

September 3, 2026

Hon. Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

BNSF-52 / CPKC-45 / CSXT-24
312215

ENTERED
Office of Chief Counsel
September 3, 2026
Part of
Public Record

Re: *STB Docket No. FD 36873 – Motion to Compel UP Depositions*

Dear Judge Soulikias:

UP is trying to block depositions of five senior leaders who have personal knowledge about the benefits and harms of the proposed merger. All five have relevant knowledge, and their testimony will help develop the record available to the Board. Rebecca Gregory and Jeff Pincock played such “critical roles” in the merger that UP gave them the “Spirit of Union Pacific” award for their merger-related work. David Hughes and Carl Garrison were central actors in developing UP’s proposals to enhance competition and other aspects of the merger proposal. And, as Jim Vena’s predecessor, Lance Fritz has relevant knowledge of UP’s past efforts to grow via interline partnership, as opposed to mergers. Underscoring their relevance, these witnesses are on tens of thousands of produced documents combined. Because all five witnesses have information relevant to the Board’s public interest analysis, they should sit for depositions consistent with the rules.¹

ARGUMENT

Parties may obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). “[T]he scope of discoverable evidence in a major merger includes the potential benefits and harms of the proposed transaction.” *See* Decision No. 20 at 4 (STB served May 12, 2026). The Board has identified specific topics that are relevant in this proceeding, including Applicants’ claimed competitive enhancements, pricing projections, integration plans, diversion analyses, and their public benefit claims. *See* Decision No. 21 at 7-12 (STB served May 28, 2026); Decision No. 30 at 3 (STB served Aug. 18, 2026).

“The testimony of any person, including a party, may be taken by deposition upon oral examination.” 49 C.F.R. § 1114.22(a). Depositions are not limited to declarants. The Discovery Guidelines provide that a person who has not submitted a verified statement may be deposed on notice that identifies “the cause or reason why such deposition will be taken.” Decision No. 24 at 3 (Guidelines 2.a.) (STB served June 18, 2026). “Any party opposing a deposition shall have the burden to secure a protective order in accordance with 49 C.F.R. § 1114.21(c).” *Id.*

Rebecca Gregory. Gregory is the Chief Administration Officer at UP, a C-suite position. She served as Vena’s chief of staff while UP was developing and negotiating the merger. Gregory was a member of UP’s “Merger Deal Team” and received the Spirit of Union Pacific Award for

¹ We are tabling for now potential disputes regarding the depositions of Andrew Brady (UP’s VP for External Relations), Beth Whited (UP’s former President), and Frank Voyack (NS’s VP for Government Relations).

playing a “critical role[] in developing the business case for the deal and supporting the negotiations of the agreement that will create America’s first transcontinental railroad.” <https://www.up.com/news/people/ceo-excellence-award-recipient-260323>. When the Merger Agreement was signed, Gregory was there. She is standing second from the right in this photo of UP’s and NS’s leadership at the signing event. <https://www.up-nstranscontinental.com/media-kit/>. (The next witness, Pincock, is standing at the far right.)



Because Gregory possesses case-relevant information, UP was ordered to search her custodial file. She features so prominently in merger-related issues that Gregory is identified on approximately 28,043 documents produced to date. Those documents make clear she possesses relevant knowledge and information. For example, Gregory received a variety of merger-specific materials as a member of the Merger Deal Team, including a July 8, 2025 presentation stating

[REDACTED] Ex. 1, UP-STB-D13-0000361 at -367. Whether a member of UP’s C-suite like Gregory is confident in the diversion projections—the foundation of UP’s deal thesis—is undoubtedly something the Board would want to consider. Gregory had major roles in several merger-related workstreams, too. For instance, Gregory was [REDACTED]

[REDACTED] See Ex. 2 NS 00320086 at -088. Further, on October 31, 2025, Vena asked Gregory to identify [REDACTED]

[REDACTED] Ex. 3, UP_1635260 at -260. In short: Gregory has been involved in analyzing and describing the merger’s purported benefits. She clearly has information relevant to the Board’s analysis. See 49 C.F.R. §1180.1(a); 1180.1(c)(1).

