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September 25, 2025
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

**MOTION TO COMPEL DEPOSITION TESTIMONY OF UP WITNESSES
AND TO HOLD PROCEDURAL SCHEDULE IN ABEYANCE**

EXPEDITED HANDLING REQUESTED

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Dated: September 25, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY

**MOTION TO COMPEL DEPOSITION TESTIMONY OF UP WITNESSES
AND TO HOLD PROCEDURAL SCHEDULE IN ABEYANCE**

1. Introduction and Summary

BNSF Railway Company (“BNSF”) hereby moves to compel the appearance and testimony of Union Pacific Railroad Company (“UP”) witnesses Richard Harris, Melissa Meier, and Michelle Zemeckis at a time and place mutually agreed upon by the parties. This motion is necessary because of UP’s categorical refusal to produce any witnesses for depositions. As described below, Mr. Harris, Ms. Meier, and Ms. Zemeckis each have relevant knowledge concerning the key issue that the Surface Transportation Board (“STB” or Board”) intended the parties to develop by permitting discovery in this matter, namely “the structuring of the transaction” between UP and Savage Tooele Railroad Company (“STR”).¹ BNSF also requests that the Board issue an order holding the procedural schedule in this proceeding in abeyance until this motion is resolved. BNSF is asking for expedited consideration of this motion.

¹ *BNSF Ry. Co.—Pet. for Enforcement—Interchange with Savage Tooele R.R. Co. (“April 28 Decision”),* FD 32760 (Sub-No. 50), slip op. at 6 n.7 (STB served Apr. 28, 2025).

UP has barred BNSF from interchanging traffic with STR, thereby preventing BNSF from providing service to the Lakeview Business Park in Tooele County, Utah. This action directly contradicts BNSF's rights under the UP/SP merger conditions. UP's refusal to allow BNSF to interchange with STR is emblematic of a broader pattern of conduct aimed at undermining the conditions imposed by the UP/SP merger and preventing shippers from receiving competitive service. As documented in numerous proceedings over the past 25 years, UP has repeatedly taken narrow or obstructive interpretations of BNSF's access rights, often requiring Board intervention to enforce compliance. These actions have consistently delayed or denied customers the competitive service the Board intended to preserve through the merger conditions.

The Board has acknowledged that BNSF's petition "presents questions about whether the [UP/SP] merger conditions are being implemented in a way that is consistent with the policies underlying them." *April 28 Decision*, slip op. at 6. The Board should grant BNSF's motion to compel to allow discovery necessary to ensure UP fulfills its obligations under the UP/SP merger. Given UP's intent to pursue a new merger with Norfolk Southern, its compliance with past merger commitments is now a matter of heightened public and regulatory importance.

2. Background

On April 28, 2025, the Board issued a decision in this proceeding denying UP's request to dismiss BNSF's petition and setting a procedural schedule with discovery closing on August 26, 2025, BNSF's opening submission due September 25, 2025, UP's reply due October 27, 2025, and BNSF's rebuttal due November 24, 2025. On May 19, 2025, BNSF served its first set of written discovery requests on UP, and on May 27, 2025, BNSF served its first set of written discovery requests on STR. On June 2, 2025, UP served its first set of written discovery requests on BNSF.

PUBLIC VERSION

On August 15, 2025, BNSF filed a Consent Motion to Modify Procedural Schedule, since UP had not yet produced any documents, meaning the parties would have no opportunity for sending follow up requests (or pursuing depositions) under the existing procedural schedule. On August 19, 2025, the Board granted BNSF's Consent Motion to Modify Procedural Schedule, resetting the procedural schedule with discovery closing on September 25, 2025, BNSF's opening submission due October 27, 2025, UP's reply due November 26, 2026, and BNSF's rebuttal due on December 24, 2025.

All parties have served responses and objections. Savage made its first production on July 14, 2025 and its final production earlier today on September 25, 2025. UP produced documents on August 21, 2025, more than three months after BNSF served its discovery requests and five days before the original close of discovery deadline. BNSF reviewed UP's production as quickly as possible to determine whether depositions would be needed.

On September 17, 2025, less than a month after UP produced its documents, counsel for BNSF emailed UP about scheduling depositions for Mr. Harris, Ms. Meier, and Ms. Zemeckis. Acknowledging the approaching close of discovery deadline on September 25, 2025, BNSF proposed an agreement to schedule depositions whenever these individuals could be made available in advance of BNSF's October 27, 2025 filing deadline. (Ex. 1 at 2.)

On September 18, 2025, UP responded that arranging for depositions before the close of discovery would be a "tremendous burden." (*Id.*) BNSF replied on September 19, 2025, reiterating its proposal to give the parties more time by scheduling depositions up through October 17, 2025, ten days before BNSF's opening submission is due. BNSF further offered to take depositions remotely and noted that "[w]e don't expect that each will take a full day." (*Id.* at 1-2.) On September 22, 2025, UP reiterated its objection to facilitating any depositions. The

relevant correspondence between BNSF and UP is attached as Exhibit 1. The correspondence reflects that BNSF sought to conduct depositions within the existing procedural schedule, such that no delays of submission deadlines would be required.

BNSF responded later that same day and served Notices of the Deposition of Richard Harris, Melissa Meier, and Michelle Zemeckis.² These Notices are attached as Exhibits 2-4. BNSF also informed UP of its intent to put the issue before the Board by moving to compel if UP continued to stymie BNSF's efforts to schedule depositions of UP witnesses.

3. Discovery

Under the discovery rules that govern STB proceedings, “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21. “The testimony of any person, including a party, may be taken by deposition” provided that the party requesting to take the deposition provides notice and “set[s] forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition will be taken.” 49 C.F.R. § 1114.22.

