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BLET-5

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

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ENTERED
Office of Chief Counsel
November 12, 2026
Part of
Public Record

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

MOTION OF BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT #19; TRANSPORTATION COMMUNICATIONS UNION/IAM, TRANSPORT WORKERS UNION OF AMERICA AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN, TO RE-DESIGNATE PORTIONS OF THE TRANSCRIPT OF THE DEPOSITION OF MAACQUI PARKERSON AS PUBLIC

Pursuant to Paragraph 10 of the Protective Order in this proceeding,[1] the unions participating as the Allied Rail Unions ("ARU"): Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers District #19, Transportation Communications Union/IAM and Transport Workers Union of America; and the Brotherhood of Locomotive Engineers and Trainmen (collectively "ARU/BLET") respectfully request an Order re-designating as "Public" certain

[1] The Board entered a protective order in this proceeding on August 5, 2025. *See* Decision No. 1, FD 36873 (STB served Aug. 5, 2025) [hereinafter "Protective Order"].

portions of the transcript of the Deposition of Union Pacific Railroad Co. Vice President Labor Relations Macqui Parkerson that were designated by the Applicants[2] as "Confidential" or "Highly Confidential". Specifically, ARU/BLET request that the Board re-designate as "Public" the following portions of the Parkerson Deposition Transcript: (page:line) 47:20-52:14, 53:19-59:7, 75:10-81:11, 83:14-84:23, 86:15-91:6, 91:7-95:14, 118:1-119:13, 136:3-145:23, 175:1-181:1. A copy of the transcript is being submitted with the confidential/non-public version of this motion as Exhibit A. Applicants have improperly designated those portions of the Parkerson Deposition Transcript as Highly Confidential or Confidential, even though the designations do not meet the standards for the designation set forth in the Protective Order.

By emails with counsel for Applicants between September 22, 2026 and November 4, 2026, counsel for ARU/BLET requested that Applicants re-designate the Parkerson Deposition Transcript as Public. A copy of the referenced emails is being submitted with the confidential/non-public version of this motion as Exhibit B to this motion. The Parkerson deposition was held on September 30, 2026 after being postponed twice by Applicants. Counsel for ARU/BLET wrote to Applicants seeking re-classification of the Parkerson Deposition Transcript on October 12, 2026, October 22, 2026 and November 1, 2026. Applicants did not respond to the emails of counsel for ARU/BLET until November 3, 2026. The November 3, 2026 correspondence lifted the designations for parts of the Transcript, but left large portions of the Transcript classified as Confidential or Highly Confidential. A copy that designation is being submitted with the confidential/non-public version of this motion as Exhibit C. By email

[2] Applicants refers collectively to 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").

November 4, 2026, counsel for ARU/BLET requested that only the above-referenced portions of the Transcript be re-classified and asked for a response by November 5, 2026 in view of the approaching deadline for submission of Comments in this proceeding. Counsel for ARU/BLET stated: "Given that it is more than a month since the deposition (so Applicants have had plenty of time to consider the classification for the transcript), that the deposition was originally scheduled for late August and was rescheduled twice, that I made several requests that Applicants respond regarding the Highly Confidential classification, and that Comments are due in two weeks, I request a response by 5:00 tomorrow". Copies of the emails documenting the multiple changes in dates for the deposition are being submitted with the confidential/non-public version of this motion as Exhibit D. To date Applicants have not responded to the November 4 email of ARU/BLET's counsel.

