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October 9, 2026

ACC-8 / ACD-8 / AFPM-8 / NITL-5 / TFI-8

312676

Via Electronic Filing

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

ENTERED
Office of Chief Counsel
October 9, 2026
Part of
Public Record

Re: Docket No. FD 36873, *Union Pacific Corp.—Control—Norfolk Southern Corp.*
Letter Brief Supporting CPKC-58

Dear Judge Soulikias:

The Alliance for Chemical Distribution ("ACD"), American Chemistry Council ("ACC"), American Fuel & Petrochemical Manufacturers ("AFPM"), The National Industrial Transportation League ("NITL"), and The Fertilizer Institute ("TFI") (collectively, "Joint Shipper Associations" or "JSA") support Canadian Pacific Kansas City's ("CPKC") October 6, 2026 motion asking Your Honor to direct Union Pacific ("UP") to redesignate as public the video of UP CEO Jim Vena's March 2026 address to the Southwest Association of Rail Shippers ("SWARS") (the "Video").[1]

UP produced the Video in discovery but designated it Confidential under the Protective Order.[2] That designation fails for three reasons. First, the Video records a public address and contains none of the information the Protective Order protects. Second, UP's sole justification for the designation—that it owns the recording—confuses ownership with confidentiality. Third, the public interest favors disclosure. A U.S. Senator has warned that Mr. Vena's remarks discourage shippers from participating in the merger proceeding, and UP now argues that shipper silence is not opposition. The public deserves to hear what Mr. Vena actually said.

I. Mr. Vena's Address Is Not Confidential Information.

The Protective Order shields from public view "Confidential Information," which covers traffic data, shipper identities tied to traffic data, confidential terms of shipper contracts, confidential financial and cost data, and "other confidential or proprietary business information."[3]

[1] Letter from CPKC to Hon. Jenifer J. Soulikias, ALJ, FD 36873 (filed Oct. 6, 2026) (CPKC-58).
[2] CPKC-58 at 1; *see Union Pac. Corp.—Control—Norfolk S. Corp.* (Decision No. 1), FD 36873 (STB served Aug. 5, 2025) ("Protective Order").
[3] Protective Order app. ¶ 1(b).

Jason.Tutrone@thompsonhine.com Phone: 202.263.4143

THOMPSON HINE LLP
ATTORNEYS AT LAW
1999 K Street NW, Suite 600
Washington, D.C. 20006
www.ThompsonHine.com
O: 202.331.8800
F: 202.331.8330

Mr. Vena did not speak behind closed doors. He addressed a SWARS conference attended by shippers, railroads, railroad suppliers, and *employees of UP's competitors*.[4] A CEO's remarks to that audience are neither confidential nor proprietary.

II. UP's Ownership of the Video Does Not Make Its Content Confidential.

UP does not contend that the Video contains traffic data, contract terms, cost data, or any other category of Confidential Information. UP refused the JSA's request to redesignate the Video solely because it "paid for the recording to be created, owns the copy in its possession, and has not distributed the video to the public."[5] That confuses who owns a recording with whether its contents are confidential or proprietary.

The Protective Order asks only whether the Video's contents are confidential or proprietary. UP may own the recording, but Mr. Vena's remarks became public when he delivered them at SWARS.

III. The Public Interest Outweighs Any Claimed Confidentiality.

Even if the Video contained confidential or proprietary material—and it does not—the public interest in disclosure would outweigh protecting it. The Board has made shipper participation in this proceeding a priority. It has emphasized that stakeholders must be able to participate "without concerns that their commercial relationships—including, as applicable, rates and service—will be negatively affected," that it "will not tolerate retaliation," and that parties must "refrain from statements or conduct that could deter public participation."[6] The Board issued these statements after U.S. Senator Tammy Baldwin warned that Mr. Vena "issued a thinly veiled threat to raise rates for customers who did not publicly support the merger."[7] The Video bears directly on the Board's and Senator Baldwin's concerns about whether shippers can participate freely.

UP's confidentiality designation hides the Video from shippers deciding whether to make submissions in this proceeding. Although any party that filed a notice of intent to participate can

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[4] The attendee list is available at https://web.cvent.com/event/9576436e-92af-4742-ba23-996e2f2e32ab/websitePage:b3200c82-d55f-4dc9-8c59-c9c89d5f1c1d. BNSF CEO Katie Farmer also spoke at the conference. Ex. A, SWARS Agenda.

