

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

- CONTROL -

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY**

**COMMONWEALTH OF PENNSYLVANIA, OFFICE OF ATTORNEY GENERAL –
MOTION FOR SUPPLEMENTAL PROTECTIVE ORDER**

Pursuant to 49 U.S.C. § 11327, the Commonwealth of Pennsylvania, Office of Attorney General (“PA OAG”) respectfully moves the Surface Transportation Board to enter a Supplemental Protective Order to govern the PA OAG’s access to confidential information produced in the captioned proceeding. A proposed Supplemental Protective Order is attached as Appendix A.

The PA OAG is the chief law officer for the Commonwealth of Pennsylvania. Pa. Const. art. IV, § 4.1. The PA OAG intends to participate in the Board’s proceeding in this matter, including by reviewing data and documents of the parties and third parties, as well as interviewing and receiving presentations from such parties.¹ The Commonwealth of Pennsylvania ranks first in the country in the number of operating railroads (65) and third in the total track mileage (more than 5,600 miles). The PA OAG’s participation requires that it have access to the non-public,

¹ The PA OAG filed a Notice of Intent to Participate on May 27, 2026.

unredacted version of the Application filed by the parties on December 19, 2025, as amended, as well as potentially other documents produced in this matter. These materials necessarily include confidential, proprietary, commercially sensitive materials subject to the Protective Order entered by the Board on August 5, 2025 (Decision No. 1) (the “Protective Order”).

However, the Protective Order includes three requirements incompatible with statutory and regulatory requirements applicable to the PA OAG. Paragraph 12 of the Protective Order requires any party receiving Designated Material (as that term is defined in the Protective Order) to destroy that material immediately upon, at the earlier of, withdrawal from the matter or the completion of the proceedings. Destruction of Designated Material as required by the Protective Order may run afoul of the PA OAG’s obligations to retain materials that are subject to the Commonwealth of Pennsylvania State Record Management Directive 210.5 promulgated under The Administrative Code of 1929.² Likewise, paragraph 11 prohibits use of any Designated Material for any purpose other than the proceedings before the Board. Given the PA OAG’s law enforcement function, the PA OAG routinely retains the ability to use information it obtains in any proceedings or investigation for any law enforcement purpose and a blanket requirement for the PA OAG to destroy all Designated Material would unnecessarily hamper the PA OAG’s ability to carry out its law enforcement function. Additionally, paragraphs 7 and 8 require that all PA OAG employees that are given access to Designated Material sign the Undertakings set forth in Exhibits A and B. Such a requirement is unnecessary given the PA OAG’s confidentiality policies. *See* PA OAG Policies, Code of Conduct.³ The proposed Supplemental Protective Order would be signed by an

² https://www.pa.gov/content/dam/copapwp-pagov/en/oa/documents/policies/md/200/210_5.pdf

³ See attached Administrative Policy. Relevant provisions follow. “Each employee of the OAG shall safeguard all confidential information.” “No employee may make improper use of confidential information.” “No employee may make improper disclosure of confidential information.” Other than as necessary to fulfill PA OAG official duties, unauthorized disclosure of such information is prohibited and could lead to disciplinary action.

individual authorized to do so on behalf of the Antitrust Section of the PA OAG.

The PA OAG recognizes that unrestricted disclosure of confidential, proprietary, or commercially sensitive information and data could cause competitive injury to the parties.

Issuance of the proposed Supplemental Protective Order protects against such disclosure while accommodating the PA OAG's legal obligations and law enforcement function, as set forth in the preceding paragraph. The proposed Supplemental Protective Order, unlike the generally applicable Protective Order, would allow the PA OAG to retain Designated Material if required by law and use Designated Material for law enforcement purposes outside of this proceeding, and would relieve the PA OAG of the obligation to have its employees sign any undertakings.

For the reasons stated above, the PA OAG respectfully requests the Board enter a Supplemental Protective Order in the form in the attached Appendix A.

