



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549



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Received SEC
FEB 26 2015
Washington, DC 20549

February 26, 2015

No Act
PE 1/12/15

James J. Theisen, Jr.
Union Pacific Corporation
jjtheisen@up.com

Re: Union Pacific Corporation
Incoming letter dated January 12, 2015

Act: 1934
Section: _____
Rule: 14a-8 (002)
Public _____
Availability: 2-26-15

Dear Mr. Theisen:

This is in response to your letter dated January 12, 2015 concerning the shareholder proposal submitted to Union Pacific by John Chevedden. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfm/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Special Counsel

Enclosure

cc: John Chevedden

*** FISMA & OMB Memorandum M-07-16 ***

February 26, 2015

**Response of the Office of Chief Counsel
Division of Corporation Finance**

Re: Union Pacific Corporation
Incoming letter dated January 12, 2015

The proposal requests that the board adopt a policy that the chairman shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship.

We are unable to concur in your view that Union Pacific may exclude the proposal under rule 14a-8(i)(3). You have expressed your view that the proposal is vague and indefinite because it does not explain whether a director's stock ownership in accordance with the company's stock ownership guidelines is a permissible "financial connection." Although the staff has previously agreed that there is some basis for your view, upon further reflection, we are unable to conclude that the proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that Union Pacific may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Evan S. Jacobson
Special Counsel

**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matter under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholders proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

January 12, 2015

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 Proposal of John Chevedden
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Union Pacific Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2015 Annual Meeting of Shareholders (collectively, the “2015 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof submitted by John Chevedden (the “Proponent”).

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 Company intends to file its definitive 2015 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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 Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.



THE PROPOSAL

The Proposal states, in relevant part:

Resolved: Shareholders request that the Board of Directors adopt a policy that the Chairman of our Board of Directors shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship. The policy should be implemented so as not to violate existing agreements and should allow for departure under extraordinary circumstances such as the unexpected resignation of the chair.

A copy of the Proposal, as well as related correspondence from the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) provides that a company may exclude a shareholder proposal if the proposal or supporting statement is vague and indefinite so as to be inherently misleading. The Staff consistently has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite if “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”); *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) where the company argued that its shareholders “would not know with any certainty what they are voting either for or against”).

The Staff has on numerous occasions concurred in the exclusion of shareholder proposals under Rule 14a-8(i)(3) where key terms used in the proposal were so inherently vague and indefinite that shareholders voting on the proposal would be unable to ascertain with reasonable certainty what actions or policies the company should undertake if the proposal were enacted. *See, e.g., AT&T Inc.* (Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities," where the phrase "moral, ethical and legal fiduciary" was not defined or meaningfully described); *Moody's Corp.* (Feb. 10, 2014) (concurring in the exclusion of a proposal requesting that the board report on its assessment of the feasibility and relevance of incorporating ESG risk assessments into the company's credit rating methodologies, where the proposal did not define "ESG risk assessments"); *PepsiCo, Inc. (Steiner)* (Jan. 10, 2013) (concurring in the exclusion of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, provided that any unvested award may vest on a pro rata basis, where, among other things, it was unclear how the pro rata vesting should be implemented); *The Boeing Co. (Recon.)* (avail. Mar. 2, 2011) (concurring in the exclusion of a proposal requesting that senior executives relinquish preexisting "executive pay rights," where "the proposal does not sufficiently explain the meaning of 'executive pay rights' and . . . as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *General Motors Corp.* (Mar. 26, 2009) (concurring in the exclusion of a proposal to "eliminate all incentives for the CEOs and the Board of Directors," where the proposal did not define "incentives"); *Verizon Communications Inc.* (Feb. 21, 2008) (concurring in the exclusion of a proposal requesting that the board adopt a new senior executive compensation policy incorporating criteria specified in the proposal, where the proposal failed to define critical terms such as "Industry Peer group" and "relevant time period"); *Puget Energy, Inc.* (Mar. 7, 2002) (concurring in the exclusion of a proposal requesting the company's board to "take the necessary steps to implement a policy of improved corporate governance" where "improved corporate governance" was not defined or explained).

