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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

MOTION OF NATURAL RESOURCES DEFENSE COUNCIL (NRDC) TO CHALLENGE DESIGNATION OF AN EMISSION INVENTORY AS HIGHLY CONFIDENTIAL

Party of record Natural Resources Defense Council (NRDC) makes this motion to challenge the designation of the workpaper "Railroad Emission Data Inventory.xlsx" (hereafter referred to as the Emission Inventory) as highly confidential and respectfully requests an Order by the Surface Transportation Board (hereafter referred to as the Board) re-designating the workpaper in question as public pursuant to the Protective Order for this proceeding.[1] The Board has already determined that the proposed merger is likely to have significant environmental impacts requiring preparation of an Environmental Impact Statement (EIS).

NRDC is a nonprofit environmental and public health membership organization committed to protecting the public and environment through research and advocacy, with hundreds of thousands of members nationwide; as such, the movants have a strong interest in the public availability of this document. Applicants Union Pacific (UP) and Norfolk Southern (NS) have designated the Emission Inventory as highly confidential.[2] This designation is improper because the information contained within the workpaper does not meet the Protective Order's standard for confidential information (let alone highly confidential information) upon information and belief.[3] With respect to the considerations of "legitimate

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[1] FD 36873 (Decision ID No. 1), slip op. at ¶ 10 (STB served Aug. 5, 2025).
[2] E-mail from Caroline Harrison to Ihab Mikati (Aug. 20, 2026), attached to this Motion as Exhibit A.
[3] FD 36873 (Decision ID No. 1) slip op. at ¶ 1, 6 (defining "Confidential Information" as traffic data, identification of shippers and receivers in conjunction with shipper-specific or other traffic data, confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information; and

access" and "legitimate protection" as articulated by the Board as recently as July 22, 2026, the balance weighs in favor of re-designation of the Emission Inventory as a public document on both prongs.[4]

ARGUMENT

I. The Movant and the General Public Have a Legitimate Interest in Public Availability of the Emission Inventory.

The Emission Inventory forms the basis of sweeping claims as to the merger's "Approximate Criteria Pollutant & CO_{2e} Benefits" reported within the Verified Statement of Matthew Graham, UP's General Director of Environmental Management, in the revised application.[5, 6] A publicly verifiable assessment of air pollution impacts is necessary information to ensure an accurate evaluation of the proposal in this proceeding's EIS process. Public involvement in the National Environmental Policy Act (NEPA) process promotes more thorough and reasoned considerations in agency decision-making.[7] Yet due to improper confidential designation, there has thus far been no way for the public to independently evaluate the underlying claims to the applicants' emission analysis.

Applicants have already demonstrated that the emission analysis submitted to the Board is unreliable. In the four months between the submission of the initial application (filed on December 19, 2025) and the amended application (filed on April 30, 2026), the applicants' estimated NO_X reduction benefit inexplicably doubled from 2,810 tons to 5,660 tons.[8] Three months after the filing date of the

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defining "Highly Confidential" as particular Confidential Information such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information).

[4] FD 36873 (Decision ID No. 28), slip op. at 2 (STB served Jul. 22, 2026) (quoting 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)).

[5] FD 36873 (Filing ID No. 311221), Amended App. Vol. 1 at 646 (served Apr. 30, 2026).

[6] CO_{2e} refers to carbon dioxide equivalents in terms of global warming potential.

[7] Stava, Ashley, et al. *Quantifying the substantive influence of public comment on United States federal environmental decisions under NEPA.* Environmental Research Letters 20.7 (June 2025), https://dx.doi.org/10.1088/1748-9326/addee5.

[8] FD 36873 (Filing ID No. 310577), App. Vol. 1 at 557 (served Dec. 19, 2025); (Filing ID No. 311221), Amended App. Vol. 1 at 646. Note that while applicants do not explain the basis of the drastic estimated increase in NO_X benefits, it is fairly clear that they mistakenly added the initial application's sum of estimated benefits (360 + 2,450 = 2,810 tons) to the amended application's sum of the same (389 + 2,461 = 2,850 tons) to reach a total of 5,660 tons, dramatically overrepresenting air quality benefits. The sloppiness of this likely tabulation error only underscores the need for transparent reporting of all underlying emission data.

amended application, applicants filed errata that corrected certain mistakes in these tables (while failing to recalculate the resulting sums, leading to an unchanged "Total" row in the errata).[9] These types of errors harm the public's confidence in the overall analysis, and should harm the Board's confidence as well. Repeated errors in visible areas of the application suggest the possibility of errors in non-visible areas.

The highly confidential designation locks out a public that could help to identify and assess such issues in comments to the Board. Excluding the public from meaningful environmental review damages the Board's ability to accurately evaluate the merger proposal. Furthermore, due to the unjustified highly confidential designation, even an interested party with access under the Protective Order could not disseminate any other (potentially deeper) mistakes or erroneous assumptions made in the Emission Inventory to interested non-parties and members of the public.