[5] Ex. B (Email from K. Kelly, Covington & Burling LLP, Counsel for Union Pacific, to Jason Tutrone, Thompson Hine LLP, Counsel for Joint Shipper Associations, Oct. 8, 2026).

[6] *Union Pac. Corp.—Control—Norfolk S. Corp.* (Decision No. 28), FD 36873, slip op. at 4 (STB served July 22, 2026).

[7] *Id.*; Letter from Sen. Tammy Baldwin to the Surface Transportation Board at 1, FD 36873 (filed July 17, 2026).

view the Video, other shippers and parties cannot.[8] These shippers may still file statements supporting the merger, opposing it, or informing the Board. But they must decide whether to come forward without knowing what Mr. Vena said about the cost of withholding support. As Senator Baldwin warned, "[t]hreats of retaliation discourage stakeholders from participating and undermine the STB's ability to conduct a rigorous review of the proposed merger."[9] Shippers deciding whether to speak should hear Mr. Vena's remarks for themselves.

The Video also bears on UP's public claim that shipper "silence is not opposition." On October 6, 2026, UP's head of marketing and sales told customers and the public that a "customer who has stayed quiet, or who has taken a neutral position publicly, is not a customer who opposes this transaction."[10] UP makes that claim while using the Protective Order to hide the very remarks from Mr. Vena that may explain that silence.

IV. Conclusion

The Video records a public address, UP's ownership of the recording does not make it confidential, and the public interest favors disclosure. For these reasons, the JSA respectfully request that Your Honor grant CPKC's motion and direct UP to redesignate the Video as public. The JSA also support CPKC's alternative request for a Board ruling.

Sincerely,

/s/ Jason D. Tutrone

Jason D. Tutrone
Benjamin Idzik

Counsel for the Alliance for Chemical Distribution, American Chemistry Council, American Fuel & Petrochemical Manufacturers, The National Industrial Transportation League, and The Fertilizer Institute

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[8] The deadline for notices of intent was September 30. Although UP said on September 15 that it would produce the Video (Letter from Laura Flahive Wu, Covington & Burling LLP, to Hon Jenifer J. Soulikias at 2, Sept. 15, 2026 (UP-105/NS-105)), it waited over two weeks until the day after the notice of intent deadline to produce it.
[9] Letter from Sen. Tammy Baldwin to the Surface Transportation Board at 1–2, FD 36873 (filed July 17, 2026).
[10] Kenny Rocker, Union Pacific, *Silence Is Not Opposition* (Oct. 6, 2026), https://www.up-nstranscontinental.com/letters/rocker-customer-support/.

Certificate of Service

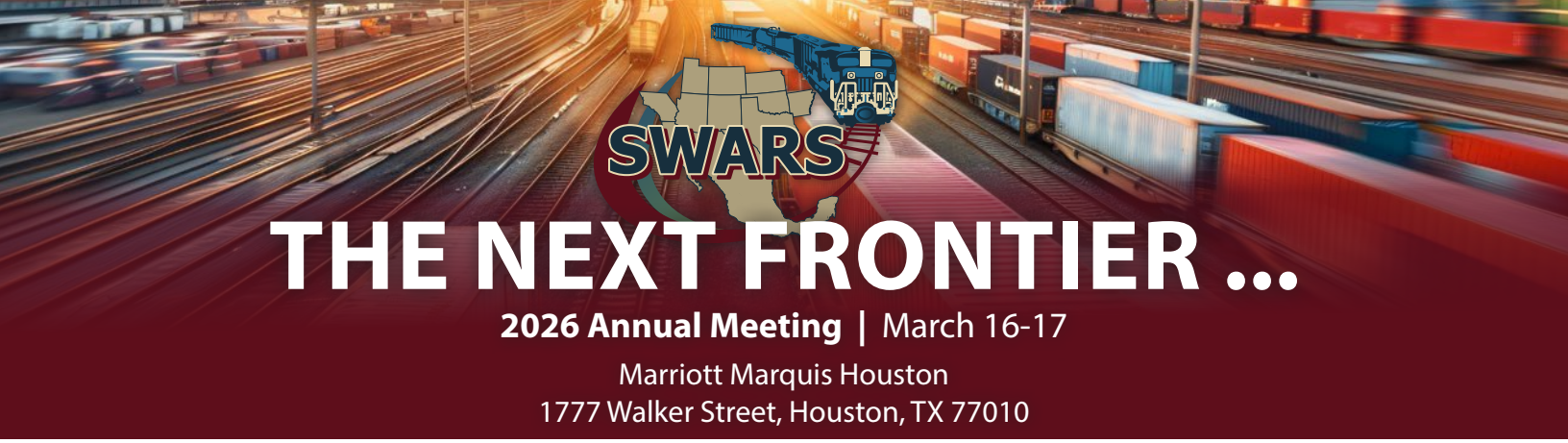
I certify that on October 9, 2026, I served a copy of this document by email or first-class mail, postage prepaid, upon all parties of record in this proceeding, including:

Hon. Sean P. Duffy
Secretary of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Attorney General of the United States
c/o Assistant Attorney General
Antitrust Division, Department of Justice
950 Pennsylvania Ave., N.W., Room 3109
Washington, D.C. 20530

/s/ *Kimberly Murray*
Kimberly Murray

Exhibit A



THE NEXT FRONTIER ...

2026 Annual Meeting | March 16-17

Marriott Marquis Houston
1777 Walker Street, Houston, TX 77010

Monday, March 16

8:30 a.m.	**SWARS Scholarship Golf Outing**	The Woodlands Country Club *Palmer Course* 100 Grand Fairway The Woodlands, TX 77381	Ryan Jordan & Fred Radvansky
9 a.m.	**SWARS Scholarship Clay Shoot**	American Shooting Centers 16500 Westheimer Pkwy, Houston, TX 77082	Ryan Jordan & Tim Millstid
Noon - 6 p.m.	**SWARS Registration**	Texas Foyer	Linda Turner & Debi Crow
12:30 - 2:30 p.m.	**Rail 101 Rail Training Class**	Hunters Creek	Folu Adepitan
3 p.m. - 4:30 p.m.	**Mixology Event**	Montrose	Lisa Jolly & Ryan Jordan
5 - 5:30 p.m.	**New Member Reception**	River Oaks	Lory Whitley
5:30 - 7 p.m.	**E. L. 'Leo' Mountjoy Reception**	Texas A-D	Linda Turner

Tuesday, March 17

7 a.m. - 6:30 p.m.	**2026 Spring Exposition**	Texas A-D	Linda Turner
7 a.m. - 8:30 a.m.	**Continental Breakfast**	Texas Foyer	Linda Turner & Debi Crow
7 a.m. - 4 p.m.	**SWARS Registration**	Texas Foyer	Linda Turner & Debi Crow
8 - 8:10 a.m.	**Military Color Guard Flag Presentation** **Singing of the National Anthem**	Texas E-H	Matthew Berberich Andrea Smith
8:10 - 8:20 a.m.	**Welcome & Opening Comments**	Texas E-H	Lory Whitley
8:20 - 8:25 a.m.	**Safety Briefing**	Texas E-H	Bruce Mann
8:25 - 8:30 a.m.	**SWARS Mission Statement/Anti-Trust Statement**	Texas E-H	Logan Ortiz
8:30 - 8:35 a.m.	**Introduction to Meeting App**	Texas E-H	Todd Tranausky
8:35 - 9:20 a.m.	**Morning Keynote Address** Jim McIngvale (Mattress Mack), owner Gallery Furniture	Texas E-H	Lory Whitley
9:20 - 9:25 a.m.	**Introduction to Emerald Sponsors**	Texas E-H	Ben Ronk
9:25 - 10:10 a.m.	**Railroad Executive Keynote Address** Jim Vena, CEO Union Pacific Railroad	Texas E-H	Lory Whitley
10:10 - 10:25 a.m.	**NETWORKING BREAK**	Texas Foyer	
10:25 - 11:10 a.m.	**Railcar Fleet Market** Paul Titterton, Executive Vice President and President, GATX	Texas E-H	Logan Ortiz

