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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36873

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

Decision No. 45

Digest:[1] This decision directs Union Pacific Railroad Company (UP) to file documents and verified statements responsive to the document production requirements and interrogatories appended to this decision regarding potential or threatened retaliation against stakeholders related to these proceedings. It also directs Applicants to respond to a letter filed by Canadian Pacific Railway Company. In addition, this decision denies UP's appeal of an administrative law judge order requiring it to redesignate a video under the proceeding's protective order, denies Applicants' motion to allow Board-initiated ex parte communications, and accepts late-filed notices of intent to participate.

Decided: November 4, 2026

On July 30, 2025, Union Pacific Corporation (UPC) and Union Pacific Railroad Company (UP) (collectively, Union Pacific) and Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NS) (collectively, Norfolk Southern) (Union Pacific and Norfolk Southern collectively, Applicants) notified the Board of their intent to file an application seeking authority for the acquisition of control by UPC, through its wholly owned subsidiary Ruby Merger Sub 1 Corporation, of NSC and, through it, NS, and for the resulting common control by UPC of UP and NS (the Proposed Transaction).

On May 28, 2026, the Board accepted for consideration (1) the revised, primary application (the Revised Application) filed on April 30, 2026, by Applicants, and (2) a related application in Union Pacific Corp.—Control—Peoria & Pekin Union Railway, Docket No. FD 36873 (Sub-No. 1). In that same decision, the Board denied a request from Applicants to lift the Board's prohibition against ex parte communications in rail merger proceedings established in Petition of Fieldston Co. to Establish Procedures Regarding Ex Parte Communications in

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Railroad Merger Proceedings (Fieldston), 1 S.T.B. 1083 (1996). Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 21), FD 36873 et al., slip op. at 34-36 (STB served May 28, 2026).

On August 18, 2026, the Board issued a decision that, among other things, established the procedural schedule for these proceedings, including setting September 4, 2026, as the deadline to file notices of intent to participate in the proceedings. Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 30), FD 36873 et al., slip op. at 13 (STB served Aug. 18, 2026). The Board later extended the deadline for notices of intent to participate to September 30, 2026. Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 35), FD 36873 et al., slip op. at 2 (STB served Aug. 31, 2026).

On October 6, 2026, Applicants asked the Board to reconsider its decision to uphold its prohibition against ex parte communications in rail merger proceedings established in Fieldston. Applicants requested that the Board consider allowing Board member-initiated ex parte communications and technical conferences "when members believe such communications would be useful to address particular issues." (Appl. Mot. 1, Oct. 6, 2026.) Several stakeholders filed replies in opposition to the request, generally arguing that Applicants' request suffered from the same flaws that were the basis for the Board's decision to deny Applicants' initial request. (See, e.g., BNSF Reply 7-8, Oct. 13, 2026.)

On October 30, 2026, UP filed with the Board an appeal of Administrative Law Judge (ALJ) Jenifer Soulikias's October 23, 2026 decision granting a motion by CPKC to redesignate as public a recording of UP Chief Executive Officer V. James Vena's address at the Southwest Association of Rail Shippers (SWARS) annual conference (the SWARS video) on March 17, 2026. UP argues that the recording is "proprietary" and, therefore, appropriately designated as confidential under the protective order in this proceeding. (UP Appeal 3, Oct. 30, 2026.) The Board has received a number of replies in opposition to UP's appeal, and CPKC has moved to enforce Judge Soulikias's redesignation decision.

DISCUSSION AND CONCLUSIONS

SWARS Statements. On March 17, 2026, Vena spoke at the SWARS annual conference. According to the SWARS website, the conference had about 900 attendees, representing a broad cross-section of the rail industry, including shippers.[2] Through public reports, the Board became aware of statements made by Vena at the conference. Decision No. 28, FD 36873, slip op. at 4 (STB served July 22, 2026). Although no recording of, or transcript from, the conference had been entered into the record at that time, the Board made clear that it "will not tolerate retaliation and will ensure that its processes are fair, transparent, and open to all stakeholders." Id. In that same decision, the Board invited Applicants to respond to the public reports and address concerns about public participation as a result of Vena's statement in Applicants' supplement to the Revised Application due July 27, 2026. Id. In response, Applicants stated that they "will