As is discussed more fully in the confidential/redacted (public) section of this motion, the portions of the Transcript that ARU/BLET seek to have re-classified do not contain information properly classified as Confidential or Highly Confidential; they concern questions and answers regarding: planned mechanical shop and locomotive facility "curtailments", Ms. Parkerson's understanding of the meaning of certain terms under the *New York Dock* employee protective conditions, positions Applicants intend to take regarding application of the *New York Dock* conditions, planned transfer of work from Atlanta to Omaha, methodology used in certain work papers provided by Applicants, discussion of certain assertions in Ms. Parkerson's Verified Statement that was classified as Public, certain aspects of agreements Applicants entered with some unions that were cited in the Application and Ms. Parkerson's Verified Statement (both classified as Public), and Applicants' "jobs for life" commitment (also discussed in Public portions of the Application). While this information is available to counsel for ARU/BLET,

counsel cannot share the information with their clients- Unions that represent workers who will be affected by the merger if it is approved. Counsel are unable to seek assessment from the Unions of representations and plans discussed by Ms. Parkerson in those portions of the Transcript, are hindered in their responses to those particular representations and plans for the ARU/BLET Comments, and are hindered in obtaining guidance from the Unions regarding dealing with those particular representations and plans in the ARU/BLET Comments.

Under the Protective Order, any party "may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as Highly Confidential."[3] The portions of the Parkerson Deposition Transcript that ARU/BLET seek to have re-classified do not include information that can in good faith be deemed Confidential or Highly Confidential under the Protective Order. Accordingly, ARU/BLET respectfully request that those portions of the Transcript be re-designated as Public.

CONFIDENTIAL SUMMARY DESCRIPTION OF PORTIONS OF THE PARKERSON DEPOSITION TRANSCRIPT SOUGHT TO BE RE-CLASSIFIED

The full transcript of the Parkerson Deposition Transcript is being filed with this motion in the confidential version. Below is a summary description of the portions of the Transcript ARU/BLET ask the Board to re-classify.

Page/line	Summary/Comment
[CONTENT REDACTED UNDER PROTECTIVE ORDER]	

[3] *See* Protective Order, Decision No.1 at 4.

ARGUMENT

I. Applicants Have Improperly Designated Portions of the Parkerson Deposition Transcript As Confidential and Highly Confidential.

Under the Protective Order, any party may designate papers filed or served in these proceedings that contain Confidential Information as Confidential.[4] Confidential Information includes "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."[5] For filings that include types of Confidential Information that are particularly sensitive, specifically "material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information," a party may designate papers as Highly Confidential.[6] Confidential information may be accessed by parties who have executed the Protective Order. Highly Confidential information may be viewed only by a party's outside counsel or outside consultants that have executed the Protective Order. No unions, shippers, interested parties, or members of the public may view or analyze information that has been designated Highly Confidential.

Circumspect and limited application of confidentiality designations is crucial because "the general public has an interest in Board proceedings being as open and transparent as possible."[7] In merger proceedings, the Board bears a significant responsibility in determining whether a transaction serves the public interest (including consideration of a proposed

[4] *Id.* at 4.

[5] *Id.* at 3.

[6] *Id.* at 4.

[7] *Urgent Issues in Freight Rail Serv.—R.R. Reporting*, EP 770 (Sub-No. 1), slip op. at 6 (STB served Mar. 14, 2024).

transaction's effect on rail carrier employees).[8] Public comments from industry stakeholders and the general public assist the Board in making this determination.[9] It is important that only information that is genuinely commercially sensitive and proprietary be designated as Highly Confidential; otherwise, interested parties may be limited in taking full advantage of their rightful opportunity to comment.[10] To encourage fulsome participation by all interested parties, the Board should provide parties with a full opportunity to review evidence concerning the impact of the proposed merger, including evidence of the merger's impact on labor and rail employees.[11]

Not only are the disputed passages of the Parkerson Deposition Transcript of import for the unions and other stakeholders in formulating their positions and comments, and relevant to the Board in making its public interest determination with respect to the proposed transaction, there is no legitimate basis for Applicants to designate those parts of the Transcript Confidential or Highly Confidential. Certainly, the Applicants have made no such showing, they merely peremptorily labeled them Confidential or Highly Confidential without explanation. Indeed, in none of their email exchanges with counsel for ARU/BLET did Applicants even attempt to

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[8] 49 U.S.C. § 11324(b) (directing the Board to consider "the interest of rail carrier employees affected by the proposed transaction").