The Board has explained that “[a]ll discovery requests entail the balancing of the relevance of the information sought against the burden of producing that information.” *Ballard Terminal R.R. Co., L.L.C.—Acquisition & Operation Exemption—Woodinville Subdivision*, AB 6 (Sub-No. 465X) (STB served May 17, 2013) (citing *Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 4 (STB served June 25, 2012)). The Board

² On September 22, 2025, BNSF also served a Notice of Deposition of Phillip Hoskins on STR. At BNSF's request, STR agreed over email to schedule Mr. Hoskin's deposition on October 6, 2025, to take place in Omaha, Nebraska.

has also consistently “recognized that this regulation allows for broad discovery.” *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, slip op. at 1 (STB served Aug. 21, 2025) (citing *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 4 (STB served Aug. 2, 2021)).

As discussed in Section 2 above, UP has repeatedly rebuffed BNSF’s attempts to schedule depositions and has objected to producing any witnesses for depositions. Permitting BNSF to take depositions of these three individuals falls squarely within the bounds of 49 C.F.R. § 1114.21, which allows parties to obtain discovery on any relevant, non-privileged matter. Depositions are clearly proportional to the needs of this case. The factual record that BNSF seeks to develop by questioning the identified individuals on matters that are highly relevant to this proceeding obviously outweighs the burden of scheduling depositions, especially when BNSF has informed UP that it is willing to schedule the depositions remotely or at UP’s offices, and at a mutually agreeable date and time.

The Board’s *April 28 Decision* noted that “obtaining additional details about the structuring of the transaction may aid its decision-making” and to that end, the Board permitted BNSF to take discovery “focused on the structuring of the transaction.” *April 28 Decision*, slip op. at 6 n.7. Developing this factual record through these depositions will allow BNSF to further develop its claim that UP structured its transaction with STR in a such a way as to establish a physical barrier that deprived BNSF of its rights under the Restated and Amended Settlement Agreement (“RASA”) to interchange with STR and to serve shippers at the Lakeview Business Park. Moreover, the deposition evidence will assist the Board as it “determine[s] whether the conditions it has imposed in merger proceedings are being properly implemented in a manner consistent with the public policy underlying those conditions.” *April 28 Decision*, slip op. at 6.

PUBLIC VERSION

After reviewing UP's production and discovery responses, BNSF identified a small number of individuals who it believes are best positioned to provide relevant information on the key issues in this proceeding of UP's intent and purpose.

Specifically, Richard Harris is { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] } (Ex. 5 at 8.) { [REDACTED] }
[REDACTED] } (*Id.* at 6.) Mr. Harris was a key contact at UP throughout the UP/STR transaction from 2019 through 2025, and he features prominently in the responsive documents that UP produced. Because of his central role in facilitating the transaction, Mr. Harris is uniquely positioned to provide relevant information on what the Board has identified as the key issue in this proceeding.

Melissa Meier appears in the responsive documents that UP produced. Her title in these documents is listed as {{ [REDACTED] }}
[REDACTED] }} Upon information and belief, Ms. Meier remains employed at UP today. She is included on important correspondence related to the transaction, including {{ [REDACTED] }}
[REDACTED] }} BNSF should be able to question Ms. Meier about these and other documents that are clearly relevant to the disputes in this proceeding.

Michelle Zemeckis is listed in UP's responses and Objections as { [REDACTED] }
[REDACTED]
[REDACTED] } (Ex. 5 at 6, 8.) { [REDACTED] }
[REDACTED] } (*Id.* at 6.) Ms. Zemeckis also features prominently in the responsive documents produced by UP, including documents directly related to the structuring of the

transaction. BNSF should be able to question Ms. Zemeckis about these and other documents that are clearly relevant to the disputes in this proceeding.

Due to UP's refusal to produce any witnesses to testify in this proceeding, BNSF is left with no choice but to file this motion. BNSF is seeking to further develop the factual record to present its case to the Board and resolve the issue of BNSF's access to serve the Lakeview Business Park. As described above, BNSF's ability to depose UP witnesses is vital to developing this record.

4. Procedural Schedule

In BNSF's deposition proposal to UP, BNSF sought to avoid extending the procedural schedule. BNSF noted that if the parties took depositions by agreement up through October 17, ten (10) days before BNSF's opening submission is due, the parties would have sufficient time (more than three weeks) to schedule the limited depositions that BNSF requested.

Because UP's refusal to present its witnesses necessitated this motion, BNSF requests that the Board hold the procedural schedule in this proceeding in abeyance until this motion is resolved. Good cause exists to hold the procedural schedule in abeyance.

The Board has held that "[a]beyance is appropriate where it would promote efficiency and not be fundamentally unfair to any party." *Lake Providence Port Commission—Feeder Line Application—Line of Delta S. R.R. Located in East Carroll & Madison Parishes, LA.*, FD 36447, slip op. at 3 (STB served Aug. 2, 2024) (citing *N. Cnty. Transit Dist.—Pet. for Declaratory Ord.*, FD 36433, slip op. at 11 (STB served May 23, 2023); *N. Am. Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017).)

Here, abeyance would promote efficiency and would not be fundamentally unfair to any party. As described above, UP's refusal to produce any witnesses to testify in this proceeding is preventing BNSF from further developing a record to

put its case before the Board. If the Board holds the procedural schedule in abeyance pending resolution of this motion, BNSF will be able to complete the discovery it is entitled to under the Board's rules and further develop the record in this proceeding.

5. Conclusion

For the foregoing reasons, BNSF requests that the Board grant this motion to compel and direct Mr. Richard Harris, Ms. Melissa Meier, and Ms. Michelle Zemeckis to attend depositions at a time and place mutually agreed upon by BNSF and UP. Additionally, BNSF requests that the Board hold the procedural schedule in abeyance pending resolution of this motion.

