location-specific data and that they have access to a summary of the anticipated employee impacts in the Service Assurance Plan included with the Revised Application. (Id. at 2-3.)

The Board finds that the Union Movants have shown that the type of information at issue has been publicly disclosed in prior proceedings and does not appear to implicate commercially or competitively sensitive concerns. As Union Movants note, in the Canadian Pacific Railway/Kansas City Southern control proceeding, the application publicly disclosed geographic information about impacts to certain types of employees. (Union Movants Mot. 6 n.17, July 2, 2026, citing Appl 2-350 to 2-361, Canadian Pac. Ry.—Control—Kan. City S., FD 36500.) Location-specific information was also publicly disclosed in other merger applications, including in Canadian National Railway—Iowa Northern Railway, FD 36744; CSX Corporation—Control—Pan Am Systems, Inc., FD 36472; and Canadian National Railway—Control—EJ&E West Company, FD 35087. Union Pacific has failed to sufficiently explain why its employee impact information is more sensitive than in other merger proceedings where applicants have typically made similar information public.

Union Pacific's argument that other railroads can use the information to recruit its employees is also unconvincing. To the extent that other carriers are interested in soliciting Union Pacific or Norfolk Southern employees, the fact that there is a proposed merger proceeding already provides such an incentive. Union Pacific also does not explain why location-specific employee information is competitively sensitive while much of their operating plan, which also includes information about where changes would occur, is not. (See, e.g., Rev. Appl. 2-706 to 2-707, 2-741 to 2-742 (Ex. 13, Operating Plan)).

For these reasons, Union Movants' motion will be granted, and Applicants will be directed to redesignate the Employee Impact Exhibits as public. Applicants will be directed to file by July 27, 2026, a redesignated version of the Employee Impact Exhibits.

*Ensuring Stakeholder Participation*. The Board is committed to ensuring that its proceedings remain open to meaningful participation by all interested persons. Rail labor, shippers, suppliers, carriers, and other stakeholders provide information that is important to the Board's analysis and must be able to do so without concerns that their commercial relationships—including, as applicable, rates and service—will be negatively affected because of their participation.

The Board is aware of reported statements alleged to have been made by UP CEO Mr. Jim Vena. See Letter from U.S. Senator Baldwin, July 17, 2026; Zach Williams, Democrat Urges Rail Regulator to Probe Alleged Merger Threats, Bloomberg Government (July 16, 2026) (providing UP's statement on the reported remarks). Applicants may take the opportunity to respond to these public reports, and address as appropriate any related concerns about public participation, as part of their supplemental responses.

The Board expects all parties to agency proceedings to refrain from statements or conduct that could deter public participation or potentially influence interested persons to provide information or views that do not reflect their own judgment. The Board will not tolerate retaliation and will ensure that its processes are fair, transparent, and open to all stakeholders. See Letter from Board Members Fuchs, Schultz, Hedlund, and Kloster to U.S. Senator Baldwin (July 22, 2026), https://www.stb.gov/wp-content/uploads/Reply-to-Sen.-Baldwin-1.pdf; see also Joint Pet. for Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disputes, EP 765, slip op. at 61 (STB served Dec. 19, 2022) (encouraging shippers that believe they are being retaliated against for pursuing permissible regulatory relief to contact the Board's Rail Customer and Public Assistance service or file formal complaints with the Board); Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions, FD 35557, slip op. at 7

(STB served June 25, 2012) ("We will not tolerate retaliatory conduct by any party in this or any agency proceeding.").

It is ordered:

1. Union Movants' motion is granted, and Applicants are directed to redesignate the Employee Impact Exhibits as public.

2. Applicants shall file redesignated versions of the Employee Impact Exhibits by July 27, 2026.

3. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.