[2] Attendee List – Southwest Association of Rail Shippers 2026 Annual Conference, Sw. Ass'n of Rail Shippers, available at https://web.cvent.com/event/9576436e-92af-4742-ba23-996e2f2e32ab/websitePage:b3200c82-d55f-4dc9-8c59-c9c89d5f1c1d (last visited Nov. 4, 2026).

treat all customers and stakeholders fairly, regardless of the views they express." (Suppl. 10, July 27, 2026.) That same filing included a letter from Vena to the Board, stating "[w]e're confident in our plan and its great public benefit. When we talk to our customers, they see the benefits too. We are not threatening them. We want their feedback, so we can better understand their business and help them win in the marketplace." (Id., Vena Letter 3, July 27, 2026.)

A video recording of Vena's address at the SWARS conference has been entered into the record as part of a discovery dispute addressed later in this decision. See Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 43), FD 36873, slip op. at 6 (STB served Oct. 23, 2026). Based on the recording, in response to a question about whether the Board would approve the proposed transaction, Vena discussed potential actions that UP might take against shippers related to their expression of views regarding the proposed merger. (CPKC Mot., Exh. C, part 3 at 13:00-13:27; 17:04-17:25, Oct. 6, 2026.) In its filings, UP has not challenged the authenticity of the video recording. (See UP Reply, Oct. 13, 2026; see also UP Appeal, Oct. 30, 2026.)

On October 30, 2026, CPKC filed a letter requesting that the Board dismiss the Revised Application on the grounds that Vena's statements—and UP's alleged conduct more generally—have irretrievably tainted the proceedings and undermine the Board's ability to assess whether the Proposed Transaction is consistent with the public interest. (CPKC Letter 11-13, Oct. 30, 2026.) Applicants will be ordered to respond to CPKC's letter on or before November 19, 2026. The Board will address CPKC's request in a subsequent decision.

Independent of CPKC's letter, the Board has serious concerns about whether Vena's statement at SWARS—as reflected in the recording—may be influencing certain stakeholders' willingness to participate in this proceeding or share their own views without fear of commercial repercussions. The Board will not tolerate actual or threatened retaliation against a stakeholder for participating in this or any other proceeding before the Board. Retaliation, whether perceived or actual, can seriously undermine the integrity of the Board's processes.

Any evidence of retaliation in this proceeding will be considered by the Board, and evidence of retaliation, or the threat of retaliation, may affect how the Board proceeds—including how the Board will resolve the pending requests regarding continuation of the proceedings, and, as appropriate, how the Board would weigh other evidence it receives in any merits determination. See PYCO Indus.—Feeder Line Acquis.—S. Plains Switching, FD 34844 et al., slip op. at 5 (STB served July 3, 2006) (finding that evidence of threatened retaliation constitutes a showing of inadequate service). For example, evidence of actual or threatened retaliation could influence the weight given to statements of support for the Proposed Transaction or what, if any, inferences the Board should draw from the level of participation by stakeholders in this proceeding.[3] Evidence of actual or threatened retaliation could also be relevant to other aspects of the public interest assessment, including market power and abuse of market power. See 49 U.S.C. § 11324(b), (c).

[3] Although, in a very different context, the Board has said that no inference can be drawn from a shipper's silence, see id. at 5 n.7, in this type of proceeding, credible threats of retaliation, especially widespread or widely disseminated, may be sufficient to justify a negative inference.

It is critical that stakeholders feel free to participate openly in this proceeding and that retaliatory conduct be reported to the Board. Given the serious nature of the SWARS statements, the Board will accept all comments filed by interested persons by the comment deadline regardless of whether they previously filed a notice of intent to participate. Any person who files and serves a comment and a notice of intent by the November 18, 2026 comment deadline will be deemed a party to the proceeding, unless otherwise ordered by the Board. Stakeholders, including trade associations, are invited to share with the Board any alleged instances of perceived, threatened, or actual retaliation relevant to these proceedings.[4] Interested persons may file such information as Confidential or Highly Confidential, as appropriate, under the Protective Order entered in this proceeding on August 5, 2025.