NRDC recently joined over forty other organizations in emphasizing the necessity of a robust public engagement process as the EIS is developed to allow the Board to work with the most complete record possible; the signatory coalition also explicitly voiced their concerns about lack of transparency in environmental information, including this very dataset:

> "*[T]he application in several places cites a workpaper titled 'Railroad Emission Data Inventory.xlsx'. However, this data inventory does not appear to be publicly available, so the public must take emissions claims on faith.*"[10]

The public has no way to authenticate opaque environmental claims made by the applicants in this proposal if the Emission Inventory remains confidential. Whether the applicants have made errors in their estimates of locomotive emissions, exaggerated truck diversion estimates, or relied on additional tabulation errors, the public cannot know. In order for NRDC and other members of the public to meaningfully engage with unresolved environmental questions raised by the proposed merger, environmental data must be made available and reviewable well before the Board's Office of Environmental Analysis initiates its EIS scoping process.

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[9] FD 36873 (Filing ID No. 311853), Errata to Amended Application, Attachment 5 (served July 27, 2026).
[10] FD 36873 (Filing ID No. 311849), Moving Forward Network et al. at 8 (citations omitted) (served Jul. 27, 2026).

In a transaction that the Board knows is likely to have significant environmental impacts, these considerations support the legitimacy of the interest in public access to the Emission Inventory.

II. The Applicants Do Not Have a Legitimate Interest in Designation of the Emission Inventory as Confidential or Highly Confidential, as the Document Does Not Meet the Standard for Such Designations as Set Forth in the Protective Order.

The Emission Inventory is not highly confidential. The Protective Order allows a party to, in good faith, label certain documents as highly confidential "such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information."[11] The Emission Inventory contains no such rate or cost data and no sensitive or proprietary information (and in fact the information therein must ultimately be released with the EIS to this proceeding). Nor does the Emission Inventory belong to the lower-sensitivity confidential level under the Protective Order. Confidential information under the Protective Order is defined as:

> "*traffic data (including but not limited to waybills, abstracts, study movement sheets, 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.*"[12]

To the extent that the Emission Inventory may indicate certain traffic patterns, upon information and belief it does not include the type of secret cost, pricing, and contractual-related traffic data contemplated here. Applicants may contend that the Emission Inventory contains commercially sensitive material because it would reveal the location or volume of its activities. But the Board has already correctly rejected that argument in the analogous context of employee impact exhibits, stating that it is unclear "why location-specific employee information is competitively sensitive while much of their operating

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[11] FD 36873 (Decision ID No. 1), slip op. at ¶ 6.
[12] Id. at ¶ 1.

plan, which also includes information about where changes would occur, is not."[13] The same principle should apply here: applicants already publicly report anticipated changes in shipping volume by corridor as well as changes in truck and lift activity by yard. The Emission Inventory adds air pollutant data that the applicants must eventually publish with the EIS—not commercial information, and certainly not protected trade secrets.

Highly detailed emission data are provided to the public as a matter of course in other major rail mergers. For example, in the 2023 merger between the Canadian Pacific and Kansas City Southern railways, detailed emission data were provided in a 115-page appendix to the EIS.[14] This "Air Quality and Climate Change" appendix included inventories of emissions at a county-by-county summary level separating into rail segments, grade crossings, and yards (Table K6); on a sub-segment-by-sub-segment level (Table K7); on a yard-by-yard level with separate estimates attributable to switching activity (Table K8), lift activity (Table K9), and on-site as well as on-the-road truck activity (K9); for each grade crossing (Table K10); for estimated truck diversions by state (Table K11); and for anticipated air impacts related to capital improvements (Table K12). The applicants in this proceeding, who must complete an EIS prior to approval, will ultimately need to disclose detailed emission data to the public to comply with NEPA. It would be unjustifiable, then, to only do so *after* the public comment period has passed under the cover of commercial sensitivity.

Together these factors weigh against a finding of legitimate interest for any designation other than public for the Emission Inventory.

CONCLUSION

The Emission Inventory does not meet the criteria for designation as confidential or highly confidential under the Protective Order, and applicants do not have a legitimate interest in concealing the Emission Inventory from the public. Conversely, movants (and the general public) have a strong and legitimate interest in accessing the Emission Inventory prior to public comment in this proceeding.

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[13] FD 36873 (Decision ID No. 28), slip op. at 4.
[14] FD 36500 (Filing ID No. 51566) Final EIS Vol. II, Appendix K (STB served Jan. 27, 2023).

Respectfully submitted,

/s/ Ihab Mikati
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August 25, 2026

EXHIBIT A

Outlook

Workpaper access - UP/NS merger

From Harrison, Caroline <CHarrison@cov.com>
Date Thu 8/20/2026 2:45 PM
To Mikati, Ihab <imikati@nrdc.org>
Cc Krovoza, Charlotte <CKrovoza@cov.com>

Hi Ihab,

In response to your question about the Graham workpapers, the workpaper "Railroad Emission Data Inventory.xlsx" is designated Highly Confidential and can only be accessed by individuals who have executed the protective order to access HC materials in this proceeding (available on the STB docket). If you send us a signed copy of the protective order, we can set you up with access.

Best,
Caroline

Caroline Harrison

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COVINGTON

Certificate of Service

I certify that on August 25, 2026, I caused a copy of this document to be served by electronic mail to Administrative Law Judge Jenifer Soulikias and upon the parties of record to this proceeding using the email addresses provided on the docket's service list or by first-class mail.

/s/ Ihab Mikati
Ihab Mikati