BNSF is asking for expedited consideration of this motion. After years of development, STR finally opened for business at the Lakeview Business Park last week.³ Every day that goes by without a resolution in this proceeding is a lost opportunity for the shippers at the Lakeview Business Park, who would benefit from dual access. (*See Romney Group Letter, July 2, 2024.*). The Board should prevent any further delays in this proceeding that would benefit UP at the expense of shippers at the Park.

³ *See Utah's first new railroad in a century opens at Lakeview Business Park*, Utah Business (Sept. 19, 2025), <https://www.utahbusiness.com/press-releases/2025/09/19/utah-new-railroad-lakeview-business-park-savage-tooele-railroad/>.

PUBLIC VERSION

Dated: September 25, 2025

Respectfully submitted,

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/s/ Peter W. Denton
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Counsel for BNSF Railway Company

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 1

BNSF / UP EMAIL CORRESPONDENCE

PUBLIC VERSION

From: Wolf, Alex
Sent: Monday, September 22, 2025 9:49 PM
To: Rosenthal, Michael
Cc: Dow, Rachel; Yang, Wentao; Denton, Peter; Matsuda, Jensen; Adrian Steel
Subject: RE: FD 32760 (Sub-No. 50) - Savage Tooole
Attachments: Deposition Notice to Michelle Zemeckis.pdf; Deposition Notice to Richard Harris.pdf; Deposition Notice to Melissa Meier.pdf; Deposition Notice to Phillip Hoskins.pdf

Mike,

Understood, and thanks for letting us know your position. Please let us know before Wednesday if you change your mind, and otherwise, we'll proceed with filing a motion to compel this week to put the issue before the Board.

In the meantime, I'm attaching notices of deposition for Richard Harris, Michelle Zemeckis, and Melissa Meier. As you'll see, we've listed Steptoe's DC office as the location, and listed dates of October 15, 16, and 17. Per our earlier correspondence, we're open to holding the depositions remotely or in person in Omaha, and to modifying the dates based on your witnesses' availability.

I'm also attaching for reference our notice of deposition for Savage's witness Phillip Hoskins, which will occur on 10/6.

Regards,
Alex

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, September 22, 2025 7:59 PM
To: Wolf, Alex <awolf@steptoe.com>
Cc: Dow, Rachel <RDow@cov.com>; Yang, Wentao <WYang@cov.com>; Denton, Peter <pdenton@steptoe.com>; Matsuda, Jensen <jmatsuda@steptoe.com>; Adrian Steel <adriansteeljr@gmail.com>
Subject: [EXTERNAL] RE: FD 32760 (Sub-No. 50) - Savage Tooole

Alex,

As explained in my prior email, Union Pacific does not agree that depositions are proportional to the needs of the case, and BNSF's effort to use the already-extended discovery period to conduct depositions is inconsistent with BNSF representations regarding the need to extend the discovery period.

Regards,
Mike

From: Wolf, Alex <awolf@steptoe.com>
Sent: Friday, September 19, 2025 1:55 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Dow, Rachel <RDow@cov.com>; Yang, Wentao <WYang@cov.com>; Denton, Peter <pdenton@steptoe.com>; Matsuda, Jensen <jmatsuda@steptoe.com>; Adrian Steel <adriansteeljr@gmail.com>
Subject: RE: FD 32760 (Sub-No. 50) - Savage Tooole

[EXTERNAL]

Mike,

PUBLIC VERSION

We noted in our opening email that we may need to schedule depositions by agreement after the close of discovery, which we're happy to do. As we stated below, the parties could have another 3+ weeks if we scheduled depositions up through 10/17, which is 10 days before BNSF's opening submission is due.

BNSF served its discovery requests on UP on May 19, 2025, but UP didn't produce documents until August 21, more than three months later and 5 days before the original close of discovery deadline. We reviewed UP's production as quickly as possible to make a determination on whether depositions would be needed. Had UP produced its documents earlier in the discovery period, we would have been able to make our request earlier.

If helpful, we can agree to take the depositions remotely. We don't expect that each will take a full day.

Please let us know your position. If needed, we'll pursue a motion to compel and ask the Board to extend the discovery deadline to allow additional time for depositions.

Thanks,
Alex

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Thursday, September 18, 2025 6:24 PM
To: Wolf, Alex <awolf@steptoe.com>
Cc: Dow, Rachel <RDow@cov.com>; Yang, Wentao <WYang@cov.com>; Denton, Peter <pdenton@steptoe.com>; Matsuda, Jensen <jmatsuda@steptoe.com>; Adrian Steel <adriansteeljr@gmail.com>
Subject: [EXTERNAL] RE: FD 32760 (Sub-No. 50) - Savage Tooole

Alex,

We've had nearly 30 years of access disputes in this docket, and I can't recall a single case in which either party sought depositions. In this instance, depositions plainly are not proportional to the needs of the case, particularly given the extent of the documents UP and Savage have produced to BNSF in discovery and the tremendous burden that would be involved in arranging for any depositions, much less three, before the close of discovery. In fact, I can't imagine any way in which we could arrange for depositions before the discovery deadline next week. Further, UP agreed to extend the discovery deadline to allow BNSF time to review the documents that were being produced and determine whether to serve follow up requests. That's what BNSF told the Board. BNSF has had that opportunity.

Regards,
Mike

From: Wolf, Alex <awolf@steptoe.com>
Sent: Wednesday, September 17, 2025 5:54 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Dow, Rachel <RDow@cov.com>; Yang, Wentao <WYang@cov.com>; Denton, Peter <pdenton@steptoe.com>; Matsuda, Jensen <jmatsuda@steptoe.com>; Adrian Steel <adriansteeljr@gmail.com>
Subject: FD 32760 (Sub-No. 50) - Savage Tooole

[EXTERNAL]
Mike,

In the Savage Tooole matter, BNSF requests depositions of the following UP employees: Rick Harris, Melissa Meier, and Shelly Zemeckis. Please let us know when these individuals can be made available. Since the close of discovery deadline is 9/25, we expect we may need to schedule these depositions after the deadline. Let us know if you're open to doing so

PUBLIC VERSION

by agreement to accommodate schedules. And since our opening submission is due on 10/27, we'd aim to complete depositions by 10/17, absent an extension of the deadlines. We're happy to discuss logistics on a call if easiest.