More generally, Gregory sits at Vena’s right hand. As Vena’s chief of staff, Gregory received [REDACTED]

[REDACTED] See, e.g., Ex. 4, UP 1377352 at -352-53 [REDACTED]

[REDACTED] Gregory has similarly prepared agendas for Vena discussing a variety

of service and operations topics, including [REDACTED] Ex. 5, UP_1652393 at -396. Gregory’s knowledge of UP service and operations is relevant to assessing whether UP needs a merger to attain the claimed service and operating improvements. *See* 49 C.F.R. § 1180.1(a) (disfavoring “consolidations . . . unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved”).

Jeff Pincock. Pincock is VP for Strategy & Corporate Development. Given the “critical role” he played in the merger’s development, Vena gave Pincock the Spirit of UP Award. <https://www.up.com/news/people/ceo-excellence-award-recipients-260323>. Pincock’s involvement included [REDACTED]

[REDACTED] and analyzing truck-to-rail conversions, which are directly relevant to the Board’s assessment of whether this merger will grow rail’s share against truck or whether it would instead take share away from other railroads. *See* Ex. 6, M. Houston Dep. Tr. 105:15-106:11, 117:4-21. Post-signing, Pincock has oversight for the integration: He is [REDACTED] and is [REDACTED]. *See* Ex. 7, UP_0038318 at -341; *see also* Ex. 8, Welch Dep. Tr. 62:16-24. Integration is a key focus of the Board under the Major Merger Rules, *see* 49 C.F.R. § 1180.1(c)(iii), so Pincock clearly has case-relevant information.

Pincock features so prominently in merger-related issues that Pincock is identified on approximately 11,392 documents produced to date. Those documents make clear he possesses relevant information. This includes a February 2024 presentation that he authored about UP’s strategic options in the “watershed,” an area in the middle of the country that is fundamental to UP’s merger thesis. In that deck, Pincock concluded [REDACTED]. Ex. 9, UP_0034295 at -296. He recommended that UP attack that issue [REDACTED]

Id. at -300. Watershed access is one of the chief benefits UP and NS claim their merger would unlock. Am. App. Vol. 1 at 13 (“Nowhere will this transformation be more consequential than in the American heartland—the ‘watershed’ markets[.]”). Pincock’s comments on the viability of [REDACTED] in that region are relevant to assessing whether the proposed merger is necessary to obtain watershed access. *See* 49 C.F.R. 1180.1(a).²

David Hughes. Hughes is the AVP of Joint Facilities & Interline Operations at UP. Hughes possesses unique personal knowledge—particularly regarding the Committed Gateway Pricing program (“CGP”) and joint facility issues—that no other witness can replicate. Before signing, Hughes [REDACTED]. *See* Ex. 13, UP-STB-D13-0000430; Ex. 14, Aug.21, 2026 Jacob Thomas Dep. Tr. 267:8-15. Post-signing, Hughes is [REDACTED]. *See* Ex. 7, UP_0038318 at -341. Hughes’ direct, personal involvement in the creation and development of the Committed Gateway Pricing

² UP claims Pincock’s deposition will be cumulative and duplicative of Todd Rynaski (SVP – Strategy). Not so. UP has produced many documents where Pincock—not Rynaski—opined on key topics, [REDACTED]. *See, e.g.,* Ex. 9, UP_0034295; Ex. 10, UP_1586476; Ex. 11 UP_0983806; Ex. 12, UP_1440001 at -003.

program—Applicants’ primary mechanism to enhance competition—is reason enough to depose him.

Hughes is identified on approximately 6,976 documents produced to date. Those documents confirm that Hughes possesses firsthand knowledge that is distinct from—and cannot be obtained through—any other witness. The documents reflect Hughes’s own direct communications with NS executives regarding gateway pricing and foreclosure risk. For example, Hughes explained to Mike McClellan (Chief Strategy Officer at NS) that [REDACTED] (Ex. 15, UP-STB-D13-0000659 at -659)—analysis he provided that is directly relevant to whether Applicants’ proposed CGP actually addresses foreclosure concerns. Hughes also discussed the future of joint assets, including those that feature prominently in the Application, explaining in his own words that [REDACTED] Ex. 16, UP_0344233 at -233. *See also* Ex. 17, NS_STB_00001339 at -1340. Hughes therefore possesses personal knowledge directly relevant to the Board’s analysis of whether the proposed merger is in the public interest.