Respectfully submitted,

/s/ Joseph S. Betsko

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September 4, 2026

APPENDIX A

SUPPLEMENTAL PROTECTIVE ORDER

1. For purposes of this Supplemental Protective Order, the defined terms contained in the Protective Order entered as the Appendix to Decision No. 1 on August 5, 2025, will apply.
2. Subject to the protections set forth in this Supplemental Protective Order any Designated Material may be provided to the Commonwealth of Pennsylvania, Office of Attorney General (“PA OAG”), and the PA OAG may attend any deposition at which Designated Material is used or discussed.
3. Designated Material must not be used by the PA OAG for any purposes other than for (a) the Proceedings, (b) as otherwise permitted or required by law, court order, or regulation, or (c) for law enforcement purposes.
4. The PA OAG must not include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as Confidential Materials Subject to Protective Order.” All pleadings and other documents so submitted must be kept confidential by the Board and must not be placed in the public docket in the Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board. If the PA OAG submits anything to the Board containing Designated Material, the PA OAG must file simultaneously a redacted version.
5. The PA OAG must not include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in the Proceedings unless (a) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket, or (b) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.
6. The PA OAG must not present or otherwise use any Designated Material at a Board hearing in the Proceedings, unless the PA OAG has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge, or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion

of such Designated Material.

7. To the extent that materials reflecting Confidential or Highly Information are provided to the PA OAG by a party in the Proceedings, and are held and/or used by the PA OAG in compliance with the terms of this Supplemental Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904 or of any other relevant provision of the ICCTA.
8. Upon completion of the Proceedings, including any petitions for reconsideration, appeals, or remands, the PAOAG must destroy all Designated Material unless (a) the PA OAG is otherwise required by law to retain certain information or documents, for example to comply with the PA OAG's statutory and regulatory obligations, or (b) the information or documents may be used for other law enforcement purposes.
9. The PA OAG agrees to comply fully with all of the provisions of this Supplemental Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.
10. Nothing in this Supplemental Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

/s/ Joseph S. Betsko

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ADMINISTRATIVE POLICY
OFFICE OF ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA

Subject:	Code of Conduct	Date:	June 9, 2026
By Direction Of:		 David W. Sunday, Jr., Attorney General	

PURPOSE: To establish uniform, baseline standards for all employees of the OAG by which personnel will be required to perform their duties while simultaneously ensuring that the highest level of integrity and professionalism is being maintained.

I. **POLICY:**

a. A fair, ethical and independent Office of Attorney General is essential to the administration of justice. Citizens have a right to trust in a legal system in which public officials and public employees maintain the highest standards of integrity and professionalism in discharging their duties as public servants. Thus, every employee of the OAG shall ensure the integrity of the OAG at all times by committing themselves to the principle that public service is a public trust, discharging their duties with fidelity, and complying with the standards of professional conduct herein set forth.

II. **General Provisions.**

- a. **Scope.** The provisions of this policy shall apply to every employee of the OAG.
- b. **Notice of Policy.** Each employee of the OAG is charged with knowledge of this Code of Conduct and expected to comply with its mandates and intent.
- c. **Enforcement.** Any employee who fails to conform their conduct to the mandates and intent of this policy shall be subject to discipline (up to and including dismissal) pursuant to the OAG's Disciplinary Policy.
- d. **Requests for Clarification.** Each employee shall, in the event they have any reason to doubt the applicability of any provision(s) of this policy to their conduct or circumstances, be responsible to seek clarification of that provision from the First Deputy Attorney general by written request submitted through their Supervisor/Chain-of-Command.

e. Definitions.

- i. **Criminal Conduct:** Conduct which, if proven, would constitute a violation of a criminal statute.
- ii. **Formally charged:** The issuance of any indictment, criminal complaint, information, or presentment, against an employee.
- iii. **OAG Policy:** any policy or directive promulgated under the authority of the Attorney General, including, but not limited to, policies within the Administrative Policy Manual and any Criminal Law Directives.
- iv. **Related to employment:** Conduct by an employee which arises in connection with, in the course of, contemporaneous with, or as a result of the employee's performance of any official duty or function on behalf of the OAG.