[9] *See* 49 U.S.C. §§ 11324, 11325; *see also* 49 C.F.R. § 1180.1(m) ("To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties.").

[10] *See Central Oregon & Pac. R.R., Inc. – Abandonment, and Discontinuance of Service - In Coos, Douglas, and Lane Counties. OR*, AB 515 (Sub-No. 2), slip op. at 3 (STB served Aug. 15, 2008) (recognized that maintaining an inappropriate Highly Confidential or Confidential designation imposes unnecessary costs on all interested parties using that information).

[11] *See* 49 C.F.R. § 1180.1(m) (encouraging public participation of affected rail labor parties in merger proceedings to facilitate development of a full record on the effects of the proposed merger).

provide justification for the refusal to re-designate the disputes portions of the Transcript as Public; Applicants simply rejected re-designation without any explanation whatsoever. See Exhibit B to this motion. And the disputed portions of the Transcript do not contain shipper-specific rate or cost data or competitively sensitive or proprietary information; nor do they contain information such as employee identifying information, employee wages, or benefits. Therefore, they cannot be properly designated as Highly Confidential by the terms of the Protective Order.[12] These exhibits also cannot be properly designated as Confidential because they do not contain traffic data or other confidential or proprietary business information.

While it is true that some of the questions and answers in the disputed portions of the Transcript refer to, or seek explanations about, certain workpapers that were labeled Highly Confidential, those portions of the Transcript do not disclose the substance of content of the workpapers; the questions and answers were about methodology employed by the authors of the work papers and requests that Ms. Parkerson say whether she could answer an ARU interrogatory by looking at the work paper when Applicants' response to that interrogatory was to say the answer could be found in the work papers.

The Board has previously explained that "a party must do more than simply assert a desire to keep a document confidential" to justify a confidentiality designation.[13] A party must assert a commercial or competitive disadvantage that would occur if the information were made public – the fact that the information is non-public internal business information is not enough.[14]

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[12] *See* Protective Order at 4.

[13] *Stagecoach Group PLC & Coach USA, Inc., et al.—Acquis. of Control—Twin Am., LLC,* MCF 21035, slip op. at 6 (STB served Feb. 8, 2011).

[14] *Id.*

Applicants have provided no explanation or support for their refusal to re-designate the disputed portions of the Transcript that would provide the type of showing that would satisfy the requirements of the Board.

Furthermore, the Board has stated that information which is not competitively sensitive by itself does not warrant a Highly Confidential designation.[15] In *TPI*, the Board agreed with CSX that certain improperly designated information did not constitute Highly Confidential material under the definition in the protective order adopted for the proceeding (*i.e.*, "specific rate, traffic, or cost data or other competitively sensitive information") because the information, standing alone, would not be considered competitively sensitive.[16] In this case, the information in the Parkerson Deposition Transcript that ARU/BLET request to have re-classified is not competitively sensitive, therefore a Highly Confidential designation is not justified, nor is a Confidential designation.

It must also be noted that this is not a "one-off" or isolated example of Applicants and UP improperly insisting on Confidential or Highly Confidential classifications, or withholding information from the public or even the Board. Early on in this proceeding, Applicants designated the administratively required Employee impact exhibit (necessary for compliance with 49 U.S.C. §11324(b) and (c)) as Highly Confidential, a designation that was rejected by the Board. Decision No. 28. (In the recollection of counsel for ARU/BLET, no applicant had ever attempted to shield from the public an Employee Impact Report in a major transaction case). Recently the Board rejected the designation of the Vena comments at the SWARs conference as

[15] *See Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, NOR 42121, slip op. at 4 (STB served July 15, 2011).