Thanks,
Alex

Alexander Wolf
Partner

Step toe

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PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 2

DEPOSITION NOTICE TO RICHARD HARRIS

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY

NOTICE OF DEPOSITION OF RICHARD HARRIS

Counsel for BNSF Railway Company (“BNSF”), pursuant to 49 C.F.R. § 1114.22, will depose Richard Harris, Senior Manager Field Operations West, Union Pacific Railroad Company (“UP”), 1400 Douglas Street, Omaha, NE 68179. The deposition will occur on Wednesday, October 15, 2025, at 9:00 am EDT or a date mutually agreed upon by the parties and will continue until it is completed. The deposition will take place in person at the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, unless otherwise agreed upon by the parties. Under the discovery rules that govern STB proceedings, “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21. The deposition of Richard Harris will be taken on the grounds and for the reason that Mr. Harris will give evidence material to the above-captioned proceeding.

PUBLIC VERSION

Dated: September 22, 2025

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for BNSF Railway Company

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Notice of Deposition of Richard Harris to be served electronically or by first-class mail, postage prepaid, on all parties of record in this proceeding.

/s/ Alex Wolf

Alex Wolf
Counsel for BNSF Railway Company

September 22, 2025

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

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BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
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EXHIBIT 3

DEPOSITION NOTICE TO MELISSA MEIER

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY

NOTICE OF DEPOSITION OF MELISSA MEIER

Counsel for BNSF Railway Company (“BNSF”), pursuant to 49 C.F.R. § 1114.22, will depose Melissa Meier, Sales and Marketing, Union Pacific Railroad Company (“UP”), 1400 Douglas Street, Omaha, NE 68179. The deposition will occur on Friday, October 17, 2025, at 9:00 am EDT or a date mutually agreed upon by the parties and will continue until it is completed. The deposition will take place in person at the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, unless otherwise agreed upon by the parties. Under the discovery rules that govern STB proceedings, “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21. The deposition of Melissa Meier will be taken on the grounds and for the reason that Ms. Meier will give evidence material to the above-captioned proceeding.

PUBLIC VERSION

Dated: September 22, 2025

Respectfully submitted,

/s/ Peter W. Denton

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(202) 468-9008

Counsel for BNSF Railway Company

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Notice of Deposition of
Melissa Meier to be served electronically or by first-class mail, postage prepaid, on
all parties of record in this proceeding.

/s/ Alex Wolf

Alex Wolf
Counsel for BNSF Railway Company

September 22, 2025

PUBLIC VERSION

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BNSF RAILWAY COMPANY
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EXHIBIT 4

DEPOSITION NOTICE TO MICHELLE ZEMECKIS

PUBLIC VERSION

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NOTICE OF DEPOSITION OF MICHELLE ZEMECKIS

Counsel for BNSF Railway Company (“BNSF”), pursuant to 49 C.F.R. § 1114.22, will depose Michelle Zemeckis, Manager I Industrial Development, Union Pacific Railroad Company (“UP”), 1400 Douglas Street, Omaha, NE 68179. The deposition will occur on Thursday, October 16, 2025, at 9:00 am EDT or a date mutually agreed upon by the parties and will continue until it is completed. The deposition will take place in person at the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, unless otherwise agreed upon by the parties. Under the discovery rules that govern STB proceedings, “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding.” 49 C.F.R. § 1114.21. The deposition of Michelle Zemeckis will be taken on the grounds and for the reason that Ms. Zemeckis will give evidence material to the above-captioned proceeding.

PUBLIC VERSION

Dated: September 22, 2025

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for BNSF Railway Company

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Notice of Deposition of Michelle Zemeckis to be served electronically or by first-class mail, postage prepaid, on all parties of record in this proceeding.

/s/ Alex Wolf

Alex Wolf
Counsel for BNSF Railway Company

September 22, 2025

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—PETITION FOR ENFORCEMENT—
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EXHIBIT 5

UP OBJECTIONS AND RESPONSES TO
BNSF DISCOVERY

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

**BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY**

**UNION PACIFIC RAILROAD COMPANY'S RESPONSES AND OBJECTIONS
TO BNSF'S FIRST SET OF DISCOVERY REQUESTS**

CHRISTINA B. CONLIN
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Attorneys for Union Pacific Railroad Company

June 18, 2025

PUBLIC VERSION

**BEFORE THE
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**BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY**

**UNION PACIFIC RAILROAD COMPANY'S RESPONSES AND OBJECTIONS
TO BNSF'S FIRST SET OF DISCOVERY REQUESTS**

Union Pacific Railroad Company ("Union Pacific") responds to the first set of discovery requests of BNSF Railway Company ("BNSF"), served on May 19, 2025, as follows:

GENERAL RESPONSES

The following General Responses apply to each of BNSF's requests:

1. Union Pacific is conducting a reasonable search for information and documents responsive to BNSF's requests. Where Union Pacific states that it will produce documents, Union Pacific will conduct a reasonable search for responsive, non-privileged documents, subject to the specific and general objections stated below. Responsive documents will be made available to counsel for BNSF as soon as practicable and subject to the Board's Protective Order.
2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.
3. Union Pacific's responses and objections are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its

PUBLIC VERSION

attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

4. Union Pacific has not secured verifications of the answers to interrogatories in this document. Union Pacific is prepared to discuss this matter with BNSF with respect to any particular answer.

GENERAL OBJECTIONS

Union Pacific's General Objections, as set forth herein, are to be considered objections to each of the specific Interrogatories and Requests for Production (including subparts) that follow. These general objections are not exhaustive and, where appropriate, Union Pacific will also state specific objections. Union Pacific's objections shall not waive, limit, or prejudice any objections that it may later assert.