The Board will also order UP to produce specific information regarding its efforts to influence participation in the proceeding. The Board has discretion to direct the filing of supplemental information as necessary to facilitate its review and has done so in this proceeding. See 49 U.S.C. § 1321(b)(3); see, e.g., Decision No. 2, FD 36873, slip op. at 2; Decision No. 3, FD 36873, slip op. at 3; Decision No. 10, FD 36873, slip op. at 3; Decision No. 13, FD 36873, slip op. at 5-7; Decision No. 21, FD 36873 et al., slip op. at 17-33. Here, UP will be required to produce responsive documents and respond to interrogatories in Appendix A to this decision no later than December 4, 2026. Rather than requiring UP to perform an enterprise search of all its employees for responsive documents, the Board has provided a targeted list of custodians whose files and records UP will be required—at least initially—to collect and review for responsiveness. Responsive documents and verified statements shall be filed with the Board and served on parties of record.

Nothing in this decision should be read to suggest that the Board has reached a determination on how to proceed with regard to any request concerning the continuation of the proceeding. A thorough inquiry into the extent of actual or threatened retaliation by UP will aid the Board in its decisionmaking as it considers these and other issues.

UP's Appeal of the Redesignation Decision. As noted above, on October 23, 2026, Judge Soulikias ordered UP to redesignate the SWARS video to remove the "confidential" designation by October 30. Decision No. 43, FD 36873, slip op. at 6. On October 30—the day of the deadline for UP to redesignate the video—UP appealed Judge Soulikias's redesignation decision to the Board and moved to stay that decision. (UP Appeal, Oct. 30, 2026; UP Stay Pet., Oct. 30, 2026). On November 2, CPKC moved to enforce Judge Soulikias's decision (CPKC Mot. to Enforce, Nov. 2, 2026), and the Board received letters opposing UP's appeal and/or supporting CPKC's motion from the Joint Shippers Associations (Joint Shippers Ass'ns Letter, Nov. 2, 2026), BNSF (BNSF Letter, Nov. 2, 2026), CSXT (CSXT Letter, Nov. 2, 2026), and Ruth L. Tines (Tines Letter, Nov. 3, 2026). Also on November 2, UP filed a reply to CPKC's motion to enforce. (UP Reply to CPKC Mot. to Enforce, Nov. 2, 2026.)

The Board will deny UP's appeal of the redesignation order for two independent reasons.

[4] The Board will entertain requests for leave to late-file any comment regarding potential or threatened retaliation related to these proceedings.

First, the appeal is untimely. (CPKC Mot. to Enforce 6, Nov. 2, 2026; Joint Shippers Ass'ns Letter 1, Nov. 2, 2026; BNSF Letter 2, Nov. 2, 2026; CSXT Letter 1, Nov. 2, 2026.) In Decision No. 30, the Board ordered that "any appeal [of] a decision issued by the ALJ be filed within five calendar days of the date of the ALJ's decision." Decision No. 30, FD 36873 et al., slip op. at 11. UP's October 30 appeal missed this deadline by two days and offered no excuse for doing so. (UP Appeal 2 n.1.) Although UP ultimately addressed the appeal's timeliness in a November 2 filing made in response to CPKC's motion to enforce Decision No. 43 (see UP Reply to CPKC Mot. to Enforce at 2-3), that argument is itself untimely because UP was obligated to present the argument in the appeal and not in a collateral filing. Moreover, the argument is transparently incorrect. Judge Soulikias's October 23 decision gave UP until October 30—seven days—to comply with her redesignation order, which she explained would give UP the ability to appeal the order before having to redesignate (i.e., "without letting the cat out of the bag"). It was thus clear that the seven days was intended to give UP time to appeal the order within the five days set forth in Decision No. 30 (and allow the Board time to act) before having to redesignate the video. Nowhere did Judge Soulikias purport to extend UP's appeal deadline beyond the five-day deadline set by the Board in Decision No. 30, and the order cannot plausibly be read to have done so. Nor, indeed, would an administrative law judge have the authority to extend a deadline set by the Board in the absence of a delegation to that effect in any event.[5]

UP belatedly asks the Board to excuse its tardiness because, in UP's view, its late filing did not prejudice any party. (UP Reply to CPKC Mot. to Enforce at 2, Nov. 2, 2026.) That request, too, is rejected as untimely, and would have been rejected even if it had been timely raised. Judge Soulikias properly ordered UP to redesignate the video (as explained below), and each day that UP fails to do so prejudices parties and other potential commenters because comments on the Revised Application are due November 18, 2026. The Board therefore denies the appeal as untimely.

