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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

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

UNION PACIFIC'S EMERGENCY MOTION FOR TEMPORARY STAY PENDING INTERLOCUTORY APPEAL OF ALJ'S ORDER REDESIGNATING CONFIDENTIAL MATERIAL AS PUBLIC

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Union Pacific respectfully moves for a temporary stay of Decision No. 43 (served October 23, 2026), insofar as it orders Union Pacific to provide its recording of Union Pacific CEO Jim Vena's address at the Southwest Association of Rail Shippers ("SWARS") annual conference (the "video") without the "Confidential" designation by October 30, 2026, pending the Board's resolution of Union Pacific's concurrently filed appeal of that order (UP-124).[1] Because the compliance deadline is today, Union Pacific requests that the Board act on an emergency basis and, at a minimum, enter an immediate administrative stay preserving the status quo while it considers this motion.

[1] Union Pacific understands Decision No. 43 to temporarily stay the requirement that it reproduce the video as public pending the resolution of this appeal. Decision No. 43 at 6 ("No party (or person who has signed the Undertaking) shall use the video for any purpose in violation of the 'Confidential' designation *until* UP provides the video without the 'Confidential' designation. This enables UP to appeal this order to the Board, if it chooses (without letting the cat out of the bag).") (emphasis added). Union Pacific is filing this motion in case the Board does not agree with the above reading of Decision No. 43.

The stay would simply preserve the status quo the ALJ herself established. Decision No. 43 directs that, until Union Pacific provides the video without the Confidential designation, no party or other person who has signed the Undertaking may use the video in violation of that designation—a measure the ALJ adopted expressly to enable Union Pacific to appeal "without letting the cat out of the bag." Decision No. 43 at 6, 9–10. A stay pending appeal is necessary to ensure that protection does not lapse before the Board can rule.

ARGUMENT

Under 49 U.S.C. § 1321(b)(4), the Board may issue a stay when necessary to prevent irreparable harm. In ruling on a request for a stay, the Board considers whether (1) the movant has made a strong showing that it is likely to prevail on the merits; (2) the movant will suffer irreparable harm absent a stay; (3) other interested parties will be substantially harmed by a stay; and (4) the public interest supports a stay. *Kan. City S.—Control—Gateway E. Ry.*, FD 34342 (Sub-No. 1), slip op. at 3–4 (STB served July 28, 2026) (citing *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)). Each factor favors a stay here.

First, Union Pacific is likely to prevail. As explained in its appeal, the Protective Order expressly covers "other confidential or proprietary business information," Decision No. 1, App. ¶ 1(b), and the video—which Union Pacific paid for, owns, and has never released to the public—falls within that text. The ALJ reached a contrary result only by imposing requirements the Protective Order does not contain, such as a "confidential business nexus," copyright registration, or restrictions on audience recording. Decision No. 43 at 4–5. And the ALJ's alternative

public-interest holding fails because the Confidential designation does not limit any party's ability to present the video to the Board or any stakeholder's ability to participate in this proceeding. UP-116 at 2–3. At a minimum, the appeal presents serious questions warranting preservation of the status quo.

Second, absent a stay, Union Pacific will suffer irreparable harm. Once the Confidential designation is removed, the video may be used by any person, for any purpose, including purposes wholly unrelated to this proceeding. If the video is redesignated before the Board rules, Union Pacific's appeal will be effectively moot, and no later ruling could restore the protection Decision No. 43 removes. The ALJ recognized as much. Decision No. 43 at 6.

Third, a stay will not harm any other party. Every party that has signed the Undertaking already has full access to the video and may use it in this proceeding, as the Joint Shipper Associations ("JSA") concede. ACC-8/ACD-8/AFPM-8/NITL-5/TFI-8 ("JSA Letter") at 2–3; UP-116 at 2. Canadian Pacific Kansas City ("CPKC"), which moved for redesignation, has already filed the full video under seal. CPKC-58 at 2 n.5 & Ex. C. A brief stay therefore will not impair any party's ability to develop the record or present its case to the Board.

Fourth, the public interest favors a stay. The public interest is served by orderly Board review of a contested discovery ruling before irreversible action is taken, and by preserving the protections parties relied upon in producing discovery under the Protective Order. Decision No. 1 at 2.

CONCLUSION

For the foregoing reasons, Union Pacific respectfully requests that the Board immediately stay Decision No. 43 insofar as it orders the redesignation of the video from Confidential to public, and direct that the video remain subject to the Confidential designation and the Protective Order's use restrictions pending the Board's resolution of Union Pacific's appeal.

Respectfully submitted,

/s/ Michael L. Rosenthal
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October 30, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2026, the foregoing document was served by first-class mail or email on all parties of record to this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Daniel Damitio