1. Union Pacific objects to each and every Interrogatory and Request for Production requesting that Union Pacific produce "all" responsive documents, communications, or information as unduly burdensome to the extent that it requests that Union Pacific search for, collect, and review millions of pages of documents, many of which will have no relevance, in order to identify each and every document that may possibly be responsive. For those requests to which it is obliged to respond, Union Pacific will produce such responsive documents or information as it is able to locate or identify in a reasonable search and which is not otherwise subject to an applicable privilege or other protection.

2. Union Pacific objects to the production of, and is not producing, documents or information subject to any attorney-client privilege, work-product doctrine, joint defense privilege, or other applicable privilege or protection. Any production of privileged documents is inadvertent and should not be deemed as a waiver of any privilege. Union Pacific reserves all rights under applicable law, including the Protective Order in this case, to demand or require

PUBLIC VERSION

the return of all copies thereof and non-use by BNSF or by any other person or entity in this or any other proceeding.

3. Union Pacific objects to the production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Union Pacific objects to the production of documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, Union Pacific will produce such information, if not otherwise objectionable, designated “Confidential” or “Highly Confidential,” subject to the terms of the Protective Order in this case. Union Pacific reserves the right to seek additional protection as needed.

5. Union Pacific objects to each and every Interrogatory and Request for Production that requests information, documents, or communications that are: (a) already in the possession of BNSF; (b) publicly available or otherwise readily available or accessible to BNSF from other sources; or (c) as accessible or available to BNSF as they are to Union Pacific and producing responsive information would impose substantially the same or greater burden on Union Pacific as it would impose on BNSF.

6. Union Pacific objects to Definition No. 5, “Communication” or “Communications,” to the extent this Definition seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific objects to Definition No. 5 as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it seeks production of information on “telephone conversations” or “in-person conversations.” Union Pacific will provide information regarding non-privileged and otherwise discoverable “Communication” or “Communications” only if the information has been put into a written form.

PUBLIC VERSION

7. Union Pacific objects to Definition No. 7, “Document” or “Documents,” to the extent this Definition seeks to expand upon and conflicts with 49 C.F.R. Part 1114, Subpart B. Union Pacific further objects to Definition No. 7 as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it seeks production of draft of electronic communications, electronic meeting invites, and meeting change or cancellation notices. Union Pacific is not searching for and will not produce drafts of electronic communications, electronic meeting invites, and meeting change or cancellation notices.

8. Union Pacific objects to Definition No. 9, “Relating to,” as unduly vague, unduly burdensome, and overbroad. Union Pacific will interpret “Relating to” according to its plain meaning.

9. Union Pacific objects to Definition No. 12, “Union Pacific Railroad Company” or “UP,” to the extent this Definition, in conjunction with other Definitions and Instructions, purports to require Union Pacific to produce documents or information that are not in its possession, custody, or control.

10. Union Pacific objects to Instruction Nos. 2, 3, 4, 5, 7, 9, 11, 13, and 18 as unduly burdensome and to the extent those Instructions seek to impose obligations on Union Pacific that are greater than or otherwise inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

11. Union Pacific objects to Instruction No. 10 to the extent that this Instruction purports to prohibit Union Pacific from redacting information that might reveal Union Pacific’s commercially sensitive or long-term corporate strategies and is not relevant to this proceeding. Union Pacific will redact any such information from otherwise responsive documents produced to BNSF.

PUBLIC VERSION

12. Union Pacific objects to Instruction No. 6 as unduly burdensome and vague to the extent that this Instruction seeks documents “until present.” Where Union Pacific agrees to produce responsive documents, and unless otherwise specifically stated, Union Pacific will only search for and provide information from or between January 1, 2019 to May 19, 2025.

INTERROGATORIES

INTERROGATORY NO. 1

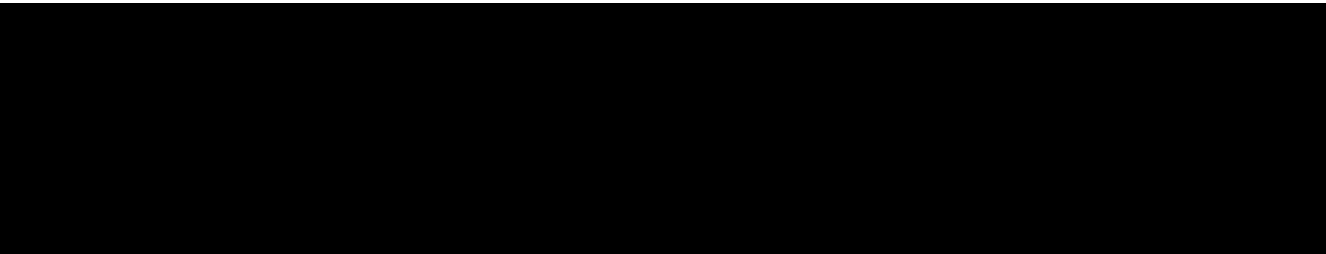
Identify all Persons who have, claim to have, or who you believe may have knowledge of the UP / Savage Transaction.