Second, the appeal wholly lacks merit, and the Board would reach the same conclusion even if the Board were reviewing the order de novo. Cf. 49 C.F.R. § 1115.1(c). The standard protective order entered in this case does not require parties to safekeep information that UP itself disclosed in a public speech to 900 industry stakeholders. "Generally speaking, when a party obtains documents or information through the discovery process, he can 'use that information in any way which the law permits.'" In re Halkin, 598 F.2d 176, 188 (D.C. Cir. 1979) (quotation omitted). The protective order entered in this case limits that freedom only to the extent that the discovered materials disclose "Confidential Information," which the protective order defines as:

> traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from

[5] To the extent UP suggests that the Board was powerless to adjust in this proceeding the Board's procedural rule setting the deadline for appeals from ALJ decisions, (UP Reply to CPKC Mot. to Enforce at 3 n.1), such a suggestion is both undeveloped and also untimely because UP raised it for the first time in its reply to CPKC's enforcement motion.

> 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.

Union Pac. Corp.—Control—Norfolk S. Corp., (Decision No. 1), FD 36873, slip op., app. 2 ¶ 1(b) (STB served Aug. 5, 2025).

UP does not appear to claim—and could not reasonably claim—that Vena's keynote address, including the words he said and his delivery of them, itself constitutes "confidential or proprietary business information." That contention would be unsupportable. As Judge Soulikias explained, "[t]he SWARS conference was a public event." Decision No. 43, FD 36873, slip op. at 4. Vena delivered the keynote address to approximately 900 people representing a broad cross-section of rail-industry participants, including UP's competitors. Id. There is no indication that audience members were prohibited from making their own video or audio recordings. Id.; (see UP Appeal 11.) Indeed, the clear *purpose* of such public addresses is to make their contents known to rail industry stakeholders. Judge Soulikias's conclusion was thus plainly correct: "If there were any confidential or proprietary business information contained within Mr. Vena's Railroad Executive Keynote Address, by sharing that information publicly, that confidentiality no longer exists. The information is now public." Decision No. 43, FD 36873, slip op. at 4; (see BNSF Letter 2, Nov. 2, 2026.) None of this UP disputes.

Instead, UP's apparent position is that the video recording itself—the *medium* in which those words are encoded—is "proprietary" in the sense that UP "paid for the recording to be created and owns it." (UP Appeal 10); see Decision No. 43, FD 36873, slip op. at 4. That is not relevant here. The protective order shields confidential or proprietary business *information*. It does not protect the medium in which already-public information is contained. A contrary rule would turn the protective order on its head. If UP were correct that the protective order covers any email or document that the custodian "created and own[ed]" (UP Appeal 10), then the majority of what is produced in discovery would be "Confidential Information" under the protective order—no matter the document's content or how wide its dissemination. Simply put, the Board's protective order exists to protect *information* for which the custodian has intent and reasonable need to keep private; it is not a mechanism to protect the custodian's ownership interest in the medium in which that information is contained.[6] Because UP does not even

[6] UP cites Black's Law Dictionary's definition of "proprietary information": "information in which the owner has a protectable interest. See TRADE SECRET." PROPRIETARY INFORMATION, Black's Law Dictionary (12th ed. 2024); (see UP Appeal 10.) But even this definition presupposes that the information in question is "business information" that the owner has "kept confidential" or "inten[ded] to keep . . . confidential." TRADE SECRET, Black's Law Dictionary (12th ed. 2024). And that is doubly true in the context of the protective order, which defines "confidential or proprietary business information" via examples such as traffic data, confidential shipper contracts, and confidential financial and cost data—all typified by the rail carrier's manifested intent and reasonable need to keep the information private. See Decision No. 1, FD 36873, slip op., app. 2 ¶ 1(b); see also, e.g., Decision No. 43,

purport to identify any "proprietary business information" that release of the video would disclose, the SWARS video is not properly designated confidential.[7]

Judge Soulikias held in the alternative that the public interest justified redesignation even if the SWARS video were in some sense confidential. Decision No. 43, FD 36873, slip op. at 5. UP does not dispute her premise that a public-interest showing can override an otherwise-proper confidentiality designation. (See UP Appeal 13-15.) Assuming without deciding that this premise is correct in this context, the Board affirms Judge Soulikias's holding that publishing the SWARS video serves the public interest.

