THOMPSON HINE

ATLANTA | CHICAGO | CINCINNATI | CLEVELAND
COLUMBUS | DAYTON | LOS ANGELES | MINNEAPOLIS
NEW YORK | SILICON VALLEY | WASHINGTON, D.C.

October 13, 2026

ACC-9 / ACD-9 / AFPM-9 / NITL-6 / TFI-9

Via Electronic Filing

312690

ENTERED
Office of Chief Counsel
October 13, 2026
Part of
Public Record

The Hon. Patrick Fuchs, Chairman
The Hon. Michelle Schultz, Vice Chair
The Hon. Karen Hedlund
The Hon. Richard Kloster
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: Docket No. FD 36873, *Union Pacific Corp.—Control—Norfolk Southern Corp.*
Union Pacific's Actions that Discourage Shipper Participation

Dear Board Members:

The Joint Shipper Associations[1] are concerned that remarks by Union Pacific's CEO at the Southwest Association of Rail Shippers 2026 Annual Meeting threatening retaliation against opposing shippers, and Union Pacific's subsequent conduct, serve to chill shipper voices. Union Pacific has (1) kept the only known video of the remarks from the public; (2) recast shipper silence as acquiescence; and (3) dismissed the trade associations that give shippers fearful of retaliation a voice. We ask the Board to weigh this conduct as it conducts this proceeding and evaluates the record.

Union Pacific Brushed Aside Mr. Vena's Remarks and Sat on the Evidence

Union Pacific has brushed aside concerns from Congress and the Board about Mr. Vena's remarks. On July 17, Senator Baldwin told the Board that Mr. Vena had issued a "thinly veiled threat to raise rates for customers who did not publicly support the merger."[2] Five days later, in *Decision No. 28*, the Board declared that it "will not tolerate retaliation," is "committed to ensuring that its proceedings remain open to meaningful participation," and expects all parties to "refrain from

[1] The Joint Shipper Associations are the Alliance for Chemical Distribution, American Chemistry Council, American Fuel & Petrochemical Manufacturers, National Industrial Transportation League, and The Fertilizer Institute.

[2] Letter from Hon. Tammy Baldwin, U.S. Senate, to the Surface Transportation Board, FD 36873, July 17, 2026.

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

statements or conduct that could deter public participation."[3] It also invited Union Pacific to respond to reports of Mr. Vena's remarks and to address related concerns about public participation.[4] Without addressing Mr. Vena's remarks directly, Union Pacific answered that "[w]e are not threatening [our customers]"[5] and shifted the spotlight to non-Applicant railroads, saying it expects its competitors "will do the same."[6]

Throughout, Union Pacific sat on the only known video of the remarks.[7] It could have released the video so the Board, Senator Baldwin, and shippers could judge the remarks for themselves. Instead, it withheld the video until the notice-of-intent deadline passed, then produced it as confidential under the Protective Order so only parties of record could see it.[8]

By failing to address Mr. Vena's remarks directly and keeping evidence of the remarks from view, Union Pacific left secondhand reports to spread Mr. Vena's message. No party seeking approval of a transaction should behave this way—let alone one seeking approval of a merger of this magnitude.

Hiding the Video Silences Shippers and Shields Union Pacific

The harm is significant and continuing. Senator Baldwin has heard "from numerous stakeholders that they are afraid to publicly relay their concerns, knowing that UP

---

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

[4] *Id.*

[5] Letter from Jim Vena, CEO, Union Pacific, to the Surface Transportation Board, at 3, FD 36873, July 27, 2026.

[6] Applicants, Second Response to Decision No. 21, at 10, FD 36873, July 27, 2026.

[7] Exhibit A contains the portion of the video with Mr. Vena's closing remarks. Exhibit B is the entire video, broken into three parts for filing.

[8] Administrative Law Judge Soulikias has received a request to make the video public. CPKC Letter Brief (CPKC-58), FD 36873, Oct. 6, 2026. The Joint Shipper Associations filed a letter brief on October 9 supporting this request.

can retaliate against them."[9] While shippers widely know the substance of Mr. Vena's remarks, the absence of a publicly available video or an on-the-record response from Union Pacific directly addressing the remarks has allowed the fear of retaliation to fester unchecked. Union Pacific's silence almost certainly led many shippers to forgo filing notices of intent to participate. It also discourages shippers that have not filed notices of intent from submitting statements opposing the merger or offering information that could help the Board.[10] Even shippers that filed notices of intent, and can now view the video, must weigh Mr. Vena's remarks and Union Pacific's silence about them before deciding whether to speak.