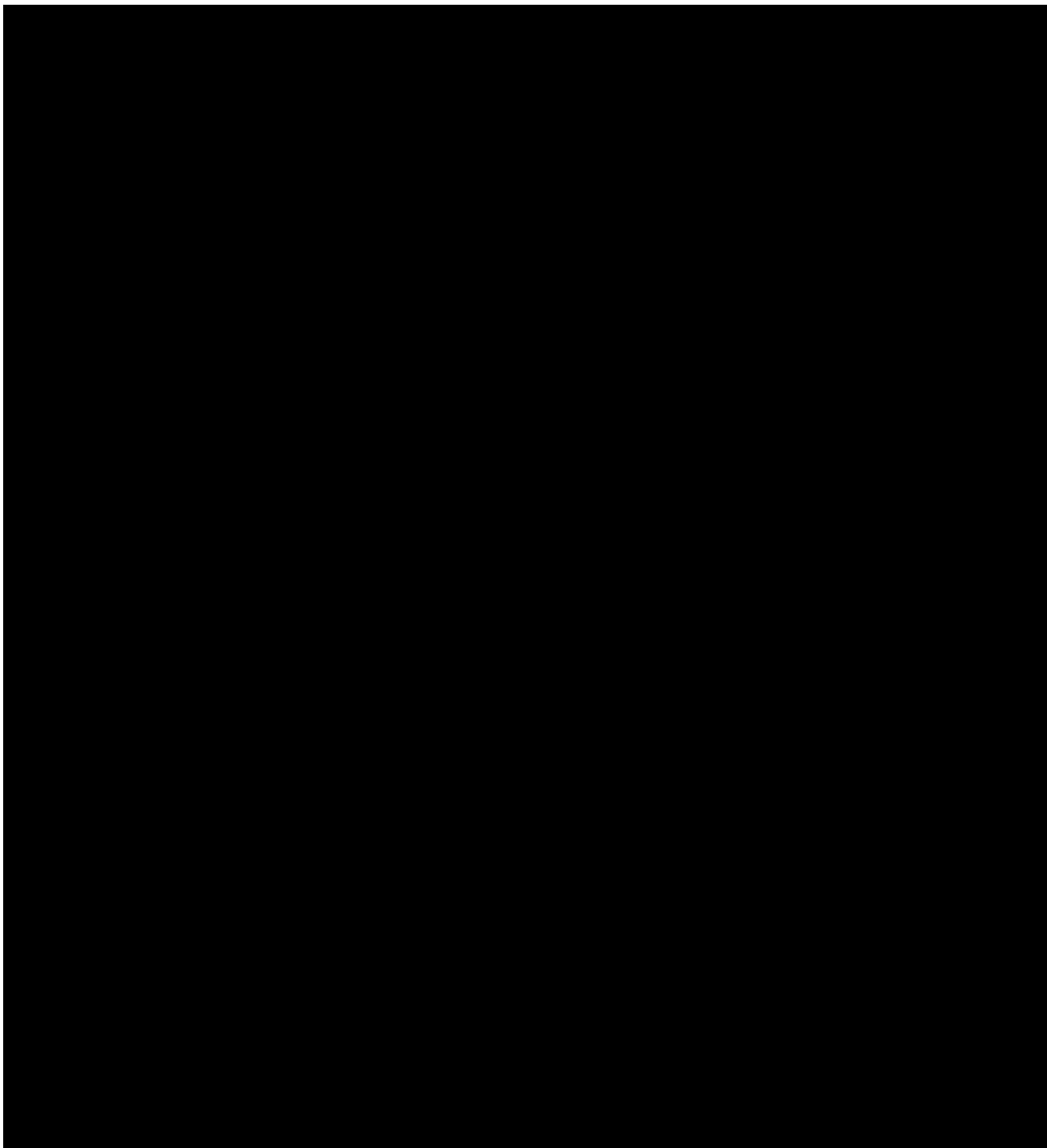
Union Pacific Response

Union Pacific objects to this Interrogatory as ambiguous and as overbroad with respect to the phrase “knowledge of the UP / Savage Transaction.” Union Pacific further objects to this Interrogatory to the extent it requests that Union Pacific identify persons not currently or previously employed by Union Pacific. Union Pacific interprets the Interrogatory as a request to identify the principal Union Pacific employees and former employees, other than legal counsel for Union Pacific, who may have knowledge about the UP / Savage Transaction that is relevant to the issues in this proceeding.

Subject and without waiving its objections, Union Pacific believes the following list of employees and/or former employees have relevant knowledge about the UP / Savage Transaction, and Union Pacific is providing the job title of their position as of May 19, 2025, or their job title as of the date of separation:

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INTERROGATORY NO. 2

Identify all Persons with information relevant to any claim or defense in this Action and describe each Person's knowledge.