As explained above, the Board has serious concerns that Vena's address at SWARS may have deterred stakeholders from participating in this proceeding, and evidence of actual or threatened retaliation bears heavily on the future course of this proceeding and how the Board will weigh the public interest in assessing the Proposed Transaction's merits. Because it is critical that stakeholders feel free to participate in this proceeding and report retaliatory conduct, the Board will accept all comments filed by interested persons by the comment deadline regardless of whether they previously filed a notice of intent to participate. Redesignating the SWARS video furthers these participatory aims because a "confidential" designation prevents anyone who is not yet a party from seeing and hearing Vena's comments as they decide whether to file comments at the Board. (CPKC Mot. to Enforce 6-7, Nov. 2, 2026; BNSF Ltr. 2, Nov. 2, 2026.)

UP asserts without explanation that making non-parties "aware of the speech" does not serve any "interest that discovery is meant to advance." (UP Appeal 14.) But, as noted above, UP provides no argument that the public interest cannot be a relevant consideration in deciding a motion to redesignate or that increasing shipper participation is not a valid public-interest aim. The Board concludes that it is such a valid aim. Identifying possible instances of actual or threatened retaliation is critical to the integrity of this proceeding, and the Board's assessment here and increasing the visibility of the SWARS address furthers that goal. (See CPKC Mot. to Enforce 6-7, Nov. 2, 2026; BNSF Letter 2, Nov. 2, 2026.)

As to remedy, Judge Soulikias ordered UP to redesignate the SWARS video by October 30, 2026. Decision No. 43, FD 36873, slip op. at 6. UP did not timely appeal that order, the deadline was never stayed, and UP remains out of compliance. To prevent prejudice to commenters, the Board will order UP to redesignate and provide to all parties of record the

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FD 36873, slip op. at 5; Yates v. United States, 574 U.S. 528, 543-44 (2015) (open-ended term in a list given content by preceding terms). The public speech Vena gave to the SWARS conference is not "proprietary information" under this or any definition of the term, nor has UP shown or even argued that it is "business information" at all.

[7] Although UP asserts that it will be "harm[ed]" if the video is seen by non-parties, distributing discovered materials in such a manner is not an inherently "improper" use of discovery, so long as the materials are not designated confidential under the protective order. (E.g., UP Appeal 8-9.) UP's harm arguments are otherwise not well founded given that the statements were made in a public forum and given their relevance to this proceeding, as explained above.

SWARS video and file a verified statement with the Board certifying that it has done so by 5:00 pm ET on November 5, 2026.

If for any reason UP has not filed the required certification by that deadline, the Board anticipates a subsequent decision that would hold the proceeding in abeyance. Such an order would toll all deadlines in the procedural schedule, including the deadline to comment on the Revised Application until such time as (1) UP certifies that it has complied with this order and (2) the Board issues a new order lifting the abeyance and setting a new procedural schedule, as appropriate.[8]

Ex Parte Communications Request. To ensure that this proceeding remains open, fair, and transparent, and due to the potential burden associated with such meetings, the Board will decline Applicants' October 6, 2026 request for Board member-initiated ex parte communications. See Decision No. 21, FD 36873 et al., slip op. at 35-36 (STB served May 28, 2026). At this time, the arguments raised by Applicants in their motion do not justify revisiting the Board's previous decision to uphold its prohibition against ex parte communications in rail merger proceedings established in Fieldston. See id. In light of the complexity of this proceeding and high level of interest in it (there are approximately 1,000 parties of record), Applicants' proposed procedures do not eliminate concerns about equal access to the Board or the burden of accurately and timely documenting a potentially large volume of ex parte meetings. However, in the future, if the Board identifies particular issues that could benefit from a technical conference with staff or other communication protocols, the Board will inform all parties at that time.[9]

Late-filed Notices of Intent to Participate. Notices of intent to participate in the proceeding were due on September 30, 2026. Decision No. 35, FD 36873 et al., slip op. at 2. Several parties have filed notices of intent to participate out of time. Four parties, CNJ Rail