In *Abbott Laboratories* (Jan. 13, 2014), the Staff concurred in the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a bylaw requiring an independent lead director, where the proposal's standard of independence specified that an independent director is "a person whose directorship constitutes his or her only connection" to the company. The proposal in *Abbott*, among other things, failed to give any guidance on how the broad term "connection" should be interpreted or applied. In particular, in *Abbott* the company noted that all its non-employee directors receive grants of restricted stock units and are required to own shares of the company's stock under the company's stock ownership guidelines. The Staff concurred that, in applying this particular proposal to *Abbott*, "neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires."

Similarly, in *Pfizer Inc.* (Dec. 22, 2014), the Staff concurred in the exclusion of a proposal nearly identical to the Proposal requesting that the board adopt a policy that the chairman be “an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship.” In *Pfizer*, the company argued that, just as with the “connection” language in *Abbott*, the proposal’s attempts to define an independent director as someone whose directorship constituted his or her only “nontrivial professional, familial or financial connection to the company or its CEO” was unclear in the context of the directors’ ownership of a significant amount of Pfizer stock. The company further argued that, unless the company amended its stock ownership guidelines, the proposal would prevent all of the company’s non-employee directors from serving as chairman due to the fact that the company’s stock ownership guidelines required each non-employee director to own a significant amount of the company’s stock. The Staff concurred that the proposal was vague and indefinite and “neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”¹

We note that the Staff on other occasions has not concurred with the exclusion of independent chairman proposals using the phrase “nontrivial professional, familial or financial connection” in defining the standard of independence applicable to the chairman, where it was argued that such phrase rendered the proposals vague and indefinite and therefore inherently misleading. See *Mylan Inc.* (Jan. 16, 2014); *Aetna Inc.* (Mar. 1, 2013); *Clear Channel Communications, Inc.* (Feb. 15, 2006). However, none of those letters raised the issue squarely presented in *Abbott* and *Pfizer*—namely, that where a company requires its non-employee directors to maintain significant stock ownership in the company, it is not clear whether such significant stock ownership constitutes a “connection” or a “nontrivial . . . financial connection” to the company (in which case, the proposals would either prevent all of the non-employee directors from serving as chairman or would require the companies to change their stock ownership guidelines and director compensation structures). It is well established that the Staff does not consider any basis for exclusion of a proposal if that basis was not advanced by a company in its no-action request. See Staff Legal Bulletin No. 14

¹ *Pfizer* makes clear that the addition of the modifying phrase “nontrivial professional, familial or financial” to the word “connection” does not render the director independence standard at issue in *Pfizer* (and in the instant Proposal) any less ambiguous than the director independence standard at issue in *Abbott*. Indeed, the independence definition in the Council of Institutional Investors’ Policies on Corporate Governance uses both formulations of the standard interchangeably:

7.2 Basic Definition of an Independent Director: An independent director is someone whose *only nontrivial professional, familial or financial connection* to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her *only connection* to the corporation.

Available at http://www.cii.org/corp_gov_policies (emphasis added).

(Jul. 13, 2001), at Section B.5 (“we will not consider any basis for exclusion that is not advanced by the company”). Accordingly, each of *Mylan*, *Aetna* and *Clear Channel* is distinguishable from *Abbott* and *Pfizer*, and from the instant situation.

Here, the Proposal, as applied to the Company, suffers from the same flaw as the proposals in *Abbott* and *Pfizer*. If implemented, the Proposal would require, among other things, that the Chairman be an individual “whose only nontrivial professional, familial or financial connection to the [C]ompany or its CEO is the directorship.” However, the Company’s non-employee directors hold significant stakes in the Company’s stock. As disclosed in the Company’s Corporate Governance Guidelines and Polices,² each director must own, within five years of joining the Company’s board of directors, equity in the Company equal to at least five times the cash portion of such director’s annual retainer. Consistent with the expectations of shareholders, the purpose of this policy is to ensure a nontrivial financial connection between each non-employee director and the Company, and all of the Company’s non-employee directors are in compliance with this requirement. In addition, non-employee directors receive an annual retainer of \$250,000 and are required to invest \$130,000 of this retainer in a “Stock Unit Account” administered by the Company. These Stock Unit Accounts fluctuate in value based on changes in the price of the Company’s common stock and, to the extent the Company’s common stock pays dividends, an amount equal to the dividend that would be received by the owner of such Stock Unit Account is deemed to be reinvested in the Stock Unit Account. A non-employee director must make this investment, which may not be paid out to the director until the termination of his or her directorship, annually.