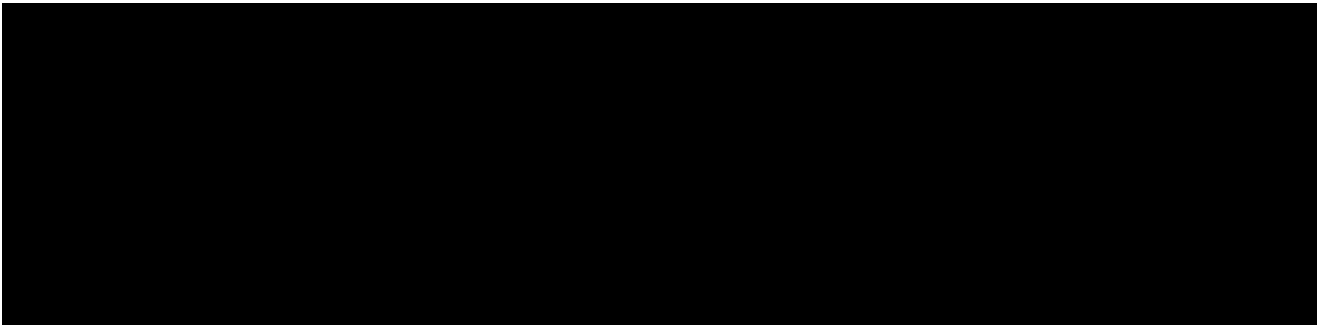
Union Pacific Response

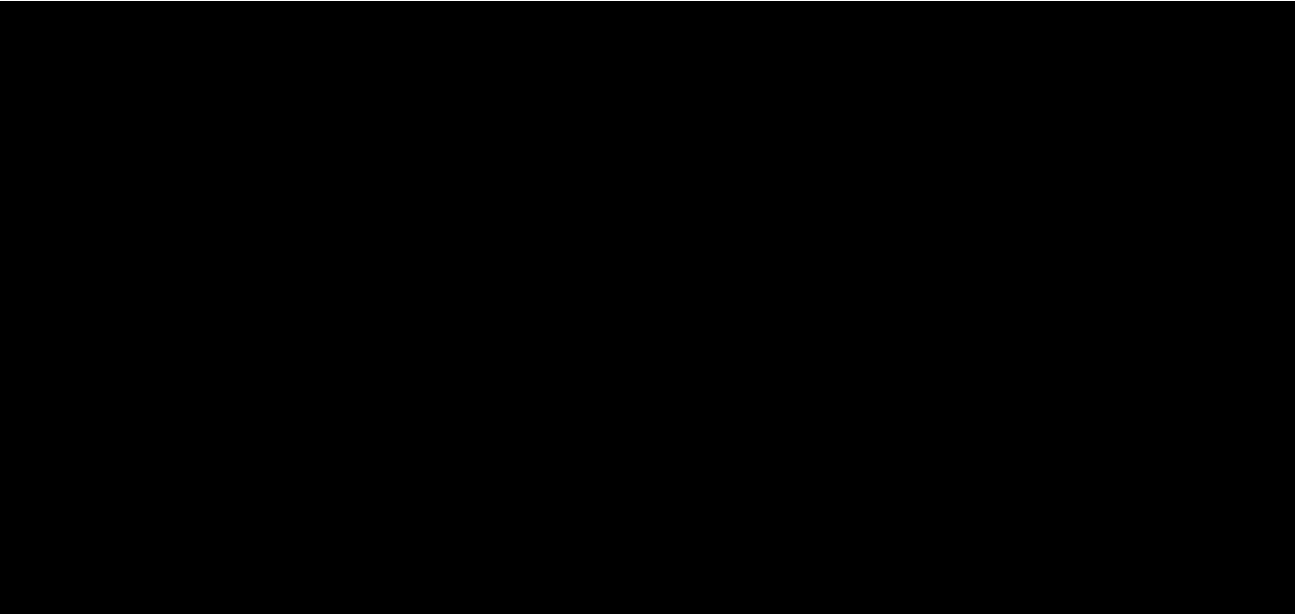
Union Pacific objects to this Interrogatory as ambiguous with respect to the phrase “information relevant to any claims and defense in this Action.” Union Pacific further objects to this Interrogatory the extent it presumes Union Pacific is aware of all of BNSF’s claims and potential claims in this proceeding before BNSF has filed its opening evidentiary submission, purports to preclude Union Pacific from offering defenses to claims BNSF may yet raise in this proceeding, or purports to prematurely require Union Pacific to reveal attorney work product or positions it may take in filings in this proceeding in advance of the deadline for such filings. Union Pacific also objects to this Interrogatory as premature because BNSF has not completed its production in response to Union Pacific’s discovery requests in this proceeding, and Union Pacific has not completed its own discovery in this proceeding.

Union Pacific interprets the Interrogatory as a request to identify the principal Union Pacific employees, other than legal counsel, who may have information that is relevant to the issues in this proceeding, as Union Pacific presently understands those issues.

Subject to and without waiving its objections, Union Pacific believes the following list of employees and/or former employees, not including legal counsel for Union Pacific, may have information that is relevant to the issues in this proceeding. Further, Union Pacific incorporates its response to Interrogatory No. 1, to the extent this Interrogatory requests duplicative information regarding job titles and employment dates for each person identified below.

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INTERROGATORY NO. 3

Identify any witness upon whose written or oral testimony You may rely in connection with any motion, hearing, or argument in this Action.

Union Pacific Response

Union Pacific objects to this Interrogatory as premature because BNSF has not filed its opening evidentiary submission in this proceeding, Union Pacific does not know what motions BNSF or others might file in this proceeding, BNSF has not completed its production of information and documents in response to Union Pacific's discovery requests in this proceeding, and Union Pacific has not completed its own discovery in this proceeding.

Subject to and without waiving its objections, Union Pacific incorporates by reference the lists of employees identified in its responses to Interrogatory 1 and 2.

INTERROGATORY NO. 4

Identify, in a description by category and location, all Documents, physical evidence, and/or information of a similar nature concerning the UP / Savage Transaction and the Connecting Track.

PUBLIC VERSION

Union Pacific Response

Union Pacific objects to this Interrogatory as overbroad and as seeking information that is not relevant to the subject matter in this proceeding in that it requests information about all documents concerning the UP / Savage Transaction. Union Pacific further objects to this Interrogatory in that it imposes undue burdens on Union Pacific that outweigh any probative value the information sought may have in this proceeding in requesting a written description of the category and location of all Documents, physical evidence, and “information of a similar nature,” except to the extent the answer to this question can be ascertained by the documents themselves.

INTERROGATORY NO. 5

Identify and explain all the reasons why UP decided to retain ownership of the Connecting Track and to not sell the Connecting Track to STR or otherwise give STR operating rights over the Connecting Track.

Union Pacific Response

Union Pacific objects to this Interrogatory as unduly burdensome in that it would require Union Pacific to “identify and explain all” the reasons for a particular decision. Union Pacific further objects to this Interrogatory insofar as it seeks legal conclusions, including as to the legal significance of the underlying facts, or information subject to the attorney-client privilege, work-product doctrine, or other applicable privilege or protection.

Subject to and without waiving its objections, Union Pacific states that it was unwilling to sell its right-of-way and track assets between Milepost 0.0 and Milepost 1.04 because it has been using the track as ancillary track to support operations on the Shafter Subdivision. Thus, to establish a connection between STR’s proposed line and the national rail network, and to ensure the line remains connected, Union Pacific agreed with STR to seek Board authority to reinstitute common carrier service between Milepost 0.0 and Milepost 1.04.