11:10 - 11:45 a.m.	**Motivational Speaker** Chris DeSantis, Author, Speaker and Consultant	Texas E-H	Robin Arnold
11:45 a.m. - 11:50	**NARS Promotional Presentation**	Texas E-H	Ray Hufnagel
11:50-Noon	**Scholarship Update**	Texas E-H	Bruce Mann
Noon - 1:30 p.m.	**NETWORKING LUNCH**	Texas A-D	
1:30 - 2:15 p.m.	**Afternoon Keynote Address** Katie Farmer, CEO BNSF Railway	Texas E-H	Bruce Mann
2:15 - 3 p.m.	**Economic Update** John Doggett, Professor, University of Texas McCombs School of Business	Texas E-H	Gail Molek
3 - 3:20 p.m.	**NETWORKING BREAK**	Texas Foyer	
3:20 - 4:20 p.m.	**Asset Optimization and AI** Rob Zmudka, Sr. Vice President & Chief Commercial Officer, GATX; Nick Borders, Business Development Liaison, RailState; and Martin Lew, CEO Commtrex	Texas E-H	Logan Ortiz
4:20 - 4:30 p.m.	**SWARS Business Meeting**	Texas E-H	Lory Whitley
4:30 - 6:30 p.m.	**President's Reception**	Texas A-D	Linda Turner

Exhibit B

Tutrone, Jason

From: Kelly, Kevin <Kkelly@cov.com>
Sent: Thursday, October 8, 2026 8:45 AM
To: Tutrone, Jason; Flahive Wu, Laura
Cc: Brown, Molly; Krovoza, Charlotte; OpalDisco
Subject: RE: STB FD 36873 - Request to redesignate Jim Vena SWARS video as Public

CAUTION EXTERNAL EMAIL

Jason,

The videorecording that Union Pacific produced was appropriately designated Confidential consistent with the Protective Order entered in this proceeding. Union Pacific paid for the recording to be created, owns the copy in its possession, and has not distributed the video to the public. Based on these facts, the videorecording constitutes "proprietary information," which the Protective Order permits to be designated as "Confidential Information."

Confidential Information may still be shared with a wide array of individuals associated with any party to this proceeding (consistent with the terms of the Protective Order) and may be used for the preparation and presentation of evidence and arguments in this proceeding and any related proceedings. Confidential Information may not be used for purposes other than this proceeding, including for other business, commercial, strategic, or competitive purposes.

We are confident that the Confidential designation permits you and your clients to make use of the videorecording for legitimate purposes, while preventing the misuse of Union Pacific's proprietary information for illegitimate purposes.

Please let us know if you would like to discuss further.

Best,

Kevin

Kevin Kelly

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5613 | kkelly@cov.com
www.cov.com

COVINGTON

From: Tutrone, Jason <Jason.Tutrone@thompsonhine.com>
Sent: Friday, October 2, 2026 3:44 PM
To: Flahive Wu, Laura <lflahivewu@cov.com>
Cc: Kelly, Kevin <Kkelly@cov.com>; Brown, Molly <MBrown@cov.com>; Krovoza, Charlotte <CKrovoza@cov.com>
Subject: STB FD 36873 - Request to redesignate Jim Vena SWARS video as Public

[EXTERNAL]

Dear Laura,

The Joint Shipper Associations (the Alliance for Chemical Distribution, American Chemistry Council, American Fuel & Petrochemical Manufacturers, National Industrial Transportation League, and The Fertilizer Institute) ask that Union Pacific redesignate document UP_3217794 (video of UP CEO Jim Vena presentation to Southwest Association of Rail Shippers conference) from Confidential to public.

Nearly 900 people, including UP's competitors and customers, attended this conference. The protective order in this proceeding (Decision 1, FD 36873 (Aug. 5, 2025)) allows parties to designate documents as Confidential if they contain or reflect types of "confidential or proprietary information." A presentation delivered before that audience is not confidential or proprietary in any meaningful sense.

Please respond by October 6th. If UP declines to redesignate the document, please identify its basis for the Confidential designation.

Best regards,

Jason

Jason Tutrone | Partner | **Thompson Hine LLP**
1999 K St. NW, Suite 600 | Washington, DC 20006
O: 202.263.4143 | **M:** 202.603.3109
www.ThompsonHine.com
Jason.Tutrone@ThompsonHine.com

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