[16] *See id.*

Confidential. Decision No. 43. And UP's improper efforts to withhold information from the public (and the Board) are not limited to this proceeding. In Ex Parte No. 770 (Sub No. 1) *Urgent Issues in Freight Rail Service—Railroad Reporting* UP sought to shield required reporting of employment data from public view by filing its report under seal while belatedly seeking a protective order; the Unions opposed that effort, and the Board directed UP to re-file its report as public. STB Decision March 13, 2024. The Unions responded to UP's subsequent public filing by noting that review of the public report revealed that there was no possible basis for the information in the report to have been classified as confidential. Unions' filing in Ex Parte No. 770-1, March 18, 2024. Subsequently, in Ex Parte No. 772, *Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes*, the Board chastised UP for its "repeated failures to comply with Board orders and requests for information", that the Board considered to be verging "on the contumacious", and which could not be "viewed as acceptable conduct by a railroad subject to the Board's statutory authority". STB Decision April 16, 2024. ARU/BLET submit that UP's handling of the request for re-classification of the disputed portions of the Parkerson Deposition Transcript are consistent with that arrogant and unacceptable behavior and that should be recognized in the Board's consideration of this motion.

II. ARU/BLET and Other Parties Would Be Prejudiced Absent the Board Granting the Motion.

ARU/BLET, and other parties with an interest in the effects of the proposed transaction on rail workers and the ability of a post-merger carrier to provide safe and adequate service with the essentially static workforce they project, would be prejudiced absent a ruling re-designating disputed portions of the Parkerson Deposition Transcript as Public. In evaluating confidentiality designations, the Board has made it clear that it must strike a balance between legitimate access

and legitimate protection.[17] Maintaining that balance here requires that the information contained in the portions of the Parkerson Deposition Transcript cited by ARU/BLET be re-designated as Public.

The subjects addressed in the disputed portions of the Parkerson Deposition Transcript go to core questions for rail workers in this case: What will happen to employment levels? Will there be enough workers to accomplish necessary work? Will there be enough workers for them to perform their work without pressure to work too quickly or less attentively as they should? Will there be enough workers for them to be able to actually take accrued leave and spend their designated off days with their families? Will Applicants try to game the system by changing collective bargaining agreements outside the Railway Labor Act years after the merger is consummated? Will Applicants try to deprive employees whose jobs are abolished of dismissal benefits by claiming that the employees must uproot their families and move hundreds or a thousand miles in order to retain those benefits? Union officers and union members have a strong interest in Applicants' answers to those questions. And the Unions have a strong interest in the ability of their counsel to discuss Applicants' answers with officers of the Unions in order to prepare Comments, consider requests for conditions, and to present argument in Board hearings.

Additionally, as the Board learned in the *Urgent Issues in Freight Rail Service* proceeding (Ex Parte No. 770) and *Union Pacific Embargoes* proceeding (Ex No. Parte 772), shortages of employees directly impact levels and quality of service, so information about the projected size of the workforce, plans to force employee relocations on threat of loss of statutory benefits, closures of facilities, and potential disputes over Applicants' efforts to change collective

[17] *Id.* at 4.

bargaining agreements outside the Railway Labor Act is pertinent to parties other than Rail Unions. States, cities, towns, and counties also have an interest in the adequacy of a railroad's workforce so that they can feel comfortable about the safety of trains that pass through their communities. Shippers have an interest in the potential for merger integration service disruptions and the quality of service that may be provided by a post-merger carrier, which are affected by the number of employees available to provide the service.[18] Other interested members of the public who have concerns about post-merger quality of service and rail safety have an interest in Applicants' post-merger staffing plans. None of these other parties and members of the public can access information that has been designated as Highly Confidential – as this information is only accessible by outside counsel and outside consultants that have undertaken the proceeding's Protective Order; and information that has been designated as Confidential cannot be publicly aired.

Given the need of the Unions for re-classification of the disputed portions of the Parkerson Deposition Transcript; the policy and premium placed on public participation in major transaction proceedings, and the statutory mandate for a determination as to whether a transaction is consistent with the public interest; and the insubstantial nature of Applicants' reasons for withholding the disputed portions of the Parkerson Deposition Transcript from the public (actually the absence of any reasons for withholding that information), the balance of interests here leans heavily toward disclosure.