[8] UP states that, in the event that the Board denies its appeal, UP would be "willing" to post the video to its own website as an alternative to redesignation. (UP Appeal 4 n.3, 15.) It thus requests that "the Board order Union Pacific to make Union Pacific's Recording available for public review on its website while preserving the Confidential designation." (Id. at 15.) This request will be denied. Nothing in the protective order or public interest warrants a Board order prohibiting other parties from also making use of the SWARS video, given the Board's conclusion that the video is not properly designated confidential. (BNSF Ltr. 3, Nov. 2, 2026; CSX Ltr. 2, Nov. 2, 2026.)

[9] In its reply in support of Applicants' motion, Grand Trunk Corporation, on behalf of itself and its U.S. rail operating subsidiaries (collectively, CN) suggests that, alternatively, "the Board could clarify that the Board Staff Liaison, who has already been designated to provide non-binding, informal opinions and interpretations to Applicants . . . is also available to any party intending to submit a responsive application." (CN Reply 3, Oct. 13, 2026). The Board will clarify that the Board liaison is available to provide informal opinions and interpretations, which are not binding on the Board, regarding the format of, or information to be included in, responsive applications, consistent with 49 C.F.R. § 1180.4(c)(6)(iii).

Corporation, Eric Strohmeyer,[10] William Boyle, and Atlantic Railways, have filed for leave to file their notices out of time, arguing that there will be no prejudice to any party at this early point in the proceeding. (See Atlantic Ry. Mot. 1, Oct. 14, 2026; Boyle Mot. 1, Oct. 1, 2026; CNJ Rail Mot. 2, Oct. 1, 2026.) No party has opposed these motions or otherwise objected to the Board's acceptance of these or any of the other late-filed notices. The Board will grant the requests for leave to file out of time and, as discussed above, the Board also will accept late-filed notices of intent that are filed before the comment deadline of November 18, 2026, without requiring filers to move for leave. The Board reminds all parties that, going forward, notices of intent to participate must be filed and served on all parties of record.

It is ordered:

1. UP's appeal of the ALJ's order redesignating confidential information as public is denied. Accordingly, UP's emergency motion for temporary stay pending interlocutory appeal of the ALJ's order redesignating confidential material as public is denied as moot. CPKC's motion to enforce the ALJ's order redesignating confidential material as public is also denied as moot.

2. UP is ordered to file a verified statement certifying that it has redesignated the SWARS video by removing the confidential label and provided a redesignated copy of the video to all parties of record by 5:00 pm ET on November 5, 2026.

3. Applicants are ordered to respond to CPKC's letter of October 30, 2026, by November 19, 2026.

4. UP is ordered to file and serve documents responsive to the document production requirements and verified statements responding to the interrogatories in Appendix A by December 4, 2026.

5. The requests for leave to file notices of intent to participate out of time from Atlantic Railways, William Boyle, CNJ Rail Corporation, and Eric Strohmeyer are granted, and all late-filed notices of intent to participate filed in this proceeding prior to the comment deadline of November 18, 2026, are and will be accepted into the record.

6. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

[10] CNJ Rail Corporation and Eric Strohmeyer filed their motion jointly on behalf of themselves and "two soon-to-be-formed legal entities, and one additional long-established organization to be named later." (CNJ Rail Mot. 1, Oct. 1, 2026.)

APPENDIX A

General Instructions and Definitions

As used herein, the terms listed below have the following meanings:

1. "All" or "any" shall both be construed as "any and all."

2. "And" and "or" shall both be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses or documents that might otherwise be construed outside of its scope.

3. The use of the singular form of any word shall include the plural and vice versa and the present tense shall include the past tense and vice versa in order to bring within the scope of the request all responses or documents that might otherwise be construed outside of its scope.

4. "Communication" means any transmission or receipt of information by one or more persons or between two or more persons by means including, but not limited to, telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

5. "Concerning" and "regarding" mean in whole or in part relating to, referring to, constituting, containing, describing, evidencing, embodying, reflecting, analyzing, identifying, stating, dealing with, or in any way pertaining to.