III. Code of Conduct

a. Employee Conduct Responsibilities: Each employee of the OAG shall:

- i. Conform to and abide by the Constitution and laws of the Commonwealth of Pennsylvania and of the United States;
- ii. Serve the interests of the diverse Citizens of Pennsylvania above their own;
- iii. Serve with integrity, trustworthiness and professionalism;
- iv. Carry out their duties and directives without fear or favor, discrimination or partiality, and demonstrating a sensitivity to race, color, religion, sex, gender identity, sexual orientation, pregnancy, national origin, age, ancestry, disability and genetic information;
- v. Safeguard all confidential information;
- vi. Abide by the formal policies, procedures and collective bargaining agreements of the OAG;
- vii. Complying with all training, certification, licensure and other requirements necessary for continued employment with the OAG;

b. Conduct generally prohibited of Employees: Each employee of the OAG shall refrain from engaging in:

- i. Any Criminal Conduct;
- ii. Any violation of OAG policy;
- iii. Impropriety, or any conduct which has the appearance of impropriety;
- iv. Scandalous or disgraceful conduct, or any other behavior—on or off duty—which may bring the service of the OAG or of the Commonwealth into disrepute;

- v. Efforts to realize personal financial gain through their public employment, other than compensation provided by law;
- vi. Conduct that constitutes a Conflict-of-Interest.

c. Specifically-prohibited conduct of Employees:

i. Adverse Interest Act Prohibitions:

1. No employee shall participate on behalf of the OAG, the Commonwealth or any Commonwealth entity in:
 - a. Negotiating any Commonwealth contract with any entity for which the employee has any financial or personal interest;
 - b. Making any determination relating to the award of any Commonwealth contract to any entity for which the employee has any financial or personal interest;
 - c. Making any determination to award any grant; make any loan; grant any subsidy; fix any rate; or issue any permit, certificate, guaranty or other thing of value to an entity in which the employee has a financial or personal interest.
 - d. The settlement of any lawsuit in which the OAG, the Commonwealth, or any Commonwealth entity is a party if any entity for which the employee has any financial or personal interest is also a party.
 - e. The settlement of any claim involving the OAG, the Commonwealth, or any Commonwealth entity if any entity with which the employee has any financial or personal interest has an interest, financial or otherwise, in such claim.
2. No employee shall influence or attempt to influence the making of any contract in which such employee has an adverse interest.
3. No employee shall supervise or in any manner deal with any contract in which such employee has an adverse interest.
4. No employee shall have an adverse interest in any contract with the OAG.
5. No employee shall, for remuneration, directly or indirectly represent any other person upon any matter pending before or involving any State agency, except in the performance of official duties.

ii. **Public Official and Employee Ethics Act – Gift Ban Prohibitions:**

1. No employee shall solicit or accept anything of monetary value (including a gift, loan, political contribution, reward or promise of future employment) based on any understanding of such employee that their official action or judgment would be influenced thereby.
2. No employee shall accept an honoraria, speaking fee, or any other valuable consideration.
3. No employee shall enter into any contract or subcontract valued at \$500 or more with any governmental body with which the employee is associated.
4. No employee shall fail to file the statement of financial interest by May 1st of each year.

iii. **Hatch Act Prohibitions:**

1. No employee shall use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.
2. No employee shall directly or indirectly coerce, attempt to coerce, command, or advise any State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes.
3. No employee shall be a candidate for elective office if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the U.S. or a Federal agency.
4. No employee shall make any general public announcement of their candidacy for public office, or file any paperwork registering their candidacy for public office, without first securing prior written approval from the First Deputy.
5. No employee shall accept any appointment to a public office—irrespective of whether the appointment is for a definite or indefinite term, and whether the position is uncompensated and advisory—without first securing prior written approval from the First Deputy.
6. No employee shall participate in any political activity which interferes with their performance of the duties of their position or which involves the use of time, supplies, equipment, or other Commonwealth resources.