Thus, as shown in the beneficial ownership table of the Company’s proxy statement for its 2014 Annual Meeting of Shareholders,³ each of the Company’s non-employee directors then serving held shares that, taking into account the Company’s June 2014 stock split and based on the market price of the Company’s stock as of the date of this letter, is worth in excess of \$500,000.⁴ In addition, each non-employee director then serving held a significantly greater economic stake in the Company through his or her deferred Stock Unit Account, with the smallest such account valued in excess of \$1,600,000 based on the market price of the Company’s stock as of the date of this letter. As a result, it cannot be determined whether under the Proposal all of the Company’s non-employee directors would be disqualified from

² Available at <https://www.up.com/investors/attachments/governance/guidelines.pdf>.

³ Available at <http://www.sec.gov/Archives/edgar/data/100885/000119312514125629/d669566ddef14a.htm>, on page 30.

⁴ David B. Dillon was elected to the Company’s board of directors on March 20, 2014, after the date of the table. At the market price as of the date of this letter, Mr. Dillon owns equity in the Company with a value in excess of \$500,000.

serving as independent Chairman due to the fact that such directors, by virtue of compliance with the Company's compensation requirements, have significant "financial connections" to the Company that are not "nontrivial." Accordingly, it is unclear from the Proposal whether it intends to restrict or not restrict stock ownership of directors or participation in the Company's Stock Unit Account program that is designed to mirror the economic effect of stock ownership. The Proposal offers no guidance to address or resolve this issue.

We also note that the Staff has taken the position that companies may exclude proposals under Rule 14a-8(i)(3) when the "meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991). For example, in *Berkshire Hathaway Inc.* (Mar. 2, 2007), the Staff concurred in the exclusion of a proposal that would have restricted the company from investing in securities of any foreign corporation that engages in activities prohibited for U.S. corporations by Executive Order because the proposal did not adequately disclose to shareholders the extent to which the proposal would operate to bar investment in all foreign corporations. *See also Duke Energy Corp.* (avail. Feb. 8, 2002) (concurring in the exclusion of a proposal that urged the company's board to "adopt a policy to transition to a nominating committee composed entirely of independent directors as openings occur" because the company had no nominating committee). Here, the Proposal fails to adequately disclose that the Proposal could result in disqualifying any independent director who has complied with the Company's rules on compensation from serving as Chairman or, alternatively, could require the Company to alter its stock ownership guidelines and its non-employee director compensation programs and compel the Chairman to dispose of the Company's shares or the economic equivalent of such shares (in which case the Chairman would no longer have any meaningful financial connection to the Company). As a result, any action taken by the Company to implement the Proposal by prohibiting directors from maintaining a nontrivial financial connection to the Company could be significantly different from the actions envisioned by shareholders.

For the foregoing reasons and based on the precedent cited above, we believe that the Proposal, as applied to the Company, is impermissibly vague and indefinite and inherently misleading and may be excluded from its 2015 Proxy Materials pursuant to Rule 14a-8(i)(3).

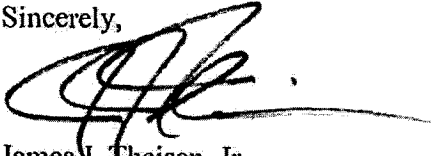
Office of Chief Counsel
Division of Corporation Finance
January 12, 2015
Page 7

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2015 Proxy Materials pursuant to Rule 14a-8(i)(3). We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

If we can be of any further assistance in this matter, please do not hesitate to call me at (402) 544-6765 or Ronald O. Mueller of Gibson, Dunn & Crutcher LLP at (202) 955-8671.