6. "Document(s)" is used in the broadest sense possible and includes all written, electronic, or printed matter of any kind, including the originals and all nonidentical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, emails, text and instant messages, notes, diaries, customer relationship management system notes or files, statistics, letters, telegraphs, minutes, agendas, contracts, reports, studies, checks, statements, receipts, returns, summaries, transcripts, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any type of conversation (including, without limitation, telephone conversations or meetings), bulletins, computer printouts, teletypes, data compilations, statistical analyses, telefaxes, invoices, worksheets, graphic or manual records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, records and motion pictures), and electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records and computerized data stored in any manner), and all drafts, alterations, modifications, changes and amendments of any of the foregoing.

7. "Including" and "include(s)" mean "including, but not limited to."

8. "Person" means any individual or natural person, firm, partnership, corporation, joint venture, proprietorship, association, governmental body or agency, trust, estate, quasi-public entity, or any other organization, business, or legal entity.

9. "Proceeding" means Surface Transportation Board Docket No. FD 36873 and any related docket, including sub-dockets.

10. "UP" means Union Pacific Corporation and Union Pacific Railroad Company and their predecessors and successors in interest, as well as their present and former directors, officers, employees, agents, managing agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, area offices, and regional offices, as well as all persons acting or purporting to act on their behalf.

11. These document production requirements and interrogatories cover the period July 28, 2025 through November 4, 2026.

12. Documents should be produced as searchable PDFs from which text can be copied or an Excel file. Any audio or video file must be produced in a readily usable electronic format. All documents must be Bates numbered.

13. In answering these Interrogatories, UP is required to furnish, in the form of a Verified Statement, under oath, all information in its possession, custody or control, even if the information is in the possession of third parties.

14. If any claim of attorney-client, work-product, or other privilege is asserted with respect to any document covered by these requests, with respect to each such document, UP must identify, for each such document, the privilege asserted and provide sufficient information concerning the document and its contents to enable the Board to determine whether to sustain the assertion of privilege, including the following: date, author(s), recipient(s), subject matter, location and custodian, and the basis for the assertion of the privilege. If the privilege claim is based on advice from counsel, the name of the counsel providing the advice (and the law firm, if applicable) must be provided.

15. UP may designate its submissions Confidential or Highly Confidential, as appropriate, in accordance with the August 5, 2025 Protective Order entered in this proceeding.

16. UP shall include with its production a list of all individuals whose records were reviewed for documents responsive to the document production requirements. The list should include, at a minimum, the person's name, title(s), and time period during which that person held each relevant title or position.

Document Production Requirements

UP will be required to search for responsive documents from the custodians listed in Exhibit A, including current custodians and any custodians that held such roles at any time during the period listed in the General Instructions and Definitions, Paragraph 11.

1. All communications with any person, including customers or potential customers of either Applicant, any non-applicant railroads, or any vendors or potential vendors of either

Applicant, referencing any potential or actual actions by either Applicant as a result of that person's participation in this Proceeding or support for, silence regarding, or opposition to the proposed transaction. Potential or actual actions include those related to rates, service, investments in infrastructure, contract terms, or effect on transacting business with UP or Norfolk Southern Railway Company, individually or as a combined entity.

2. All internal UP documents regarding communications responsive to Document Production No. 1 (including any oral communications), including summaries of such communications, references to such communications, and guidance or instructions regarding such communications. Also provide internal documents concerning actions described in No. 1, whether or not communicated externally.

3. All internal UP documents (including customer maps, customer profiles, tracking documents, risk assessments) reflecting efforts to identify, monitor, or manage any customer or potential customer according to any person's participation in this Proceeding or support for, silence regarding, or opposition to the transactions that are the subject of this Proceeding.

4. All policies or written supervisory procedures regarding pressuring, influencing, or otherwise communicating with any person regarding that person's or affiliated entity's participation in any Board proceedings.

5. Organizational charts sufficient to reflect all positions whose responsibilities include interacting with persons outside UP during the relevant timeframe. The organizational chart should include a description of each department's general responsibilities and spheres of influence.

Interrogatories

UP will be required to provide Verified Statements from the individuals that currently hold roles listed in Exhibit B and individuals that held such roles at any time during the period listed in the General Instructions and Definitions, Paragraph 11.