iv. **Outside Employment-Related Prohibitions**

1. No employee shall engage in private, outside or supplemental employment which conflicts with the conditions of employment of the position by which said employee is employed by the OAG.
2. No employee shall, for fee or remuneration, engage in or accept private, outside or supplemental employment, engage in instruction, authorship, lecture, mastership, or arbitration, or render other services for any private interest, without first securing prior approval through submission of the Request for Approval of Outside Employment or Engagement form.

v. **Information/Resources/Property/Supplies-Related:**

1. No employee may make improper use of confidential information.
2. No employee may make improper disclosure of confidential information.
3. No employee shall use any OAG or Commonwealth equipment, supplies, or properties for other than officially-designated purposes.
4. No employee shall use or disclose any information obtained as a result of service or employment by the OAG, and which is not available to the public-at-large, for other than officially-designated purposes.
5. No employee shall make inappropriate use of computer resources.

vi. **Attorney-Specific Requirements:** Attorneys employed by the OAG shall not:

1. Engage in the private practice of law.
2. Engage in any private business which might in any way interfere with their interests, availability, or capability to perform competently their duties as a full-time employee of the OAG;
3. Refer to private attorneys any claims or cases which involve the Commonwealth or any Commonwealth entity as an actual or potential adverse party;

4. Advise private attorneys regarding any claims or cases which involve the Commonwealth or any Commonwealth entity as an actual or potential adverse party;
5. Violate the Rules of Professional Conduct, 204 Pa. Code §§ 81.1, *et seq.*;
6. Agree to the entry of a consent decree in any civil action against the Commonwealth or any agency without first obtaining the approvals required by the Commonwealth Attorneys Act.

d. Employee Reporting Obligations: Each employee of the OAG shall make the following notifications:

i. Criminal Conduct:

1. Employees shall, within the earlier of 24 hours or prior to the start of their next regularly scheduled work shift, notify their supervisor of their being **arrested** for Criminal Conduct.
2. Employees shall, within the earlier of 24 hours or prior to the start of their next regularly scheduled work shift, notify their supervisor upon being **formally charged** with Criminal Conduct.
3. Employees shall, within the earlier of 24 hours or prior to the start of their next regularly scheduled work shift, notify their supervisor upon being notified by another law enforcement agency that they are the subject of an investigation.
4. Supervisors shall, upon receipt of any notification above, promptly notify the Director of Human Resources and Office Services.

ii. Statement of Financial Interests: Employees shall, by May 1st of each year, submit a statement of financial interest for the preceding calendar year to the Human Resources Section.

iii. Outside Employment: Employees shall, before commencing any outside employment, submit a Request for Approval of Outside Employment or Engagement form to the Human Resources Section.

- iv. **Public Office:** Employees shall, at least two working days before making any general public announcement, advertising or otherwise publishing, or filing any paperwork registering for their candidacy for public office, submit candidacy notification to the Director of Human Resources and Office Services. Employees shall, before accepting any appointment to public office, submit candidacy notification to the Director of Human Resources and Office Services.
- v. **Other Notifications:** Employees shall make the notifications required by any other OAG policy, in accordance with the timeframes therein set forth.

IV. Concluding Provisions

- a. **Modification/Suspension:** Except where otherwise prohibited by law, the Attorney General may waive or modify the provisions of this policy at any time.
- b. **Supersession:** This statement of policy replaces in its entirety the Code of Conduct for Employees Appointed and/or Approved by the Attorney General dated Feb. 4, 2021.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Commonwealth of Pennsylvania, Office of Attorney General Motion for Supplemental Protective Order has been electronically filed with the Surface Transportation Board and served on all parties of record in this proceeding by electronic mail this 4th day of September 2026.

/s/ Joseph S. Betsko

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