Carl Garrison. Garrison is VP of Network Planning & Operations at UP. Garrison possesses unique, firsthand knowledge that no other witness can provide. Before signing the merger agreement, Garrison was [REDACTED] and handled [REDACTED]. *See* Ex. 18, UP-STB-D13-0000381 at -396; Ex. 2, NS 00320088. Post-signing, Garrison is [REDACTED]. *See* Ex. 7, UP_0038318 at -341. Applicants argue that Garrison’s deposition should be deferred as duplicative of Eric Gehringer or Pincock, but the deposition is not duplicative—Garrison’s personal involvement in distinct workstreams gave him knowledge that neither Gehringer nor Pincock shares. Moreover, as explained above, Applicants have not agreed to produce Pincock for a deposition.

Garrison is identified on approximately 10,837 documents produced to date. Those documents confirm that Garrison possesses personal knowledge—derived from his own direct involvement—that is not available from any other witness. For example, Garrison personally led a [REDACTED] (Ex. 19, UP_0374964)—a meeting not attended by any other deponent. He attended a May 21, 2025 meeting [REDACTED] Ex. 13, UP-STB-D13-0000430 at -439. Garrison also conducted [REDACTED] ahead of the initial Application’s filing. *See* Ex. 20, UP_1082282-83.

Garrison’s involvement spanned from the pre-planning period through the Application submission. *See, e.g.,* Ex. 21, UP 1486616 at -616 [REDACTED]

[REDACTED]; Ex. 22, UP 1633001 [REDACTED]

[REDACTED] This last communication—a candid, first-person account of Garrison’s own decision to pause operational changes due to merger sensitivities—is the kind of personal knowledge that only Garrison can testify to. No other witness

is an adequate substitute—Garrison was an agreed-upon custodian who was personally involved in UP’s merger-related efforts for many months.

Lance Fritz. Fritz served as UP’s Chief Executive Officer from 2015 to 2023. Because he was UP’s CEO for eight years, Mr. Fritz has direct knowledge of matters that are critically relevant, including the likely effects of a transcontinental merger on the industry, strategic alternatives to transcontinental mergers, and the likelihood of further industry consolidation were a transcontinental merger to be approved. *See e.g.* Ex. 23, [REDACTED] Ex. 24, UP 0082759 at -762 (strategic planning presentation on [REDACTED])

Mr. Fritz appears on roughly 5,167 documents produced to date. He led UP when it evaluated the competitive implications of Canadian Pacific’s merger with Kansas City Southern and [REDACTED]. *See, e.g.* Ex. 25, UP_1559553 at -591 ([REDACTED]); Ex. 26, UP_0086240 (similar). During that same period, UP maintained and expanded interline service with NS and other carriers. *See e.g.* Ex. 27, UP_0199071 [REDACTED]).

The Court has already recognized the relevance of Mr. Fritz’s views. In Decision No. 31, the Court ordered production of his documents because “Mr. Fritz’s comments would be highly relevant to non-Applicants’ opposition to the proposed transaction.” Decision No. 31 at 9. So, too, would his testimony: it will provide a valuable perspective on whether the growth and service benefits Applicants attribute to the proposed merger require consolidation or could be achieved through means short of a merger, such as interline arrangements and operational improvements. [REDACTED] *See* Ex. 8, D. Welch Dep. Tr. 271:25-272:6; Ex. 25, UP_1559553 at -558. Notwithstanding, Mr. Fritz was “adamantly” opposed to further railroad consolidation. *See, e.g.,* Tony Hatch, *That’s a Wrap: RailTrends 2018 recap*, PROGRESSIVE RAILROADING (December 2018), https://www.progressiverailroading.com/rail_industry_trends/article/Thats-a-Wrap-RailTrends-2018-recap-by-Tony-Hatch--56325.

CONCLUSION

Because each witness has relevant personal knowledge on topics that are central to the Board’s assessments, Gregory, Pincock, Hughes, Garrison, and Fritz should sit for depositions.

[Signature page follows.]

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EXHIBIT 1

(REDACTED)

EXHIBIT 2

(REDACTED)

EXHIBIT 3

(REDACTED)

EXHIBIT 4

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EXHIBIT 5

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EXHIBIT 6

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EXHIBIT 27

(REDACTED)

CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.

/s/ Onika K. Williams

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September 3, 2026