1. Identify any person with whom you have orally discussed any potential or actual actions by either Applicant related to that person's participation in this Proceeding or support for, silence regarding, or opposition to the proposed transaction that is the subject of this Proceeding. Potential or actual actions include those related to rates, service, investments in infrastructure, contract terms, or effect on transacting business with UP or Norfolk Southern Railway Company, individually or as a combined entity.

2. Provide the following information regarding each person identified in response to Interrogatory No. 1: date, time, and location of the communication; individuals present, physically or virtually; and a summary of the communication.

3. Identify all UP employees or agents with whom you have discussed the potential impact or consequences of any person's participation in this Proceeding or support for, silence regarding, or opposition to the proposed transaction that is the subject of this Proceeding.

4. Provide the following information regarding each person identified in response to Interrogatory No. 3: date, time, and location of the communication; individuals present, physically or virtually; and a summary of the communication.

Exhibit A

All individuals who hold or held any of the following titles or positions during the period specified in paragraph 11 of the General Instructions and Definitions. This list of titles or positions shall be construed to include within the scope of the request all individuals performing the corresponding functions under these or different titles, whether company-wide or by region, territory, commodity, account, or organizational unit. The headings organize the listed functions and do not limit coverage by departmental name. Plural usage describes classes of individuals, not one official title (e.g., Vice Presidents shall be construed to mean each person whose title includes Vice President).

- Chief Executive Officer
- President
- Strategic Advisor or Special Advisor
- Executive Vice President and Chief Financial Officer
- Chief of Staff
- Marketing and Sales
    - Executive Vice President, Marketing and Sales
    - Senior Vice Presidents, Vice Presidents, and Assistant Vice Presidents performing sales or marketing functions
    - Directors performing sales or marketing functions, including senior or general directors
    - Managers performing sales or marketing functions, including sales managers, marketing managers, senior managers, and general managers
    - Account representatives, sales representatives, marketing representatives, and individuals performing similar sales or marketing functions
- Operations
    - Executive Vice President – Operations
    - Senior Vice Presidents – Operations, including of the Northern Region and of the Southern Region
    - Assistant Vice President – Joint Facilities and Interline Operations
    - Other Senior Vice Presidents, Vice Presidents, and Assistant Vice Presidents with responsibility for dispatching, network operations, network planning and operations, and customer care and support
- External Relations and Public Affairs
    - Vice President – External Relations
    - Vice President – Public Affairs
    - Assistant Vice Presidents and Directors (including senior or general director) with responsibility for stakeholder communications about this Proceeding
- Senior Vice President – Administration
- Senior Vice President and Chief Human Resources Officer
    - Vice President – Labor Relations
- Senior Vice President – Strategy
    - Vice President – Strategy and Corporate Development
    - Assistant Vice President and Directors (including senior or general director) with responsibility for strategy

- Vice President – Supply Chain
    - Assistant Vice President – Strategic Sourcing
    - Director – Strategic Sourcing (including senior or general director)

Exhibit B

All individuals who hold or held any of the following titles or positions during the period specified in paragraph 11 of the General Instructions and Definitions. This list of titles or positions shall be construed to include within the scope of the request all individuals performing the corresponding functions under these or different titles, whether company-wide or by region, territory, commodity, account, or organizational unit. The headings organize the listed functions and do not limit coverage by departmental name. Plural usage describes classes of individuals, not one official title (e.g., Vice Presidents shall be construed to mean each person whose title includes Vice President).

- Chief Executive Officer
- President
- Strategic Advisor or Special Advisor
- Executive Vice President and Chief Financial Officer
- Chief of Staff
- Marketing and Sales
    - Executive Vice President, Marketing and Sales
    - Senior Vice Presidents, Vice Presidents, and Assistant Vice Presidents performing sales or marketing functions
- Operations
    - Executive Vice President – Operations
    - Senior Vice Presidents – Operations, including of the Northern Region and of the Southern Region
    - Other Senior Vice Presidents, Vice Presidents, and Assistant Vice Presidents with responsibility for dispatching, network operations, network planning and operations, and customer care and support
- Senior Vice President – Administration
- Senior Vice President – Strategy
- Senior Vice President and Chief Human Resources Officer
    - Vice President – Labor Relations
- Vice President – Supply Chain