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August 13, 2026

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Hon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Chief Counsel
August 13, 2026
Part of
Public Record

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

Dear Judge Soulikias:

Applicants respectfully move for the entry of the Proposed Order attached as Exhibit A, which clarifies procedures to be followed in the event a party to this proceeding produces material, whether inadvertent or otherwise, that is protected by the attorney-client privilege, work product doctrine, or any other privilege, as well as procedures for the return of non-responsive materials containing Confidential Information.¹

Consistent with Decision No. 3, the ALJ has authority to manage the discovery process, including the ability “to entertain and rule upon discovery matters and to resolve initially all disputes concerning discovery in this proceeding.” The Proposed Order is intended to facilitate the efficient exchange of documents and information necessary for discovery in this proceeding while protecting against the disclosure of privileged or confidential material, and is particularly necessary in this proceeding due to the large volume of documents and communications that the parties are producing on an expedited timeline. The Proposed Order is also consistent with the Board’s past approval of clawback provisions in other proceedings. *See, e.g., Atchison, Topeka & Santa Fe Ry.—Operating Rts.—S. Pac. Transp. Co.*, FD 22218 (STB Served June 14, 2023); *Omaha Public Power Dist. V. Union Pac. R.R.*, NOR 42173 (STB Served Aug. 9, 2022); *N. Am. Freight Car Ass’n v. Union Pac. R.R.*, NOR 42144 (STB Served Oct. 23, 2017).

Applicants have conferred with non-Applicant Class I railroads regarding the Proposed Order, but the parties were unable to reach agreement.

For these reasons, Applicants respectfully request that the ALJ enter the attached Proposed Order.

¹ For purposes of this Motion and the attached Proposed Order, “Confidential Information” has the meaning set forth in the Protective Order issued in this proceeding. *See* Decision No. 1.

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Sincerely,

/s/ Matthew J. Warren
Matthew J. Warren
Marc A. Korman

*Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

/s/ Laura Flahive Wu
Laura Flahive Wu
Kevin M. Kelly

*Attorneys for Union Pacific Corporation
and Union Pacific Railroad Company*

cc: All Parties of Record

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

[PROPOSED] ORDER REGARDING CLAWBACK PROCEDURES

IT IS ORDERED that, to facilitate the efficient and orderly exchange of any documents, electronically stored information (ESI) or other information in this proceeding, the following procedures shall govern the assertion and resolution of claims of privilege or protection of materials produced in discovery, including claims that material is protected by the attorney-client privilege, work product doctrine, or other applicable privilege or protection.

1. The production of privileged or work-product protected documents or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. In the event that a party discovers that it produced or disclosed material that is protected by the attorney-client privilege, work product doctrine, or any other privilege (“Protected Material”), the producing party may make a written request within a reasonable time after it discovers the disclosure that another party return the Protected Material (“Clawback Notice”).
2. Within ten (10) calendar days of the issuance of the Clawback Notice, the producing party shall provide (a) a privilege log with respect to the disclosed Protected Material that is sufficiently detailed to enable the receiving parties to evaluate a claim of privilege, including identification of attorneys involved in the relevant documents or communications, and (b) where appropriate, a redacted version of the disclosed Protected Material utilizing the same bates number(s) as the original. However, the producing party is not obligated to provide a privilege log for any clawed-back material where only a portion of the document contains Protected Material and where the attorneys involved in the relevant document or communications will be visible on the document when the producing party reproduces the document. In the event that the basis for a privilege assertion is not apparent from the face of a redacted document, the parties shall meet and confer following a written request from the challenging party. Upon receipt of the written notification, the receiving parties shall not further review the Protected Material, and shall immediately, and in no event more than five (5) calendar days after receiving the Clawback Notice, destroy, or return all copies, electronic or otherwise, and provide a certification of counsel that all such information has been returned, or destroyed, including by its vendors,

consultants, experts, and agents. The provisions of Federal Rule of Evidence 502(b) do not apply.

3. Within ten (10) calendar days of receipt of the privilege log (or notice that such a log will not be provided pursuant to the “However” clause in Section 2), a receiving party may challenge the producing party’s privilege claim, consistent with the procedure set forth in Section F of the Discovery Guidelines.
4. By returning, or destroying the Protected Material, the receiving party is not conceding that the material is privileged and is not waiving its right to later challenge the substantive privilege claim and seek an order from the Board or administrative law judge requesting an in camera review or compelling production of the Protected Material, provided that it may not challenge the privilege claim by arguing that the production of the Protected Material waived the privilege. Nothing herein shall be interpreted as alternating or shifting the burden associated with challenging a party’s privilege claim.
5. If a receiving party has disclosed Protected Material to any third parties, the receiving party, once it learns of the disclosure, must promptly: (a) notify, in writing, the producing party of the disclosure; (b) use its best efforts to retrieve all copies of the Protected Material; and (c) notify, in writing, the producing party as to whether all copies have been retrieved. This Order shall be interpreted to provide the maximum protection allowed to the producing party as articulated in Federal Rule of Evidence 502.

IT IS SO ORDERED.

DATED this _____ day of _____, 2026.

Jenifer J. Soulikias, Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of August, 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 J. Soulikias.

/s/ Travis Cabbell