

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
December 12, 2025
Part of
Public Record

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

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

**UNION PACIFIC'S MOTION FOR PARTIAL RECONSIDERATION OF
ORDER GRANTING BNSF'S MOTION TO COMPEL DEPOSITIONS**

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Union Pacific Railroad Company (“Union Pacific”) moves for reconsideration of one narrow aspect of the December 10, 2025, Order of the Administrative Law Judge assigned to this matter granting BNSF’s Motion to Compel Depositions: the December 24, 2025, deadline for the three witnesses to appear for their depositions. To permit the affected witnesses and their counsel sufficient time to confer in preparation for the depositions and to identify dates for the depositions that do not conflict with previously scheduled professional and personal commitments, Union Pacific respectfully requests that the Board modify its order to extend the deadline for the three depositions to occur to January 23, 2025.

PROCEDURAL BACKGROUND

On September 25, 2025, BNSF filed its underlying motion to compel deposition testimony from three Union Pacific witnesses: Richard Harris, Melissa Meier, and Michelle Zemeckis.

On September 26, 2025, the Board’s Chief Counsel issued an order that held the procedural schedule of this proceeding in abeyance pending further order of the Board. *See* Decision served Sept. 26, 2025, slip op. at 1.

On November 26, 2025, the Board referred discovery in this proceeding to Administrative Law Judge Soulikias. *See* Decision served Nov. 26, 2025, slip op. at 2.

On December 10, 2025, after considering BNSF’s motion and Union Pacific’s reply, Administrative Law Judge Soulikias issued an order granting BNSF’s motion and directing that the depositions of Mr. Harris, Ms. Meier, and Ms. Zemeckis occur “no later than Wednesday, December 24, 2025.” December 10 Order at 4 (original emphasis omitted).

Pending a further order of the Board, there is currently no discovery deadline (or procedural schedule) in this proceeding. *See* December 10 Order at 3.

RELEVANT FACTS

The two-week period—running from December 11, 2025 to December 24, 2025—that the Order has set for the depositions of Mr. Harris, Ms. Meier, and Ms. Zemeckis to occur coincides with pre-planned vacations and end-of-year work obligations for the witnesses, holiday office closures for Union Pacific employees, and professional conflicts for counsel for the witnesses and Union Pacific.

Mr. Harris, Ms. Meier, and Ms. Zemeckis have previously planned vacations and previously scheduled work commitments during the relevant period. Union Pacific’s offices will be closed for all employees on December 24, 2025, for Christmas Eve. Counsel for the witnesses and Union Pacific have limited availability during the period

due to previously set deadlines for submissions in other Board proceedings, including the December 19, 2025, noticed filing date for Union Pacific and Norfolk Southern's forthcoming merger application in *Union Pacific Corp., et al.—Control—Norfolk Southern Corp., et al.*, FD 36873, the December 22, 2025, deadline for Union Pacific's reply in *BNSF Railway Co.—Petition for Enforcement—Service to Granite Mountain Quarries*, FD 32760 (Sub-No. 48), and the December 22, 2025, deadline for Union Pacific's reply in *BNSF Railway Co.—Petition for Clarification—Service to Colorado Materials*, FD 32760 (Sub-No. 49).

ARGUMENT

The Administrative Law Judge should extend the deadline to complete depositions from December 24, 2025, to January 23, 2025, to prevent the witnesses and Union Pacific from suffering undue prejudice. The witnesses and their counsel have very limited availability to prepare and appear for depositions during the relevant period due to previously planned personal vacations, professional commitments, and holiday-related office closures. Even if the witnesses were able to re-schedule their vacations and their prior work commitments, which would require significant disruption to their lives, the current deadline would unnecessarily curtail the witnesses' ability to confer with their counsel and receive legal advice regarding their preparation for their depositions. Due to professional conflicts, counsel for the witnesses and Union Pacific are unable to dedicate the time necessary to adequately confer with the witnesses ahead of their forthcoming depositions or provide the legal

advice necessary to protect the witnesses' interests.¹ To require the witnesses and counsel to proceed on the existing schedule would risk irreparable harm.

While extending the deadline to complete the depositions to January 23, 2025, will address the concerns of the witnesses and Union Pacific, it will not prejudice BNSF. There is no schedule currently in place for the proceeding that would be delayed by the extension. And the extension will permit the parties to confer on procedures for ensuring the depositions proceed smoothly.²

Counsel for Union Pacific conferred with counsel for BNSF via email on December 12, 2025, in an attempt to reach an agreement on a reasonable schedule for depositions, but BNSF declined to consent to Union Pacific's requested extension.

CONCLUSION

For the reasons set forth above, Union Pacific respectfully requests that the Administrative Law Judge modify the December 10, 2025, Order granting BNSF's Motion to Compel Depositions to extend the deadline for the three depositions to occur to January 23, 2025.

¹ The December 10 Order observes that "BNSF should be prepared for these depositions" and that "[b]efore the procedural schedule was held in abeyance, ... the parties were planning on working on this case during this time period." December 10 Order at 4. While this might be true for BNSF and its counsel, it is not true for the witnesses, Union Pacific, or their counsel. Before the schedule was held in abeyance, Union Pacific's merits brief was due to be submitted on November 26, 2025, and any depositions would have been completed long before December 2025.

² On December 10, 2025, counsel for BNSF proposed to counsel for Union Pacific that the parties could proceed with the depositions remotely, but there is no order or stipulation regarding procedures for remote depositions in effect in this proceeding, nor have the parties negotiated an informal agreement covering the handling of exhibits, presence of court reporter, or technical issues that are normally resolved in advance of remote depositions.

Respectfully submitted,

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December 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2025, I caused the foregoing document to be served by email on all parties of record in this proceeding and Administrative Law Judge Jenifer Soulikias.

/s/ Michael L. Rosenthal