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ATTORNEYS AT LAW

312674

October 8, 2026

Hon. Jenifer J. Soulikias
 Administrative Law Judge
 Surface Transportation Board
 395 E Street, S.W.
 Washington, D.C. 20423-0001

ENTERED
 Office of Chief Counsel
 October 9, 2026
 Part of
 Public Record

Re: Finance Docket No. 36873, Motion to Recall Witness for Deposition (Public)

Dear Judge Soulikias,

Iowa Interstate Railroad, LLC (“IAIS”), Foresight Energy, LLC (“Foresight”) and Metra (Northern Illinois Transit Authority’s commuter rail division) (“Metra”) (collectively “Movants”), pursuant to Paragraph F.1 of the June 18, 2026 Discovery Guidelines, respectfully move for an Order directing the recall of Union Pacific Railroad Company (“UP”) witness Katherine Novak to complete the deposition that was abruptly, unilaterally and unreasonably terminated on September 24, 2026. Movants submit this letter brief in support of their request.

Ms. Novak submitted Verified Statements in this proceeding concerning the Applicants’ plans for resolving 2-to-1 shipper concerns and is UP’s principal sponsor of the Committed Gateway Pricing (“CGP”) program that Applicants have identified as a principal “competitive enhancement” that would result from their proposed merger. Additionally, she testified that she has management responsibilities within UP in connection with interline rail movements and coordination of passenger rail operations. As parties in interest with full discovery rights, IAIS (a Class II railroad apparently excluded from CGP), Foresight (an acknowledged 2 to 1 shipper), and Metra (Northern Illinois’s passenger rail authority) submitted notices of intent to participate in Ms. Novak’s scheduled deposition on September 24, 2026. In accordance with Paragraph C.5 of the Guidelines, Movants conferred with counsel for the non-Applicant railroads that also filed notices and agreed to an allotment of time for questioning the witness. Additionally, and consistent with the emerging pattern for depositions, it was agreed that examiners who were physically present in Omaha for the deposition would proceed first, followed by counsel who participated remotely. Under this arrangement, Foresight/Metra would follow counsel for CPKC and IAIS would proceed after that.

During the deposition, Ms. Novak repeatedly responded to questions with requests for repetition or further explanation, and many answers initially were evasive, not responsive or vague and required rephrasing, revision and/or follow-up by the examining attorney. Additionally, and more significantly, counsel for UP consumed substantial time throughout the day by raising more than 600 objections to nearly **50%** of the questions asked and

Tr. Page 28, line 14-Page 29, line 14:

{{ [REDACTED] ?}}

Tr. Page 199, line 4-Page 200, line 14:

{{ [REDACTED] }}

Tr. Page 227, line 8-Page 229, line 9:

{{ [REDACTED] }}

[REDACTED]

Despite the foregoing, and while counsel for Foresight/Metra was posing a question to the witness, UP counsel invoked the general Guidelines rule that a non-expert witness should be deposed for one (1) day of seven (7) hours (Paragraph C.2.c) and terminated the deposition. In the colloquy that followed, counsel for Movants explained that between the need for repeated follow-ups to questions posed to Ms. Novak and the large number of objections that UP counsel had interposed, considerable time had been consumed by non-testimonial matters and the deposition reasonably should be continued to completion.² It also was noted that less than an hour of additional time would be needed, and that since the witness, the court reporter and all interested counsel already were present, efficiency supported the request. However, UP counsel refused to extend the deposition and abruptly departed with the witness. As a result, Foresight/Metra had their deposition rights cut short, and IAIS had its rights denied altogether.

² Ms. Novak was also afforded numerous breaks throughout the day, including a 40-minute lunch break. While Movants are not suggesting that breaks were counted in the 7-hour standard deposition time, their frequency reduced any burden Ms. Novak may have endured if she had remained available for the limited time needed to complete her deposition. Additionally, UP counsel never provided advance notice of the time that remained in the standard 7-hour range, a typical courtesy given to examining counsel that would have offered an opportunity to shorten some examinations to allow ample time for all scheduled participating parties.

While Paragraph C.2.c of the Guidelines states that fact witness depositions should not exceed seven (7) hours, it also states that “[p]arties shall use their best efforts to complete depositions as promptly as practicable.” That should apply to both sides of the deposition coin. Just as examining counsel should avoid repetitive questioning and other time-wasting tactics, defending counsel should refrain from repetitive or “speaking” objections and similar behavior that effectively prejudices an examiner’s ability to conduct the deposition fairly and efficiently. *Hardin v. Mendocino Coast Dist. Hosp.*, 2019 WL 1855989 at *7 (N.D. Cal. Apr. 25, 2019). The rough draft of the transcript of Ms. Novak’s September 24 deposition shows that the time UP counsel consumed with objections and witness instructions exceeded the time that Movants’ counsel requested to finish Ms. Novak’s deposition. As deposition questions constitute “discovery requests,” recalling Ms. Novak for the modest time needed for Foresight/Metra to conclude their examination and IAIS to conduct its own would be consistent with Guidelines Paragraph C.2.b., as UP counsel’s actions amounted to a failure to respond to Movants’ requests.

Movants conferred in good faith with UP counsel over a mutually convenient date and time to recall Ms. Novak for the limited purposes and time described herein. Movants agreed to complete the deposition remotely to minimize the burden on the witness. However, UP counsel declined to agree to the proposed recall. For the foregoing reasons, Movants respectfully request that UP be ordered to make Ms. Novak available for completion of her deposition by Foresight, Metra, and IAIS.

Respectfully submitted,



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cc: Parties of Record