III. RE-CLASSIFICATION REMAINS IMPORTANT AT THIS TIME, AND ARU/BLET SHOULD BE PERMITTED TO AMEND THEIR PUBLIC COMMENTS WITH INFORMATION FROM THE PARKERSON DEPOSITION TRANSCRIPT IF THE BOARD GRANTS THIS MOTION

[18] *See*, *Urgent Issues In Freight Rail Service—Railroad Reporting*, Ex Parte No. 770 (Sub No. 1), May 5, 2022.

Applicants may contend that there is no reason to grant this motion because Comments are due on November 18th. ARU/BLET will file their comments and may include Highly Confidential and Confidential information in their comments while filing a redacted version in a public filing. But ARU/BLET submit that given the delays caused by Applicants, ARU/BLET should be allowed to amend their Public Comments with information from the Parkerson Deposition Transcript if this motion is granted so that ARU/BLET counsel can discuss that information with the Unions as this proceeding progresses, and so other stakeholders and members of the public can have access to that information.

As described above, the Parkerson deposition was originally scheduled for August 26, 2026 after counsel for ARU accepted that date. It was then unilaterally rescheduled by Applicants for September 4, 2026, and then unilaterally rescheduled again; Applicants originally proposed October 16, 2026 but it was ultimately scheduled for September 30, 2026. Shortly after the deposition, counsel for ARU/BLET sought re-classification of the Transcript and followed up that request 2 more times. Applicants first responded on November 3, 2026, 15 days before the due date for Comments, designating whole swaths of the Transcript as Confidential and Highly Confidential without any explanation or attempt at justification. ARU/BLET submit that given the delay by Applicants, ARU/BLET should be allowed to amend their public comments to include re-classified information from the Parkerson Deposition Transcript that they cite in their confidential filing on November 18, 2026, if the Board grants this motion

CONCLUSION

Applicants seem to believe that there is no harm when significant information is unavailable to stakeholders or the public, if the information is made available to counsel and

consultants for participant stakeholders. That belief is premised on a fundamentally wrong understanding of these proceedings. The Board's consideration of the Application is not a closed process limited to Applicants, the Board, and counsel and consultants for industry stakeholders. In this proceeding, the Board must determine whether the proposed transaction is consistent with the public interest (including the interests of employees). 49 U.S.C. §11324(b) and (c). The Board cannot meaningfully make that determination without full participation of industry stakeholders (including representatives of affected employees). Furthermore, the public at large has an interest in pertinent information about the proposed transaction. If counsel for stakeholders cannot submit comments and briefs that the public can truly see and understand, if counsel for stakeholders cannot refer to pertinent information in open hearings, the public is limited in its understanding of the effects and implications of the proposed transaction. Applicants' overly restrictive view of what information industry stakeholders can know and respond to, and what may be known by the public, should be rejected as inconsistent with the statute.

For the reasons set forth herein, ARU/BLET respectfully request that the disputed excerpts of the Parkerson Deposition Transcript from Highly Confidential and Confidential be re-classified as Public, and that ARU/BLET be allowed to amend their Public Comments to include any information from the Parkerson Deposition Transcript that were cited in their Confidential Comments that would be re-classified if the Board grants this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Motion to be served to representatives of all Parties of Record as of the date of this filing, and to Administrative Law Judge Jenifer Soulikias by email using the addresses on the service list for this proceeding.

/s/Richard S. Edelman
Richard S. Edelman

Date: November 12, 2026

ARU/BLET EXHIBIT A

CONFIDENTIAL- FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

ARU/BLET EXHIBIT B

CONFIDENTIAL- FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

ARU/BLET EXHIBIT C

CONFIDENTIAL- FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

ARU/BLET EXHIBIT D

CONFIDENTIAL- FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER