

January 15, 2021

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Union Pacific Corporation
Shareholder Proposals of The Children's Investment Fund and James
McRitchie
Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Union Pacific Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) (i) a shareholder proposal (the “TCI Submission”) and recitals and statement in support thereof (the “TCI Supporting Statement”) received from The Children’s Investment Master Fund (“TCI Fund”); and (ii) a shareholder proposal (the “McRitchie Submission”) and recitals and statement in support thereof (the “McRitchie Supporting Statement”) received from As You Sow (the “McRitchie Representative”) on behalf of James McRitchie¹ (“McRitchie,” and together with TCI Fund, the “Proponents”). The TCI Submission and the McRitchie Submission are each referred to herein as a “Duplicate Submission,” and collectively as the “Duplicate Submissions.”

¹ Co-filers of the McRitchie Submission previously included Liz Michaels and the Merck Family Fund, but the McRitchie Representative subsequently informed the Company via email on December 30, 2020 that it was withdrawing Liz Michaels and the Merck Family Fund as co-filers of the McRitchie Submission. See Exhibit F.

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Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the expected deadline for the Company to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Duplicate Submissions, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE DUPLICATE SUBMISSIONS

The TCI Submission states:

RESOLVED, that shareholders of Union Pacific Corporation (“UP” or the “Company”) request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company’s greenhouse gas emission levels (the “Emissions”) in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions’ progress made year over year (the “Reduction Plan”), and provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan.

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A copy of the TCI Submission and the TCI Supporting Statement, as well as related correspondence with TCI Fund, is attached to this letter as Exhibit A.

The McRitchie Submission states:

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

A copy of the McRitchie Submission and the McRitchie Supporting Statement, as well as related correspondence with McRitchie, is attached to this letter as Exhibit B.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Submissions may each be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(c) because each Duplicate Submission consists of multiple proposals, and despite proper notice, the Proponents have failed to correct this deficiency.

In addition, to the extent the Staff is unable to concur in our view that the TCI Submission consists of multiple proposals, we hereby respectfully request that the Staff concur in our view that the McRitchie Submission may be excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(f), as the McRitchie Representative did not provide sufficient documentation demonstrating McRitchie's delegation of authority to the McRitchie Representative consistent with Rule 14a-8(b), despite the Company's timely notice of the procedural deficiency; and
- Rule 14a-8(i)(11) because the McRitchie Submission substantially duplicates the TCI Submission, which the Company would include in its 2021 Proxy Materials.

ANALYSIS

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I. The Duplicate Submissions May Each Be Excluded Under Rule 14a-8(c) Because Each Duplicate Submission Consists Of Multiple Proposals.

A. The TCI Submission Background.

On November 11, 2020, TCI Fund submitted the TCI Submission to the Company via email, which the Company received on November 11, 2020. After reviewing the TCI Submission, the Company sent a letter to TCI Fund (the “TCI Deficiency Notice”) on November 24, 2020, which was within 14 days of the date on which the TCI Submission was received, notifying TCI Fund of the Company’s belief that the TCI Submission contained more than one shareholder proposal in violation of Rule 14a-8(c) and of TCI Fund’s obligation to “indicat[e] which proposal [TCI Fund] would like to submit and which proposal [TCI Fund] would like to withdraw.” A copy of the TCI Deficiency Notice is attached to this letter as Exhibit C.

Specifically, the Resolved clause of the TCI Submission set forth the first proposal by stating:

RESOLVED, that shareholders of Union Pacific Corporation (“UP” or the “Company”) request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company’s greenhouse gas emission levels (the “Emissions”) in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions’ progress made year over year (the “Reduction Plan”)
.....

Separately, the Resolved clause of the TCI Submission requested an annual vote on the Reduction Plan, specifically asking that the Company “provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan.”

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On December 1, 2020, TCI Fund responded via email to the TCI Deficiency Notice. *See Exhibit D.* Instead of indicating which of the two distinct proposals TCI Fund wished to submit and which TCI Fund wished to withdraw, TCI Fund stated:

The Proposal requests that shareholders be provided with an opportunity at each annual meeting to express non-binding advisory approval or disapproval with regard to a report disclosing the Company's greenhouse gas emission levels, as well as any strategy that the Company may have adopted or will adopt to reduce such emissions (the "Reduction Plan"). Disclosure of the Company's Reduction Plan is necessary for shareholders to express their non-binding advisory approval or disapproval of it. It follows that the Proposal is comprised of complementary components that are "closely related and essential to a single well-defined unifying concept." (SEC Release No. 2412,999 (Nov. 22, 1976).

Accordingly, the TCI Submission continues to have two separate and distinct requests in a single proposal in violation of Rule 14a-8(c): (1) prepare and issue "a report disclosing the Company's greenhouse gas emission levels . . . as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future"; and (2) to provide an annual vote for shareholders "to express non-binding advisory approval or disapproval of the Reduction Plan."

B. The McRitchie Submission Background.

On December 3, 2020, the McRitchie Representative submitted the McRitchie Submission to the Company via overnight mail, which the Company received on December 4, 2020. After reviewing the McRitchie Submission, the Company sent a letter to the McRitchie Representative (the "McRitchie Deficiency Notice") on December 17, 2020, which was within 14 days of the date on which the McRitchie Submission was received, notifying McRitchie of, among other things, the Company's belief that the McRitchie Submission contained more than one shareholder proposal in violation of Rule 14a-8(c) and McRitchie could "correct this procedural deficiency by revising the [McRitchie Submission] to consist of only one proposal." A copy of the McRitchie Deficiency Notice is attached to this letter as Exhibit E.

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The Resolved clause of the McRitchie Submission expressly sets forth one first proposal requesting an annual non-binding advisory shareholder vote on the Company's climate policies and strategies. Specifically, the proposal states:

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

However, the McRitchie Submission also implicitly contains a second proposal requesting, as a separate and precedent act, that the Company publicly report on its climate change policies and strategies (the "Climate Strategy Report"). In this respect, the McRitchie Supporting Statement makes clear that the McRitchie Submission contemplates disclosure of "a climate change transition strategy" which would address the Company's "plans related to climate change" and which would have quantitative targets of a nature which shareholders could assess by "refer[ring] to benchmarks such as the Net Zero Benchmark and/or Science Based Targets." Thus, even though the McRitchie Submission does not expressly request a report, it presupposes the existence of a report setting forth specific quantitative "plans" and "strategies" related to climate change.² The McRitchie Submission therefore implicitly

² We believe that it is not credible to assert that the McRitchie Submission does not presuppose the publication, in advance of each annual meeting, of a specific type of climate change report, as that argument would result in shareholders voting on something that does not exist and, as a result, would be inconsistent with federal securities laws. As stated by TCI Fund in its response quoted above, "Disclosure of the Company's Reduction Plan is necessary for shareholders to express their non-binding advisory approval or disapproval of it."

In fact, on the same day that the McRitchie Representative sent the McRitchie Submission to the Company, it also submitted a separate proposal to the Company, purportedly as representative of different shareholders of the Company, that requested that the Company "issue a climate transition report, at least 120 days prior to the next annual meeting, and updated annually, that addresses the scale and pace of its responsive measures associated with climate change." The supporting statement to this proposal state, "Shareholders believe that planning and reporting by [the Company] on its climate transition plans and strategies will benefit the [C]ompany and its investors" and recommends that the requested report "[set] forth a Reduction Plan with goals, ambitions, and time frames that the Company has adopted (or proposes to adopt) to reduce those greenhouse gas emissions over time." Because the McRitchie Representative did not provide proof that any of the proponents of this separate proposal satisfied the ownership requirements of Rule 14a-8, it is the subject of a separate no-action request.

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requests the Company to prepare and issue a Climate Strategy Report, which as discussed below, is a separate and distinct act from the request for an annual shareholder advisory vote, and thus constitutes a second proposal.

As discussed in further detail below, the Company received a response from the McRitchie Representative addressing other procedural defects in the McRitchie Submission, but to date, the Company has not received a response from McRitchie or the McRitchie Representative regarding the multiple proposal deficiency. Accordingly, the McRitchie Submission continues to have two separate and distinct requests in a single proposal in violation of Rule 14a-8(c): (1) to prepare and issue a Climate Strategy Report; and (2) to provide an annual “non-binding, advisory [shareholder] approval or disapproval” vote on the Climate Strategy Report.

C. *Analysis.*

The Duplicate Submissions may each be omitted pursuant to Rule 14a-8(c) because the Proponents have each combined two separate and distinct matters into a single proposal in violation of Rule 14a-8(c). Specifically, after receiving the Duplicate Submissions, the Company timely provided the TCI Deficiency Notice and McRitchie Deficiency Notice to TCI Fund and McRitchie, respectively, stating that the Duplicate Submissions consisted of two proposals and instructing how the Proponents could cure the deficiency. Then, instead of curing the deficiency, TCI Fund stated that there was no deficiency and neither McRitchie nor the McRitchie Representative responded to the deficiency.

Rule 14a-8(c) provides that a shareholder “may submit no more than one proposal to a company for a particular shareholders’ meeting.” The Staff has consistently recognized that Rule 14a-8(c) permits the exclusion of submissions combining separate and distinct elements that lack a single well-defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. For example, in *General Motors Corp.* (avail. Apr. 9, 2007, *recon. denied* May 15, 2007), the submission requested that the board “seek shareholder approval for the restructuring of the [company]” and proceeded to set forth several transactions that the restructuring plan should entail. The company explained that though the overall transaction contemplated the separation of four company operations into separate companies, the transaction entailed distinct steps and a variety of elements that are “intended to be independent.” The Staff concurred in the company’s exclusion of the submission under Rule 14a-8(c). Similarly, in *PG&E Corp.*

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(avail. Mar. 11, 2010), the Staff concurred with exclusion of a submission asking that, pending completion of certain studies of a specific power plant site, the company: (i) mitigate potential risks encompassed by those studies; (ii) defer any request for or expenditure of public or corporate funds for license renewal at the site; and (iii) not increase production of certain waste at the site beyond the levels then authorized. Notwithstanding the proponent's argument that the steps requested in its submission would avoid circumvention of state law in the operation of the specific power plant, the Staff specifically noted that "the proposal relating to license renewal involves a separate and distinct matter from the proposals relating to mitigating risks and production level." *See also American Electric Power Company, Inc.* (avail. Jan. 2, 2001) (concurring in the exclusion of a stockholder submission which sought to: (i) limit the term of director service, (ii) require at least one board meeting per month, (iii) increase the retainer paid to the company's directors, and (iv) hold additional special board meetings when requested by the chairman or any other director, where the Staff found that the submission constituted multiple proposals despite the proponent's argument that all of the actions were about the "governance of [the company]"); *Duke Energy Corp.* (avail. Feb. 27, 2009) (concurring in the exclusion of a stockholder submission to impose director qualifications, to limit director pay and to disclose director conflicts of interest, despite the proponent's claim that all three elements related to "director accountability"); *Morgan Stanley* (avail. Feb. 4, 2009) (concurring in the exclusion of a submission requesting stock ownership guidelines for director candidates, new conflict of interest disclosures and restrictions on director compensation, notwithstanding the proponent's argument that each of those items related to the broad concept of "improving director accountability").

The Staff has concurred in the availability of Rule 14a-8(c) even in cases where the shareholder's submission was phrased in terms of a series of specific but separate actions that related to a common theme. For example, in *Textron Inc.* (avail. Mar. 7, 2012), the Staff concurred in the exclusion of a submission that sought to allow shareholders to make director nominations in the company's proxy materials where the proposal also included a provision that addressed whether operation of the nomination process would constitute a change of control of the company. The Staff concurred that this collateral provision "constitute[d] a separate and distinct matter from the proposal relating to the inclusion of stockholder nominations for director in Textron's proxy materials," and accordingly that the submission was excludable under Rule 14a-8(c). Similarly, in *Parker-Hannifin Corp.* (avail. Sept. 4, 2009), the Staff concurred in the exclusion of a submission that sought to create a "Triennial Executive Pay Vote" program that consisted of three elements: (i) a triennial executive pay vote to approve the compensation of the company's executive officers; (ii) a triennial

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executive pay vote ballot that would provide stockholders an opportunity to register their approval or disapproval of three components of the executives' compensation; and (iii) a triennial forum that would allow stockholders to comment on and ask questions about the company's executive compensation policies and practices. The Staff concurred in exclusion under Rule 14a-8(c), specifically noting that the third part of the proposed program was a "separate and distinct matter" from the first and second parts and, therefore, that all of the proposals could be excluded. *See also, Centra Software, Inc.* (avail. Mar. 31, 2003) (concurring in the exclusion of a submission requesting amendments to the bylaws to require separate meetings of the independent directors and that the chairman of the board not be a company officer or employee, where the company argued the proposals would amend "quite different provisions" of the bylaws and were therefore unrelated).

Moreover, the Staff has concurred that multiple proposals are involved when one part of a shareholder's submission addresses matters or actions that are a necessary precedent to implementation of another part of the submission. For example, in *HealthSouth Corp.* (avail. Mar. 28, 2006), the submission would have amended the company's bylaws to: (i) grant shareholders the power to increase the size of the board; and (ii) allow shareholders to fill any director vacancies created by such an increase. The Staff concurred that the submission constituted multiple proposals even though the proponent claimed that the proposals were related to the single concept of giving shareholders the power to add directors of their own choosing. In *Exxon Mobil Corp.* (avail. Mar. 19, 2002) the Staff concurred that multiple proposals were involved in a submission requesting that the election of directors include a slate of nominees larger than the number of available board seats and that the additional nominees come from individuals with experience from a variety of shareholder groups, notwithstanding the proponent's claim that the proposals related to the single concept of diversification of the board. In *Allstate Corp.* (avail. Jan. 29, 1997), the Staff concurred that a submission constituted multiple proposals when it requested that the company adopt cumulative voting and then avoid certain actions that the proponent indicated may indirectly impair the effectiveness of cumulative voting.

Like the multiple-proposal submissions described in the precedents above, each of the Duplicate Submissions actually contains two proposals that request separate and distinct actions, in violation of Rule 14a-8(c). Specifically, the TCI Submission plainly requests that the Company (1) prepare and issue "a report disclosing the Company's greenhouse gas emission levels . . . as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future"; and (2) provide an annual vote for shareholders "to

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express non-binding advisory approval or disapproval of the Reduction Plan.” Similarly, the McRitchie Submission (1) implicitly requests that the Company prepare and issue a Climate Strategy Report addressing the Company’s “climate policies and strategies, in consideration of key climate benchmarks”; and (2) explicitly requests that the Company provide an annual shareholder vote for “non-binding, advisory approval or disapproval” of the Climate Strategy Report.

The fact that the Duplicate Submissions each involve two separate and distinct requests is clear from both the face of the submissions and from precedent. One of the actions entails the Company preparing a specific type of climate change report, setting forth its plans and strategies. The second proposal entails an entirely different action, providing for and soliciting shareholders’ vote on the Company’s plans (which of itself would require preparation of proxy disclosures framing the Reduction Plan/Climate Strategy Report for a vote). Each of these is a distinct and material action. In its Compliance and Disclosure Interpretations (Regarding Unbundling under Rule 14a-4(a)(3) Generally) (updated Jan. 24, 2014), the Staff clarified that (other than in the context of equity incentive plans), proposals bundling two or more material matters into a single proposal violate the unbundling requirement of Rule 14a-4(a)(3) (and therefore violate the single proposal requirement of Rule 14a-8(c)) unless the two matters are “so ‘inextricably intertwined’ as to effectively constitute a single matter.” The fact that an advisory vote to approve a company’s climate change strategy plan is not “inextricably intertwined” with a vote on requiring a company to issue a climate change strategy plan is demonstrated by the fact that many companies have received and allowed shareholders to vote on proposals requesting issuance of a report on climate change strategy, and none of those has previously involved separately putting that report forward for an advisory vote of shareholders.

Moreover, the Duplicate Submissions present two separate and distinct issues for shareholders to consider: a shareholder who supports having a company annually report on its climate change strategy would not necessarily also support imposing the burden on the company, the shareholder itself, and other shareholders, of having to annually assess and cast an advisory vote on the company’s strategy. In this respect, the Duplicate Submissions present the same issue that the Staff considered in *Parker-Hannifin Corp.* The communications and engagement with shareholders requested through the climate change strategy report under the Duplicate Submissions is comparable to the shareholder engagement forum requested by the submission in *Parker-Hannifin Corp.* However, communicating with shareholders, whether through a report or a company-sponsored forum,

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is a separate and distinct action from putting a matter to a shareholder vote. As demonstrated by *HealthSouth Corp.*, *Exxon Mobil Corp.*, and *Allstate Corp.*, discussed above, the fact that one action may be a necessary predicate for the other does not mean that the two are “inextricably intertwined.”

For the reasons addressed above, each of the Duplicate Submissions contains two separate and distinct requests, each requiring a material action that is distinct from and involves different processes from the other. Furthermore, the Company provided Deficiency Notices to the proponents within the time-period specified by Rule 14a-8 for notifying them of the multiple proposals, and neither corrected the deficiency as required by Rule 14a-8. For these reasons, the Duplicate Submissions may be excluded from the Company’s 2021 Proxy Materials under Rule 14a-8(c).

II. The McRitchie Submission May Be Omitted In Reliance On Rule 14a-8(f), As The McRitchie Representative Has Not Provided Sufficient Documentation Demonstrating McRitchie’s Delegation Of Authority Consistent With Rule 14a-8(b) And Did Not Provide Sufficient Documentation Demonstrating The Proponent’s Delegation of Authority Upon Request After Receiving Proper Notice Under Rule 14a-8(f)(1).

A. Background.

Rule 14a-8(b) provides guidance as to “who is eligible to submit a proposal.” On November 1, 2017, the Staff published Staff Legal Bulletin No. 14I (“SLB 14I”) which announced the Staff’s policy regarding the application of Rule 14a-8(b) when a shareholder submits a proposal through a representative (i.e., a “proposal by proxy”). The Staff stated in SLB 14I that a shareholder’s submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits a proposal by proxy provides documentation describing the shareholder’s delegation of authority to the proxy. The Staff noted that sufficient documentation would do the following:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and

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- be signed and dated by the shareholder.

Further, to state expressly the Staff's interpretations regarding the submission of proposals by proxy, the Commission proposed, and has since adopted, amendments to Rule 14a-8 that reflects the need for documentation of the nature discussed in SLB 14I and also:

- includes the shareholder's statement authorizing the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf; and
- includes the shareholder's statement supporting the proposal.

Exchange Act Release No. 34-87458 (November 5, 2019) (the "November 2019 Proposing Release"). The November 2019 Proposing Release emphasized the importance of safeguarding the integrity of the shareholder proposal process and the eligibility restrictions and stated:

We believe an affirmative statement that the shareholder authorizes the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf would help to make clear that the representative has been so authorized.

Accordingly, the Staff's guidance in SLB 14I and the Commission's recent rule proposal make clear that it is necessary for a proper Rule 14a-8 delegation of authority to identify the specific proposal to which the delegation relates. In *General Motors Co. (Mayhugh)* (avail. Mar. 27, 2020), the proponent's cover letter addressed most of the eligibility requirements under SLB 14I except that it failed to identify the specific proposal to be submitted. The company argued, among other reasons, that the proposal was excludable because the proponent's cover letter only included "a vague reference to a 'Rule 14a-8 proposal' rather than describe the subject matter of the [p]roposal with any degree of specificity." The Staff concurred with exclusion under Rules 14a-8(b) and 14a-8(f). Also, in *Fitbit, Inc.* (avail. Mar. 20, 2020), the company requested the exclusion of a proposal under Rule 14a-8(f) where the proponent's representative failed to provide sufficient documentation demonstrating the proponent's delegation of authority to the proponent's representative consistent with Rule 14a-8(b). The Staff concurred with the exclusion of the proposal under Rule 14a-8(f).

B. McRitchie Has Failed To Provide Sufficient Evidence Of A Delegation Of Authority To The McRitchie Representative.

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As described above, the Staff's guidance in SLB 14I sets forth specific requirements regarding the type of information that the Staff expects a proponent to provide to sufficiently evidence a delegation of authority to the proponent's representative. In this regard, the Staff further notes that it expects companies to apply reasonable judgment when the documentation may be technically deficient but otherwise provides reasonable support for such delegation. The Company is aware that the Staff has denied no-action requests that were based solely on a proponent's failure to sufficiently identify the subject matter of a proposal to which its delegation of authority relates.

The delegation of authority with respect to the McRitchie Submission, however, goes beyond a mere technical deficiency. The documentation included by the McRitchie Representative dated December 2, 2020, purporting to authorize the McRitchie Representative to act on behalf of McRitchie (the "McRitchie Authorization Letter") did not accurately identify the McRitchie Submission. As highlighted in the McRitchie Deficiency Notice, the McRitchie Authorization Letter identified the subject of the McRitchie Submission as relating to "Climate transition reporting," yet the McRitchie Submission appears to relate more specifically to a "vote to express non-binding advisory approval or disapproval of the Company's publicly available climate policies and strategies." The Company notified the McRitchie Representative of its concerns relating to the McRitchie Authorization Letter in the Deficiency Notice, but the Company did not receive a response from McRitchie or the McRitchie Representative regarding this deficiency. Instead, on December 30, 2020, the McRitchie Representative responded via email with a proof of ownership letter from TD Ameritrade (which the Company determined satisfied the proof of ownership issue identified in the McRitchie Deficiency Notice) and also informing the Company that it was "withdrawing the named co-filers: Liz Michaels and Merck Family Fund from [the McRitchie Submission]." *See Exhibit F.* The Company remains concerned that the McRitchie Representative switched the subject matter of the McRitchie Submission without any indication that McRitchie consented to submission of a proposal addressing an entirely different subject matter. The Company is of the view that such a concern goes to the core of why a delegation of authority must specifically identify the proposal to which it relates, consistent with Staff guidance in SLB 14I, and therefore it may omit the Proposal from its 2021 Proxy Materials.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent

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of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice; *see also* SLB 14I (“Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder’s failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. *See* Rule 14a-8(f)(1).”).

The Company respects the Staff’s expectation that companies will not seek to exclude proposals by proxy based on highly technical readings of documentation of eligibility. The Company further understands that the Staff has declined to concur in no-action requests where companies argued that exclusion of a proposal was permitted based solely on the failure to name a specific proposal in a delegation of authority where only one proposal was attached. The Company respectfully submits, however, that the issues raised by each McRitchie Authorization Letter inaccurately identifying the subject matter of the McRitchie Submission and the McRitchie Representative failure to respond to a notice of the deficiency with respect to the McRitchie Authorization letter are inconsistencies that are not mere foot faults, but rather demonstrates exactly the issues that the Staff attempted to address with its guidance on proposals by proxy in SLB 14I, namely, the failure to make a company aware of the specific subject matter of a proponent’s proposal that is the subject of a delegation of authority. Consistent with Rule 14a8(f)(1), the Company timely notified the McRitchie Representative of the eligibility deficiencies, including the deficiency related to the McRitchie Authorization Letters. By ignoring the deficiency related to the McRitchie Authorization Letter, the McRitchie Representative has fully disregarded the intent of Rule 14a-8(b) and the Staff’s related guidance in SLB 14I. Acceptance of the purported McRitchie Authorization Letter would fundamentally undermine SLB 14I and render that guidance moot.

The Company is aware of *International Business Machines Corp.* (avail. Dec. 20, 2019, *recon. denied* Jan. 17, 2020) (“*IBM*”) where the Staff was unable to concur with the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f). In *IBM*, the company argued that the proponent failed to identify the specific proposal to be submitted, failed to delegate authority to its representative consistent with SLB 14I and failed to cure the deficiency within fourteen calendar days. In the denial of reconsideration, the Staff explained that:

Rule 14a-8 currently does not provide a basis to exclude a proposal where the shareholder that uses a representative fails to provide documentation meeting

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all of the guidelines set forth in [SLB 14I]. SLB 14I is not a rule or regulation. SLB 14I addresses situations where there may be ambiguities about the actual proponent and their role with respect to the proposal.

Unlike in *IBM*, where the proponent himself submitted the proposal to the company and designated a representative, here, the McRitchie Representative, Danielle Fugere of As You Sow, submitted the McRitchie Submission. As a result, there continues to be existing ambiguities related to McRitchie's role with respect to the McRitchie Submission because (1) the McRitchie Representative submitted the McRitchie Submission, (2) the Company has received no correspondence and has not otherwise been contacted by McRitchie, and (3) the McRitchie Authorization Letter appears to be a standard form from As You Sow and fails to address the issue discussed in the McRitchie Deficiency Notice related to concerns raised by SLB 14I.

To date, the Company has not received any correspondence from McRitchie or the McRitchie Representative relating to the McRitchie Authorization Letter's failure to specifically identify the proposal to be submitted to the Company. Accordingly, the Company believes that it may properly omit the Proposal from its 2021 Proxy Materials in reliance on paragraphs (b) and (f) of Rule 14a-8.

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III. The McRitchie Submission May Also Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company May Include In Its 2021 Proxy Materials.

A. Background.

To the extent that the Staff disagrees that the TCI Submission and the McRitchie Submission constitute multiple proposals, then the McRitchie Submission substantially duplicates the TCI Submission, a shareholder proposal the Company previously received, because both Duplicate Submissions request the Company to prepare and issue a report regarding the Company's greenhouse gas emissions and climate change policies and to provide for an annual, non-binding shareholder vote on those policies.

The Company received the TCI Submission on November 11, 2020, whereas the Company subsequently received the McRitchie Submission on December 4, 2020. Moreover, as discussed above, the Company believes the TCI Submission may be excluded under Rule 14a-8(c). However, if the Staff does not concur with the exclusion of the TCI Submission under Rule 14a-8(c), the Company intends to include the TCI Submission in the 2021 Proxy Materials. As discussed below, the principal focus of each of the Duplicate Submissions is the same, and therefore, in the event the Staff does not concur with the exclusion of the TCI Submission, the McRitchie Submission is properly excludable under Rule 14a-8(i)(11).

B. The "Substantially Duplicates" Standard.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." The Commission has stated that "the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

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The standard that the Staff has traditionally applied for determining whether a proposal substantially duplicates an earlier received proposal is whether the proposals present the same “principal thrust” or “principal focus.” See *Pacific Gas & Electric Co.* (avail. Feb. 1, 1993). A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request different actions. See, e.g., *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring that a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations was substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring that a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders substantially duplicated a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company’s outstanding stock to have one vote per share).

C. *The McRitchie Submission Substantially Duplicates The TCI Submission.*

Although phrased differently, the principal thrust and focus of the McRitchie Submission and the TCI Submission are the same: a request for the Company to prepare and issue a report regarding the Company’s greenhouse gas emissions and climate change policies and to provide for an annual, non-binding shareholder vote on those policies. This duplication is demonstrated by the following chart:

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<i>The TCI Submission</i>	<i>The McRitchie Submission</i>
<i>The subject matter of each of the Duplicate Submissions requires a report on the Company's plan to address climate change.</i>	
<p>“ . . . a report disclosing the Company's greenhouse gas emission levels (the ‘<u>Emissions</u>’) . . . as well as any strategy . . . to reduce the Emissions in the future, including any Emissions' progress made year over year (the ‘<u>Reduction Plan</u>’)”</p>	<p>“ . . . the Company's publicly available climate policies and strategies, in consideration of key benchmarks.”</p>
<i>Each of the Duplicate Submissions requests the Company to provide for a non-binding, advisory shareholder vote on the Company's climate change strategy plan.</i>	
<p>“ . . . provide shareholders with the opportunity . . . to express non-binding advisory approval or disapproval of the Reduction Plan.”</p>	<p>“ . . . provide shareholders with the opportunity . . . to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies.”</p>
<i>Each of the Duplicate Submissions requests that shareholders be allowed to vote annually on the Company's climate change strategy plans starting next year.</i>	
<p>“ . . . provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express . . . approval or disapproval”</p>	<p>“ . . . provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote”</p>

The two ways in which the Duplicate Submissions vary are: (i) how the climate change-related plan is requested, and (ii) the information specified to be included in the climate change-related plan. With regards to how the climate change strategy plan is requested, the TCI Submission expressly requests the Company's Board of Directors disclose the

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Company’s climate change-related plans via “a report disclosing the Company’s greenhouse gas emission levels.” Meanwhile, the McRitchie Submission does not expressly request such a plan, but as previously discussed, the McRitchie Submission implicitly requests a climate change-related plan considering that to satisfy the McRitchie Submission’s request to allow shareholders to annually vote on the Company’s “climate policies and strategies,” the Company must publish its climate policies and strategies in order for the Company’s shareholders to review such policies and strategies. Thus, the McRitchie Submission implicitly requests that the Company publicly report on its climate policies and strategies.

With respect to information to be included in the climate change-related plan, the TCI Submission requests that the Company disclose greenhouse gas emission levels and any strategies the Company may or will adopt to reduce these levels in the Reduction Plan. The McRitchie Supporting Statement acknowledges that greenhouse gas emissions is a metric of “climate accountability for companies” and the McRitchie Submission requests that “key climate benchmarks” be considered. Thus, greenhouse gas emission levels are encompassed by the Climate Strategy Report.

The overlap of the Duplicate Submissions is further demonstrated by the similar concerns addressed in the TCI Supporting Statement and the McRitchie Supporting Statement (collectively, the “Supporting Statements”):

<i>The TCI Submission</i>	<i>The McRitchie Submission</i>
“. . . disclosing reduction targets . . . is an important means of assuring shareholders that management is taking seriously the physical and transition risks associated with climate change.”	“Increasingly, investors are seeking to ascertain whether their companies’ climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs.”

The language in the Supporting Statements regarding climate change concerns makes clear that the objective of the TCI Submission and the McRitchie Submission is to address risks associated with climate change. As demonstrated in the foregoing comparisons, the differences in how a climate change-related plan is requested and what specifically must be

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addressed in such a plan do not change the conclusion that the Duplicate Submissions share the same principal thrust and focus, and therefore substantially duplicate one another.

The Staff has consistently concurred that two proposals can be substantially similar within the scope of Rule 14a-8(i)(11) notwithstanding a slight difference in the actions requested. *See, e.g., Caterpillar Inc. (AFSCME Employees Pension Plan)* (avail. Mar. 25, 2013) (concurring that a proposal requesting a report was substantially duplicative of a proposal that the company “review and amend, where applicable,” certain policies and post a summary of the review on the company’s website, despite the addition of an additional action in connection with the requested report); *Cooper Industries, Ltd.* (avail. Jan. 17, 2006) (permitting the exclusion of a proposal requesting that the company “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings” as substantially duplicating a prior proposal requesting that the company “commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations’ Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights”); *Ford Motor Co.* (avail. Feb. 19, 2004) (concurring in the exclusion of a proposal calling for internal goals related to greenhouse gases as substantially similar to a proposal calling for a report on historical data on greenhouse gas emissions and the company’s planned response to regulatory scenarios, where the company successfully argued that “[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness”).

Here, notwithstanding some differences, the Duplicate Submissions have the same principal thrust and focus: requesting the Company to prepare and issue a report regarding the Company’s greenhouse gas emissions and climate change policies and to provide for an annual, non-binding shareholder vote on those policies. As a result, the actions requested by the Duplicate Submissions would address substantially the same issues and concerns.

Further, the Staff previously has concurred in the exclusion of shareholder proposals as substantially duplicative regardless of whether one of the proposals is more specific or limited than the other proposal. For example, in *JPMorgan Chase & Co. (New York City Employees’ Retirement System et al.)* (avail. Mar. 14, 2011), the Staff concluded that a proposal that specifically requested a report on internal controls over its mortgage servicing operations could be omitted in reliance on Rule 14a-8(i)(11) as substantially duplicative of

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other previous proposals that asked for general oversight on the development and enforcement on already-existing internal controls related to loan modification methods. Irrespective of the differences in scope and detail, the principal focus and the core issue of general mortgage modification practices remained the same. *See also Exxon Mobil Corp. (Goodwin et al.)* (avail. Mar. 19, 2010) (concurring in the exclusion of a proposal seeking consideration of a decrease in the demand for fossil fuels as substantially duplicative of a proposal asking for a report to assess the financial risks associated with climate change); *Lehman Brothers Holdings Inc.* (avail. Jan. 12, 2007) (concurring in the exclusion of a proposal requesting semi-annual reports on independent expenditures, political contributions, and related policies and procedures as substantially duplicative of a proposal that sought an annual disclosure of independent expenditures and political contributions); *American Power Conversion Corp.* (avail. Mar. 29, 2002) (concurring in the exclusion of a proposal asking that the company's board of directors create a goal to establish a two-thirds independent board as substantially duplicative of a proposal that sought a policy requiring nomination of a majority of independent directors).

Finally, because the McRitchie Submission substantially duplicates the TCI Submission, if the Company were required to include both of the Duplicate Submissions in its 2021 Proxy Materials, there is a significant risk that the Company's shareholders would be confused when asked to vote on the Duplicate Submissions. In such a circumstance, shareholders could assume incorrectly that there must be substantive differences between the Duplicate Submissions and the requested actions. As noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). Accordingly, the Company believes that the McRitchie Submission may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the TCI Submission.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Duplicate Submissions from its 2021 Proxy Materials, and we respectfully request that the Staff concur that the Duplicate Submissions may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter

GIBSON DUNN

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should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or John A. Menicucci, Jr., the Company's Sr. Counsel – Corporate & Compliance, at (402) 544-3440.

Sincerely,



Ronald O. Mueller

Enclosures

cc: John A. Menicucci, Jr., Union Pacific Corporation
Danielle Fugere, As You Sow
Richard Kelly and James Hawks, TCI Fund Management Limited

EXHIBIT A

From: "Schwartz, Abraham" <Abraham.Schwartz@srz.com>
To: "JMENICUCCI@UP.COM" <JMENICUCCI@UP.COM>
Cc: "Klein, Eleazer" <Eleazer.Klein@srz.com>, "Gold, Brandon" <Brandon.Gold@srz.com>
Date: 11/11/2020 11:33 AM
Subject: TCI - 14a-8

*** PROCEED WITH CAUTION - This email was sent from
outside the Company ***

Dear Mr. Menicucci, Jr.,

On behalf of our client, TCI Fund Management Limited, attached please find a shareholder proposal submitted pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, for inclusion in Union Pacific Corporation's (the "Company") proxy statement for its next annual meeting of stockholders. A copy of the attached is being delivered to the Company's principal executive offices as well.

Can you kindly confirm receipt of this email?

Thanks,

Abraham Schwartz

Associate

212.756.2195

abraham.schwartz@srz.com

919 Third Avenue, New York, NY 10022

212.756.2000 | 212.593.5955 fax

Schulte Roth & Zabel LLP
New York | Washington DC | London
www.srz.com

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**

THE CHILDREN'S INVESTMENT MASTER FUND
c/o TCI FUND MANAGEMENT LIMITED
7 Clifford Street
London
W1S 2FT

November 11, 2020

**VIA HAND DELIVERY AND EMAIL TO JOHN A. MENICUCCI, JR., SENIOR
COUNSEL AND ASSISTANT CORPORATE SECRETARY –
JMENICUCCI@UP.COM**

Union Pacific Corporation
Attention: John A. Menicucci, Jr., Senior Counsel and Assistant Corporate Secretary
Officer 1400 Douglas Street, 19th Floor
Omaha, Nebraska 68179

Re: Union Pacific Corporation (the “Company”)

Dear Mr. Menicucci, Jr.,

TCI Fund Management Limited (“TCI” or “we”) is the investment manager to The Children’s Investment Master Fund (the “Fund”), the owner of 6,016,539 shares of common stock, par value \$2.50 per share of the Company (the “Common Stock”), or approximately 0.89% of the outstanding shares, which has held continuously for more than one year shares representing a market value of \$2,000 or more prior to and including the date hereof.

This letter shall serve as notice to the Company of TCI’s timely submission of a stockholder proposal on behalf of the Fund pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended, (“Rule 14a-8”) for presentation to the Company’s stockholders at the Company’s next annual meeting of shareholders, anticipated to be held in May 2021, or any postponement or adjournment or special meeting held in lieu thereof (the “Meeting”).

The Fund’s Rule 14a-8 proposal (the “Proposal”) is as follows:

PROPOSAL

“RESOLVED, that shareholders of Union Pacific Corporation (“UP” or the “Company”) request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company’s greenhouse gas emission levels (the “Emissions”) in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions’ progress made year over year (the “Reduction Plan”), and provide shareholders with the opportunity, at each such annual meeting (starting at the next

annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan.”

SUPPORTING STATEMENT

As governments take steps to limit greenhouse gas emissions and mandate reporting in line with the Task Force on Climate-related Financial Disclosure; disclosing reduction targets, detailing strategies for embedding climate change throughout their business models and services and providing progress therein to shareholders, is an important means of assuring shareholders that management is taking seriously the physical and transition risks associated with climate change. Although this resolution cannot and does not compel the Company to do so, we believe it is in the best interests of the Company and its shareholders for the Board of Directors to disclose its current Emissions and its Reduction Plan, if any, prior to the Meeting and provide shareholders with an advisory vote on the Reduction Plan at the Meeting.

END OF PROPOSAL

As is required by Rule 14a-8, attached is a letter from HSBC BANK USA, NA verifying that the Fund continuously and beneficially owned shares of Common Stock having a market value of \$2,000 or more for at least one year prior to the date of the submission of the above Proposal. As of the date hereof, the Fund has continuously held the required number of shares of Common Stock for over a one-year period. The Fund intends to continue to hold shares of Common Stock having a market value of not less than \$2,000 through the date of the Meeting.

TCI represents that, as investment manager to the Fund, it has the power to invest, vote, or direct the vote of such Common Stock and has full power and authority to submit the Proposal on the Fund’s behalf.

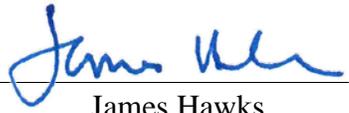
Please notify us as soon as possible if you would like any further information or if you believe this notice is deficient in any way or if additional information is required so that TCI may promptly provide it to you in order to cure any deficiency.

Thank you for your time and consideration.

Very truly yours,

**THE CHILDREN'S INVESTMENT MASTER
FUND**

By: **TCI FUND MANAGEMENT LIMITED**

By:  
Name: Richard Kelly James Hawks
Title: Authorized Signatories

cc: The Board of Directors of the Company

EXHIBIT B



DEC - 4 2020

VIA FEDEX & EMAIL

December 3, 2020

Rhonda S. Ferguson
Executive Vice President,
Chief Legal Officer & Corporate Secretary
Union Pacific Corporation
1400 Douglas Street, 19th Floor
Omaha, NE 68179
rferguson@up.com

Dear Ms. Ferguson,

As You Sow is filing a shareholder proposal on behalf of James McRitchie, Proponent, a shareholder of Union Pacific, for inclusion in Union Pacific's 2021 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

To schedule a dialogue, please contact me at DFugere@asyousow.org. Also, please send all correspondence to me **with a copy to shareholderengagement@asyousow.org**.

Sincerely,

Danielle Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

Whereas: Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs. Shareholders therefore seek a voice in advising the Company regarding its plans related to climate change.

In response to material climate risk, investors frequently refer to two key benchmarks of progress.

The steering committee of the Climate Action 100+ initiative, a coalition of more than 500 investors with over \$52 trillion in assets, has developed a Net Zero Company Benchmark (Benchmark) outlining metrics of climate accountability for companies, and transparency for shareholders, including metrics related to greenhouse gas (GHG) emissions, GHG targets, improved climate governance, and climate related financial disclosures, among others.

The Science-Based Targets Initiative (SBTi) has established a credible means of assuring that corporate targets align with climate science. The initiative's robust validation process helps to provides investors a standardized view for evaluating climate targets.

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

Supporting Statement: In assessing the company's policies and strategies, shareholders can refer to benchmarks such as the Net Zero Benchmark and/or Science Based Targets.

Nothing in this proposal shall be construed as constraining the discretion of the board and management in its disclosures or implementation of a climate change transition strategy.

December 2, 2020

Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: James McRitchie

Company: Union Pacific Corporation

Annual Meeting / Proxy Statement Year: 2021

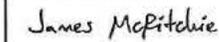
Subject: Climate transition reporting

The Stockholder has continuously owned over \$2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2021.

The Stockholder gives *As You Sow* the authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution.

The Stockholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

FF59A56565064FC

Name: James McRitchie

Title: Shareholder Advocate



VIA FEDEX & EMAIL

December 3, 2020

Rhonda S. Ferguson
Executive Vice President,
Chief Legal Officer & Corporate Scty
Union Pacific Corporation
1400 Douglas Street, 19th Floor
Omaha, NE 68179
rferguson@up.com

Dear Ms. Ferguson,

As You Sow is co-filing a shareholder proposal on behalf of the following Union Pacific shareholders for action at the next annual meeting of Union Pacific.

- Liz Michaels
- Merck Family Fund

Shareholders are co-filers of the enclosed proposal with James McRitchie, who is the Proponent of the proposal. *As You Sow* has submitted the enclosed shareholder proposal on behalf of Proponent for inclusion in the 2021 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. *As You Sow* is authorized to act on Liz Michaels's and Merck Family Fund's behalf with regard to withdrawal of the proposal.

Letters authorizing *As You Sow* to act on co-filers' behalf are enclosed. A representative of the lead filer will attend the stockholder meeting to move the resolution as required.

To schedule a dialogue, please contact me at DFugere@asyousow.org. Also, please send all correspondence to me **with a copy to shareholderengagement@asyousow.org**.

Sincerely,

Danielle Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

Whereas: Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs. Shareholders therefore seek a voice in advising the Company regarding its plans related to climate change.

In response to material climate risk, investors frequently refer to two key benchmarks of progress.

The steering committee of the Climate Action 100+ initiative, a coalition of more than 500 investors with over \$52 trillion in assets, has developed a Net Zero Company Benchmark (Benchmark) outlining metrics of climate accountability for companies, and transparency for shareholders, including metrics related to greenhouse gas (GHG) emissions, GHG targets, improved climate governance, and climate related financial disclosures, among others.

The Science-Based Targets Initiative (SBTi) has established a credible means of assuring that corporate targets align with climate science. The initiative's robust validation process helps to provides investors a standardized view for evaluating climate targets.

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

Supporting Statement: In assessing the company's policies and strategies, shareholders can refer to benchmarks such as the Net Zero Benchmark and/or Science Based Targets.

Nothing in this proposal shall be construed as constraining the discretion of the board and management in its disclosures or implementation of a climate change transition strategy.

December 2, 2020

Andrew Behar

CEO

As You Sow

2150 Kittredge St., Suite 450

Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Liz Michaels

Company: Union Pacific Corporation

Annual Meeting / Proxy Statement Year: 2021

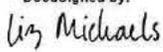
Subject: Climate transition reporting

The Stockholder has continuously owned over \$2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2021.

The Stockholder gives *As You Sow* the authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution.

The Stockholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

47338525B5E8404

Name: Liz Michaels

Title: Shareholder

December 2, 2020

Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Merck Family Fund

Company: Union Pacific Corporation

Annual Meeting / Proxy Statement Year: 2021

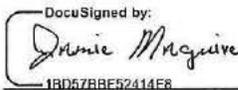
Subject: Climate transition reporting

The Stockholder has continuously owned over \$2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2021.

The Stockholder gives *As You Sow* the authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution.

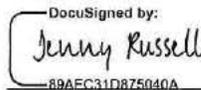
The Stockholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

1BD57B8E52414E8

Name: Jamie Maguire

Title: Manager

DocuSigned by:

89AEC31D875040A

Name: Jenny Russell

Title: Manager

EXHIBIT C

From: Twu, Victor

Sent: Tuesday, November 24, 2020 4:15 PM

To: 'Eleazer.Klein@srz.com' <Eleazer.Klein@srz.com>; 'Brandon.Gold@srz.com' <Brandon.Gold@srz.com>; 'abraham.schwartz@srz.com' <abraham.schwartz@srz.com>

Cc: Mueller, Ronald O. <RMueller@gibsondunn.com>

Subject: Union Pacific Corp. - Deficiency Notice (TCI)

Gentlemen –

Attached please find a copy of the letter correspondence regarding the shareholder proposal you submitted on behalf of your client, TCI Fund Management Limited. Copies of this letter are also being sent to you and your client via UPS.

Best,
Victor

Victor Twu

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412
Tel +1 949.451.3870 • Fax +1 949.475.4787
VTwu@gibsondunn.com • www.gibsondunn.com

November 24, 2020

VIA INTERNATIONAL MAIL

The Children's Investment Master Fund
c/o Richard Kelly and James Hawks
TCI Fund Management Limited
7 Clifford Street
London
W1S 2FT
United Kingdom

Dear Messrs. Kelly and Hawks:

I am writing on behalf of Union Pacific Corporation (the "Company"), which received on November 11, 2020, the shareholder proposal you submitted on behalf of The Children's Investment Master Fund (the "Proponent") pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Meeting of Shareholders (the "Submission"). Pending the opportunity for the Company to engage with the Proponent on this matter, we are providing this notice at the current time to address certain deadlines set forth in SEC Rule 14a-8.

The Submission contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Pursuant to Rule 14a-8(c) under the Exchange Act, a shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. We believe that the Submission constitutes more than one shareholder proposal. Specifically, while parts of the Submission relate to a report on the Company's greenhouse gas emission levels, we believe that the request for an annual non-binding advisory vote regarding the "Reduction Plan" constitutes a separate proposal. The Proponent can correct this procedural deficiency by indicating which proposal the Proponent would like to submit and which proposal the Proponent would like to withdraw.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Washington, D.C. 20036-5306. Alternatively, you may transmit any response by email to me at RMueller@gibsondunn.com.

GIBSON DUNN

The Children's Investment Master Fund
November 24, 2020
Page 2

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8.

Sincerely,

A handwritten signature in blue ink, reading "Ronald O. Mueller", is displayed within a light blue rectangular box.

Ronald O. Mueller

Enclosure

cc: Eleazer Klein, Schulte Roth & Zabel LLP
Brandon S. Gold, Schulte Roth & Zabel LLP
Abraham Schwartz, Schulte Roth & Zabel LLP

Rule 14a-8 – Shareholder Proposals

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

- (i) Would disqualify a nominee who is standing for election;
- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12*: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13*: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z9754636692412914

Service

UPS Worldwide Express®

Shipped / Billed On

11/19/2020

Delivered On

11/27/2020 9:40 A.M.

Delivered To

LONDON, GB

Received By

ALI

Left At

Reception

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/16/2020 4:08 P.M. EST

EXHIBIT D

THE CHILDREN'S INVESTMENT MASTER FUND
c/o TCI FUND MANAGEMENT LIMITED
7 Clifford Street
London
W1S 2FT

December 1, 2020

VIA E-MAIL AND COURIER

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington DC 20036-5306

Dear Mr. Mueller:

On behalf of TCI Fund Management Limited ("TCI"), the investment manager to The Children's Investment Master Fund, we are writing to you in response to your letter, dated November 24, 2020 (the "Letter"), regarding the proposal, dated November 11, 2020 (the "Proposal"), submitted by TCI to Union Pacific Corporation (the "Company") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, to be included in the Company's proxy statement for its 2021 annual meeting of shareholders.

Your Letter asserts that the Proposal does not comply with the "one proposal" limitation embodied in Rule 14a-8(c) on the basis that the requested annual non-binding advisory vote on the Company's plans for greenhouse gas emissions is a separate proposal from the report on those plans. That is not correct.

The Proposal requests that shareholders be provided with an opportunity at each annual meeting to express non-binding advisory approval or disapproval with regard to a report disclosing the Company's greenhouse gas emission levels, as well as any strategy that the Company may have adopted or will adopt to reduce such emissions (the "Reduction Plan"). Disclosure of the Company's Reduction Plan is necessary for shareholders to express their non-binding advisory approval or disapproval of it. It follows that the Proposal is comprised of complementary components that are "closely related and essential to a single well-defined unifying concept." (SEC Release No. 2412,999 (Nov. 22, 1976).

As a result, the Proposal is in full compliance and fully consistent with the requirements of Rule 14a-8(c).

December 1, 2020
Ronald O. Mueller
Page 2

Sincerely,

**THE CHILDREN'S INVESTMENT MASTER
FUND**

By: **TCI FUND MANAGEMENT LIMITED**

By: 
Name: Richard Kelly James Hawks
Title: Authorized Signatories

cc: Sherri J. Starr

EXHIBIT E

December 17, 2020

VIA OVERNIGHT MAIL

Danielle Fugere
As You Sow
2150 Kittredge Street, Suite 450
Berkeley, CA 94704

Dear Ms. Fugere:

I am writing on behalf of Union Pacific Corporation (the “Company”), which received on December 4, 2020, the shareholder proposal you submitted on behalf of James McRitchie, Liz Michaels, and the Merck Family Fund (each, a “Proponent”) regarding a climate transition report pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2021 Annual Meeting of Shareholders (the “Submission”).

The Submission contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

1. Proposals by Proxy

Your correspondence did not include sufficient documentation demonstrating that you had the legal authority to submit the Submission on behalf of any Proponent as of the date the Submission was submitted (December 4, 2020). In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”), the SEC’s Division of Corporation Finance (“Division”) noted that proposals submitted by proxy, such as the Submission, may present challenges and concerns, including “concerns raised that shareholders may not know that proposals are being submitted on their behalf.” Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 14I states that in general the Division would expect any shareholder who submits a proposal by proxy to provide documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

Danielle Fugere
December 17, 2020
Page 2

The documentation that you provided with the Submission raises the concerns referred to in SLB 14I. Specifically, the Submission raises the concerns referred to in SLB 14I because the documentation from each Proponent, each dated December 2, 2020, purporting to authorize you to act on that Proponent's behalf (each, an "Authorization Letter") does not accurately identify the specific proposal to be submitted. In this regard, while each Authorization Letter identifies the subject of the proposal to be submitted as relating to "Climate transition reporting," the Submission appears to relate more specifically to a "vote to express non-binding advisory approval or disapproval of the Company's publicly available climate policies and strategies." To remedy this defect, each Proponent should provide documentation that confirms that as of the date you submitted the Submission, the Proponent had instructed or authorized you to submit the specific proposal to the Company on the Proponent's behalf, and should identify the specific proposal submitted.

2. Proof of Continuous Ownership

To the extent that the Proponents authorized you to submit the Submission to the Company, please note the following. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company's stock records do not indicate that either Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that either Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Submission was submitted to the Company.

To remedy this defect, each Proponent must submit sufficient proof of its continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 4, 2020, the date the Submission was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- 1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 4, 2020; or
- 2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the

Danielle Fugere
December 17, 2020
Page 3

Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the “record” holder of the Proponent’s shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent’s broker or bank is a DTC participant by asking the Proponent’s broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- 1) If the Proponent’s broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent’s broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 4, 2020.
- 2) If the Proponent’s broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 4, 2020. You should be able to find out the identity of the DTC participant by asking the Proponent’s broker or bank. If the Proponent’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent’s account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent’s shares is not able to confirm the Proponent’s individual holdings but is able to confirm the holdings of the Proponent’s broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including December 4, 2020, the required number or amount of Company shares were continuously held: (i) one from the Proponent’s broker or bank

Danielle Fugere
December 17, 2020
Page 4

confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

3. Multiple Proposals

Pursuant to Rule 14a-8(c) under the Exchange Act, a shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. We believe that the Submission constitutes more than one shareholder proposal. Specifically, the Submission implicitly requires, as a separate and precedent act, that the Company publicly report on its climate change transition policies and strategies. The Proponent can correct this procedural deficiency by revising the Submission to consist of only one proposal..

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at RMueller@gibsondunn.com.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

Enclosures

Rule 14a-8 – Shareholder Proposals

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

- (i) Would disqualify a nominee who is standing for election;
- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12*: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13*: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.



**Division of Corporation Finance
Securities and Exchange Commission**

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#) and [SLB No. 14E](#).

B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.¹

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.² Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as “street name” holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement “from the ‘record’ holder of [the] securities (usually a broker or bank),” verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.³

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as “participants” in DTC.⁴ The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a “securities position listing” as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.⁵

3. Brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,⁸ under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.⁹

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).¹⁰ We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].”¹¹

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder’s securities are held if the shareholder’s broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company’s deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).¹² If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company’s deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.¹³

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company’s notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,¹⁴ it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.¹⁵

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.¹⁶

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission’s website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

¹ See Rule 14a-8(b).

² For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

³ If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

⁴ DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

⁵ See Exchange Act Rule 17Ad-8.

⁶ See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

⁷ See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

⁸ *Techne Corp.* (Sept. 20, 1988).

⁹ In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

¹⁰ For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

¹¹ This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

¹² As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

¹³ This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

¹⁴ See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

¹⁵ Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

¹⁶ Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

<http://www.sec.gov/interp/leg/cfslb14f.htm>

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z975463NT93928385

Service

UPS Next Day Air®

Shipped / Billed On

12/17/2020

Delivered On

12/18/2020 10:39 A.M.

Delivered To

BERKELEY, CA, US

Received By

REL 364

Left At

Other

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/30/2020 8:54 P.M. EST

EXHIBIT F

From: Gail Follansbee <gail@asyousow.org>
Sent: Wednesday, December 30, 2020 6:57 PM
To: Mueller, Ronald O. <RMueller@gibsondunn.com>
Cc: Danielle Fugere <DFugere@asyousow.org>; Shareholder Engagement <shareholderengagement@asyousow.org>
Subject: Union Pacific - Shareholder proposal - climate transition reporting 21.UNP.2

[External Email]

Hello Mr. Mueller,

This is a response to the deficiency notice received by overnight mail dated December 17, 2020 and received at our offices on December 18, 2020.

Please see attached the Proof of Ownership documentation of Union Pacific for 80 shares from James McRitchie, the Proponent.

Please note that we are withdrawing the named co-filers: Liz Michaels and Merck Family Fund from this proposal.

Please confirm receipt and let us know if any deficiencies remain.

Thank you so much,
Gail

Gail Follansbee (she/her)

Coordinator, Shareholder Relations

As You Sow

2150 Kittredge St., Suite 450

Berkeley, CA 94704

(510) 735-8139 (direct line) ~ (650) 868-9828 (cell)

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12/09/2020

James McRitchie

Re: Your TD Ameritrade Account Ending in ***

Dear James McRitchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 80 common shares of the Union Pacific Corporation (UNP) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Jennifer Hickman' in a cursive script.

Jennifer Hickman
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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