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Office of Chief Counsel
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Part of
Public Record

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

Re: Docket No. FD 36873, *Union Pacific Corp., et al.—Control—Norfolk Southern Corp., et al.*

Dear Judge Soulikias:

Union Pacific respectfully opposes CPKC's motion to redesignate as public the videorecording of Union Pacific CEO Jim Vena's March 2026 address at the Southwest Association of Rail Shippers ("SWARS") annual conference, which Union Pacific produced on October 1, 2026 and designated "Confidential" under the Protective Order.[1] The video was properly designated Confidential, the designation imposes no meaningful burden on any party's ability to use the video in this proceeding, and there is no legitimate need to disseminate Union Pacific's proprietary recording beyond the parties to this case. The motion should be denied.[2]

First, the video constitutes proprietary business information that the Protective Order expressly permits Union Pacific to designate Confidential. The Protective Order defines "Confidential Information" to include not only traffic, contract, and cost data, but also "proprietary business information." Decision No. 1, App. ¶ 1(b). Proprietary information includes "[i]nformation in which the owner has a protectable interest." Proprietary Information, Black's Law Dictionary (11th ed. 2019). The video satisfies that definition. Union Pacific paid for the recording to be created and owns the copy in its possession. It also has a protectable interest in the recording: it has never distributed the video publicly, and it is entitled to determine whether, when, and to whom the video is disseminated. That interest was not waived by Union Pacific's compelled production of the recording in discovery. *See, e.g.*, *Norfolk S. Corp.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R.*, FD 36836, 2025 STB LEXIS 191, at *3–4 (STB served Aug. 27, 2025) (Soulikias, ALJ) [hereinafter "*NPBL Order*"] (denying motion to

[1] *See* CPKC-58; *see also* ACC-8/ACD-8/AFPM-8/NITL-5/TFI-8 [hereinafter "JSA Letter"].

[2] Union Pacific does not object to Your Honor resolving this motion, which the Protective Order expressly authorizes. *See* Decision No. 1, App. ¶ 10. There is no need to refer the matter to the Board as CPKC alternatively requests and the JSA supports. *See* CPKC-58 at 2; JSA Letter at 3.

redesignate documents as public notwithstanding that the documents were previously produced pursuant to an order compelling discovery). Indeed, the Protective Order exists precisely to preserve an owner's control over dissemination of such protectible material outside of this proceeding. *See* Decision No. 1, App. ¶ 7.

CPKC's motion and the JSA Letter conflate the event with the recording. They contend that the SWARS conference was "a public event" and that the address, therefore, "contains no Confidential Information." CPKC-58 at 2; *see also* JSA Letter at 2. But whether SWARS attendees heard Mr. Vena speak in person says nothing about the status of a recording that Union Pacific commissioned, owns, and has not made available for public use.[3] Neither CPKC nor the JSA contends that the video was ever published, posted, or provided to attendees or anyone else other than through compelled discovery in this proceeding. *See, e.g.*, *NPBL Order*, 2025 STB LEXIS 191, at *4 (denying redesignation where the movant "ha[d] not shown that this information has been made publicly available since the documents' creation"). If the videorecording in Union Pacific's possession was already public, then there would have been no need for CPKC to seek production of the video in discovery.

Second, the Confidential designation fully preserves every party's ability to use the video *in this proceeding*. The Protective Order permits Confidential material to be used for "the preparation and presentation of evidence and argument" in this proceeding and, unlike "Highly Confidential" material, Confidential material may be disclosed to any party representative that signs the undertaking. *See also* JSA Letter at 2–3 (conceding that "any party that filed a notice of intent to participate can view the Video"). Every shipper, shipper association, labor organization, and carrier that is a party to this proceeding may thus review the video and use it in its filings. CPKC's own motion confirms that the designation is no obstacle: CPKC has already filed the full address and an excerpt with Your Honor under seal and has offered to share them with any party that has executed the undertaking. CPKC-58 at 2 n.5. CPKC identifies no use of the video in this proceeding that the Confidential designation prevents. Redesignation would thus add nothing to the record before the Board. *See, e.g.*, *NPBL Order*, 2025 STB LEXIS 191, at *6 (redesignation denial "does not prevent [the movant] from presenting the documents to the Board," which "will determine the materiality of any documents").

The JSA's contention that the designation "hides the Video from shippers deciding whether to make submissions in this proceeding," JSA Letter at 2, is equally incorrect. Nothing about the Confidential designation prevents any stakeholder from participating. The JSA itself concedes that non-party shippers "may still file statements supporting the merger, opposing it, or informing the Board," *id.* at 3, and of course any shipper participating in the proceeding that has signed the undertaking will have full access to the video.

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[3] Although immaterial to the analysis, the assertion that the SWARS conference was a "public event" is mistaken. The conference was restricted to registered attendees who had paid a fee to attend. There was no livestream or other widespread public dissemination of the event.

CPKC's invocation of the Board's statement that stakeholders "must be able to" provide information "without concerns that their commercial relationships . . . will be negatively affected because of their participation" also misses the mark. *See* CPKC-58 at 2 (quoting Decision No. 28 at 4). That statement concerns stakeholders' freedom to participate in the proceeding, and a Confidential designation does nothing to restrict it.

Third, CPKC has failed to identify any legitimate basis to allow dissemination of Union Pacific's proprietary recording *outside this proceeding*. The Protective Order exists to ensure that information "produced by any party . . . will be used solely for purposes of this proceeding and not for any other business or commercial purpose," Decision No. 1 at 2, and it expressly bars use of designated material for "any business, commercial, strategic, or competitive purpose," *id.*, App. ¶ 11. CPKC is one of Union Pacific's principal competitors and a leading opponent of the transaction. If the designation were lifted, nothing would prevent CPKC or others from excerpting selected clips from the video, stripped of their context, and circulating them in media, presentations, marketing materials, or other uses outside this proceeding. But the discovery process is not meant to permit parties to use a competitor's proprietary information outside of this proceeding, and CPKC's request to strip the designation from a recording it obtained through discovery—so that it may make such use of the video without any limitation—would permit precisely the kind of illegitimate uses that the Protective Order is designed to prevent. To the extent CPKC, the JSA, or any other party believes the video is relevant to the Board's review, they remain free to present that argument to the Board, using the video under seal as the Protective Order provides.

For the foregoing reasons, Union Pacific respectfully requests that Your Honor deny CPKC's motion to redesignate the videorecording.

Respectfully submitted,

/s/ Laura Flahive Wu

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cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of October, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer J. Soulikias.

/s/ Jamie Dominique U. Magcale
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