Sincerely,



James J. Theisen, Jr.
Associate General Counsel and Assistant Secretary

cc: Ronald Mueller, Gibson, Dunn & Crutcher LLP
John Chevedden

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EXHIBIT A

JOHN CHEVEDDEN

*** FISMA & OMB Memorandum M-07-16***

*** FISMA & OMB Memorandum M-07-16***

Ms. Diane K. Duren
Corporate Secretary
Union Pacific Corporation (UNP)
1400 Douglas St 19th Floor
Omaha NE 68179
PH: 402 544-5000
FX: 402-501-2144

Dear Ms. Duren,

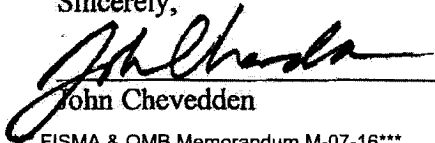
I purchased stock and hold stock in our company because I believed our company has greater potential. I submit my attached Rule 14a-8 proposal in support of the long-term performance of our company. I believe our company has unrealized potential that can be unlocked through low cost measures by making our corporate governance more competitive.

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is submitted for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

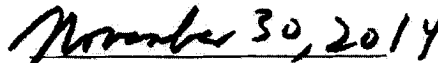
In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to ***** FISMA & OMB Memorandum M-07-16***** Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to ***** FISMA & OMB Memorandum M-07-16***** (at)

*** FISMA & OMB Memorandum M-07-16***

Sincerely,


John Chevedden

*** FISMA & OMB Memorandum M-07-16***


Date

cc: Jim Theisen <jjtheisen@up.com>
Assistant General Counsel & Assistant Secretary
PH: 402-544-6765
FX: 402-271-4088

[UNP: Rule 14a-8 Proposal, November 30, 2014]

Proposal 4 – Independent Board Chairman

Resolved: Shareholders request that the Board of Directors adopt a policy that the Chairman of our Board of Directors shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship. The policy should be implemented so as not to violate existing agreements and should allow for departure under extraordinary circumstances such as the unexpected resignation of the chair.

When our CEO is our board chairman, this arrangement can hinder our board's ability to monitor our CEO's performance. Many companies already have an independent Chairman. An independent Chairman is the prevailing practice in the United Kingdom and many international markets. This proposal topic won 50%-plus support at 5 major U.S. companies in 2013 including 73%-support at Netflix.

This topic is particularly important for Union Pacific because our Lead Director, Steven Rogel, may not be the most qualified person to be Lead Director. Mr. Rogel had the second longest tenure on our board and long-tenure can negatively impact director independence, which is critical to the role of Lead Director. Plus Mr. Rogel was a member of our executive pay committee and was the head of our nomination committee. Meanwhile our CEO, John Koraleski, was given \$17 million in 2013 Total Summary Pay and excessive perks. Plus unvested equity pay partially or fully accelerates upon CEO termination.

Our clearly improvable corporate governance (as reported in 2014) is an added incentive to vote for this proposal:

Directors Erroll Davis and Jose Villarreal were negatively flagged by GMI Ratings, an independent investment research firm, due to their involvement with the General Motors and PMI Group bankruptcies respectively. Mr. Davis headed our executive pay committee. Mr. Villarreal was a member of our audit and executive pay committees.

Judith Richards Hope, at age 73 and with 26-years long-tenure, was a member of our nomination committee. There was not one independent director who had general expertise in risk management, based on GMI's standards.

Returning to the core topic of this proposal from the context of our clearly improvable corporate governance, please vote to protect shareholder value:

Independent Board Chairman – Proposal 4

Notes:
John Chevedden,
proposal.

*** FISMA & OMB Memorandum M-07-16***

sponsored this

“Proposal 4” is a placeholder for the proposal number assigned by the company in the final proxy.

Please note that the title of the proposal is part of the proposal.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email. FISMA & OMB Memorandum M-07-16***