



Freight Rail
Customer Alliance



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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: EP 770 (Sub-No. 1), *Urgent Issues in Freight Rail Service—Railroad Reporting*,

Dear Ms. Brown:

The Freight Rail Customer Alliance (“FRCA”) and National Coal Transportation Association (“NCTA”) respectfully state their support for the “Unions’ Reply to Union Pacific Railroad Motion for Protective Order” and “Unions’ Comment Regarding Union Pacific’s January Employment Data Report” filed February 23, 2024, and February 26, 2024, respectively. FRCA and NCTA further state as follows.

NCTA and FRCA addressed a prior attempt by Union Pacific Railroad Company (“UP”) to obtain excessive and unwarranted confidentiality protection in their letter filed January 4, 2023, in EP 722, *Oversight Hearing Pertaining to Union Pacific Railroad Company’s Embargoes*. UP’s latest attempt is even more lacking.

UP claims an expectation of privacy for information that it has previously filed publicly without objection or restriction. No harm has been identified from prior disclosure, and UP’s suggestions that it might experience harm now are empty conjecture. UP contends the disclosure “was informed by unique and transitory market considerations that are no longer in effect.” Whether they are in effect or will return is exactly why the Board has ordered the data to be reported, all the more so in light of UP’s own recent actions and statements as to its future plans. Furthermore, the data is highly aggregated and thus unlikely to bear on UP’s pursuit of any specific opportunities. The

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bigger concern is that UP will be unable to serve its existing customers and meet its obligations, as Chairman Oberman discussed in his recent speech, https://www.stb.gov/wp-content/uploads/02-29-24_Oberman_SEARS-speech.pdf, and FRA Administrator Bose addressed in his recent letter to UP CEO Vena, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1709239266067/308023.pdf.

Notably, no other carrier has sought equivalent restrictions. By seeking confidential treatment, and threatening so seek highly confidential treatment for what other carriers are disclosing publicly, UP seeks to create an unlevel playing field tilted to its advantage. UP does not merit such elevated status.

UP's invocation of FOIA Exemption 4 is misplaced. Even if the information falls within the exemption, protection from disclosure under FOIA is discretionary, not mandatory. *E.g.*, <https://www.justice.gov/media/1212566/dl?inline> (DOJ 2022 FOIA Guidelines) (noting, *inter alia*, "openness should prevail" and encouraging "discretionary disclosures of information"). In this instance, the Board should not establish or allow any restrictions on the information that impair the ability of customers and the public to ascertain UP's ability and commitment to provide adequate service and fulfill its obligations.

Having inflicted enormous harm on FRCA's and NCTA's members, other customers, and the general public due to its failure or refusal to serve, UP should not be allowed to impose restrictions on access to and use of information pertaining directly to whether those customers and the public can expect UP to provide reasonable and adequate service going forward.

Respectfully submitted,



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