By hiding the video and ignoring Mr. Vena's remarks, Union Pacific also deprives shippers of their best protection against retaliation: exposure. When a threat is public, Union Pacific cannot quietly act on it. Every rate and service decision would face scrutiny against that threat. Yet unless the video is made public, shippers that are not parties of record will never see it. And parties of record must destroy or return it by the end of this proceeding—precisely when the risk of retaliation is greatest.[11]

Union Pacific Is Using This Conduct to Recast Shipper Silence as Acquiescence while Dismissing the Associations that Give Shippers a Voice

Union Pacific is exploiting this lack of transparency to control which shipper voices reach the Board. In an October 6 letter to customers, Kenny Rocker, Union Pacific's

---

[9] Letter from Hon. Tammy Baldwin, U.S. Senate, to the Surface Transportation Board, FD 36873, July 17, 2026.

[10] *See Decision No. 28*, slip op. at 4 ("[S]takeholders provide information that is important to the Board's analysis and must be able to do so without concerns that their commercial relationships . . . will be negatively affected because of their participation.").

[11] Under the Protective Order, parties that receive material designated confidential must destroy it when the party withdraws from the proceeding or the proceeding ends. *Union Pac. Corp.—Control—Norfolk S. Corp.* (*Decision No. 1*), FD 36873, slip op. at 5 (STB served Aug. 5, 2025). This does not apply to file copies of pleadings and other documents retained by *outside counsel*. *Id.* at 3-4.

Executive Vice President of Marketing and Sales, contends that a "customer who has stayed quiet, or who has taken a neutral position publicly, is not a customer who opposes this transaction—even if they belong to an association who has."[12] He concedes that many customers "would rather not take a public position while the proceeding is active."[13] But Mr. Rocker ignores that Union Pacific's own CEO threatened rate increases for shippers that oppose the transaction.

Union Pacific also dismisses the trade associations that speak for shippers that risk retaliation by speaking individually. Mr. Rocker concedes that "[t]rade associations do important work," but then asserts: "We move plastic from the Chemical plant, not the American Chemistry Council (ACC). . . . We do not stop to wonder what an association thinks about the merger."[14] The playbook is plain: warn opponents, frame their silence as acquiescence, and dismiss their trade associations.

That dismissal gets it backward. Union Pacific discounts trade associations for speaking with a single voice, but that is why their voices matter. An association speaks with one voice so that members who fear retaliation do not need to speak individually. While some members may differ from their trade association, an association's advocacy reflects its members' collective interests, and members direct the association's positions and actions. The Board should give that advocacy full weight.

Thin Shipper Support for the Merger Reflects Retaliation Fears

Thin public support for the merger shows how Union Pacific's conduct affects shippers. Mr. Vena claims that "[b]enefits from single-line service mean that every American business that moves goods by rail—whether manufacturers, farmers, or

[12] Kenny Rocker, Union Pacific, *Silence Is Not Opposition* (Oct. 6, 2026), https://www.up-nstranscontinental.com/letters/rocker-customer-support/.

[13] *Id.*

[14] *Id.*

exporters—stands to gain from the merger."[15] Yet Mr. Rocker celebrates support from only about five percent of Union Pacific's approximately 10,000 customers.[16]

The Board Should Consider Union Pacific's Conduct and Protect Shipper Participation

Union Pacific's conduct—failing to address threatening remarks, keeping a video of the remarks from the public, and recasting the resulting shipper silence as support—falls short of the standard the Board set in *Decision No. 28*. The Joint Shipper Associations ask the Board to consider that conduct when weighing the record, including the absence of shipper opposition, and to ensure that shippers can participate in this proceeding without fear of reprisal.

Very truly yours,

/s/ Jason D. Tutrone

Jason D. Tutrone

[15] Vena V.S. ¶ 38, App. Vol. 1, at 226, FD 36873, Apr. 29, 2026.

[16] Union Pacific, Company Overview, https://www.up.com/aboutup/corporate_info/uprrover/index.htm (last visited Oct. 13, 2026) (stating UP has approximately 10,000 customers); Kenny Rocker, Union Pacific, *Silence Is Not Opposition* (Oct. 6, 2026), https://www.up-nstranscontinental.com/letters/rocker-customer-support/ (stating that "more than 500 shippers" support the merger).

Exhibit A

(Confidential - Subject to Protective Order)

Exhibit B

(Confidential - Subject to Protective Order)

Certificate of Service

I certify that on October 13, 2026, I served a copy of this document by email or first-class mail, postage pre-paid, upon all parties of record in this proceeding and the parties listed below.

/s/ Jason D. Tutrone
Jason D. Tutrone