PUBLIC VERSION

INTERROGATORY NO. 6

Identify and explain all the reasons why UP decided to reinstate common carrier operating authority over the Connecting Track.

Union Pacific Response

Union Pacific objects to this Interrogatory as unduly burdensome in that it would require Union Pacific to “identify and explain all” the reasons for a particular decision. Union Pacific further objects to this Interrogatory insofar as it seeks legal conclusions, including as to the legal significance of the underlying facts, or information subject to the attorney-client privilege, work-product doctrine, or other applicable privilege or protection.

Subject to and without waiving its objections, Union Pacific states that it sought to reinstitute common carrier service between Milepost 0.0 and Milepost 1.04 of the former Warner Branch to connect its Shafter Subdivision with a new railroad line to be constructed by Savage Tooele Railroad Company.

INTERROGATORY NO. 7

Identify any current or potential UP customers that UP has reason to believe considered, or are considering, locating at the Lakeview Business Park.

Union Pacific Response

Union Pacific objects to this Interrogatory as ambiguous in referring to “current or potential UP customers.” Union Pacific further objects to this Interrogatory as overbroad and as seeking information that is not relevant to the subject matter of this proceeding. Union Pacific interprets this Interrogatory as seeking information regarding shippers who are current Union Pacific customers or potential customers on the Union Pacific railroad network and who have considered, or are considering, locating a facility at the Lakeview Business Park.

Subject to and without waiving its objections, Union Pacific is aware of two potential customers that it has reason to believe considered, or are considering, locating at the Lakeview

PUBLIC VERSION

Business Park: {{[REDACTED]}}. Union Pacific will also produce business records from which the answer to this Interrogatory can be derived or ascertained, to the extent any such current or potential customers exist. *See* 49 C.F.R. § 1114.26(b).

INTERROGATORY NO. 8

Identify, to the extent UP is aware, the reasoning behind the decision of any current or potential customer to locate, or not to locate, at the Lakeview Business Park.

Union Pacific Response

Union Pacific objects to this Interrogatory as ambiguous in referring to “any current or potential customer.” Union Pacific further objects to this Interrogatory as overbroad and as seeking information that is not relevant to the subject matter of this proceeding. Union Pacific interprets this Interrogatory as seeking information regarding shippers who are current Union Pacific customers or potential customers on the Union Pacific railroad network and who have considered or are considering, locating a facility at the Lakeview Business Park.

Subject to and without waiving its objections, Union Pacific will produce business records from which the answer to this Interrogatory can be derived or ascertained, to the extent Union Pacific was made aware of decisions of any such current or potential customers. *See* 49 C.F.R. § 1114.26(b).

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1

All Documents and Communications related to the UP / Savage Transaction.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

PUBLIC VERSION

REQUEST NO. 2

All Documents and Communications related to negotiations about the UP / Savage Transaction.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 3

All Documents and Communications related to (i) the Connecting Track, and/or (ii) alternative proposals or routes for the STR rail line.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 4

All Documents and Communications related to the reasons why UP decided to retain ownership of the Connecting Track and to not sell the Connecting Track to STR or otherwise give STR operating rights over the Connecting Track.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 5

All Documents and Communications related to the reasons why UP decided to reinstate common carrier operating authority over the Connecting Track.

PUBLIC VERSION

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 6

All Documents and Communications related to UP's plans to access the Lakeview Business Park (via STR interchange or otherwise) or the commercial benefit to UP from accessing the Lakeview Business Park.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 7

All Documents and Communications between UP and any current or prospective customer at the Lakeview Business Park.

Union Pacific Response

Union Pacific objects to this Request as overbroad and as seeking information that is not relevant to the subject matter of this proceeding because it seeks all documents and communications regardless of the subject matter.

Subject to and without waiving its objections, Union Pacific will produce documents and communications between Union Pacific and any current or prospective customer at the Lakeview Business Park regarding the customer's reasons for locating or not locating a facility at the Lakeview Business Park, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 8

All Documents and Communications related to the potential for any current or

PUBLIC VERSION

potential customers to locate, or decision not to locate, at the Lakeview Business Park.

Union Pacific Response

Union Pacific objects to this Interrogatory as ambiguous in referring to “current or potential customers.” Union Pacific further objects to this Request as overbroad and as seeking information that is not relevant to the subject matter of this proceeding. Union Pacific interprets this Request as seeking information regarding shippers who are current Union Pacific customers or potential customers on the Union Pacific railroad network.

Subject to and without waiving its objections, Union Pacific will produce documents and communications between shippers who are current Union Pacific customers or potential customers on the Union Pacific railroad network and regarding a decision to locate or not to locate a facility at the Lakeview Business Park, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 9

All Documents and Communications related to BNSF’s ability to interchange with STR or to otherwise access the Lakeview Business Park.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 10

All Documents and Communications that reference any implications that the RASA may have on the UP / Savage Transaction, including but not limited to the implications of Section 8(k).

PUBLIC VERSION

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

REQUEST NO. 11

All Documents and Communications concerning Your understanding, assessment, and/or analysis of the effect of the UP / Savage Transaction on UP's obligations or BNSF's rights under the RASA.

Union Pacific Response

Subject to and without waiving its objections, Union Pacific will produce nonprivileged documents responsive to this request, to the extent they exist and can be identified in a reasonable search.

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June 18, 2025

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2025, I have caused the foregoing Union Pacific Railroad Company's First Set of Discovery Requests to BNSF Railway Company to be served by email on all parties of record in this proceeding.

/s/ Michael L. Rosenthal

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF Railway Company's Motion to Compel Deposition Testimony of UP Witnesses and to Hold Procedural Schedule in Abeyance* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Jensen Matsuda
Jensen Matsuda
Counsel for BNSF Railway Company

September 25, 2025