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October 14, 2026
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October 14, 2026

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

Re: *Docket No. FD 36873 - Union Pacific Corporation and Union Pacific Railroad Company – Control – Norfolk Southern Corporation and Norfolk Southern Railway Company*

Dear Judge Soulikias:

Grand Trunk Corporation and its U.S. rail operating subsidiaries[1] (collectively, "CN") submit this letter in response to Iowa Interstate Railroad, LLC, Foresight Energy LLC, and Metra's Motion to Recall Witness (IAIS-4/FSE-2/METRA-2), filed October 8, 2026.

CN does not take a position on, and does not ask the Board to decide, whether Katherine Novak should be recalled. Rather, CN supports the Motion to the extent it seeks relief ensuring that ***all*** parties that give notice of their intent to participate in a deposition, and that have satisfied their obligation to confer regarding the allocation of examination time for that deposition, receive the time they reserved. In short, CN requests declaratory and other relief confirming that BNSF, CPKC, and CSXT may not unilaterally strip other noticing parties of their allocated time to examine witnesses. CN, like every other party to this proceeding, is entitled to a reasonable allocation of examination time consistent with the Discovery Guidelines,[2] and CN anticipates continuing to seek reasonable amounts of examination time to obtain discovery related to its

[1] Bessemer and Lake Erie Railroad Company, Cedar River Railroad Company, Chicago, Central & Pacific Railroad Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Iowa Northern Railway Company, The Pittsburgh & Conneaut Dock Company, and Wisconsin Central Ltd.

[2] *See* Decision No. 24, FD 36873 (STB served June 18, 2026) (the "Discovery Guidelines").

anticipated requested conditions.[3]

While CN recognizes that this letter comes after the deadline for motions to be addressed at the October 16, 2026 ALJ conference, good cause exists to accept it. Additional issues have arisen since last Thursday, and, absent Your Honor's intervention, those issues will recur in several depositions scheduled between now and the next conference.[4] CN has already been prejudiced in its ability to obtain relevant and important discovery in the deposition of Mr. Gehringer on October 13, and that prejudice will continue until these issues are resolved. These issues therefore cannot wait for the next conference. Further, CN's requests are directly related to the Motion to Recall Witness, and, for efficiency, should be considered at the same hearing.

I. BNSF, CSXT, and CPKC Are Abusing the Deposition Process.

The Discovery Guidelines provide that no deposition of a fact witness shall exceed one day of seven (7) hours, and that the parties who wish to examine a fact witness "shall confer prior to the deposition to allocate examination time." *See* Discovery Guidelines ¶ 5. BNSF, CSXT, and CPKC are not complying with the Discovery Guidelines. Instead, they have repeatedly sought to deny CN—a party that has fully complied with the Discovery Guidelines—the examination time allocated through the conferral process, and in one instance they succeeded. Specifically, in advance of the deposition of Eric Gehringer, CN sent an email notifying the relevant parties of its intent to participate and reserving up to 20 minutes of examination time. Yet at the deposition, BNSF and others refused to allow counsel for CN to examine the witness.

CN has consistently complied with the Discovery Guidelines, conferring by email with counsel for BNSF, CSXT, and CPKC, and any other noticing parties, whenever it requires time during a deposition. CN's requested allocations have been modest—often only 20 to 45 minutes out of seven hours. Yet at prior depositions (not during the conferral process), BNSF, CSXT, and CPKC responded dismissively and argued that CN is not entitled to ***any*** time at all, only to eventually acknowledge (as required by the Discovery Guidelines) that CN has a right to examine the witness. At the Gehringer deposition, they abandoned even that acknowledgment. While BNSF, as the noticing party for most depositions, has been the most vocal opponent of CN, a brief review of the record illustrates that it is a concerted effort amongst BNSF, CSXT, and CPKC to blatantly defy the Discovery Guidelines to the exclusion of CN.[5]

The Novak Deposition. CN's negotiation for time at the deposition of Ms. Novak was needlessly contentious. Counsel initially leveled baseless accusations at CN when it sought an allocation of time for her deposition.[6] Only after CN asserted its rights under the Discovery Guidelines during the conferral process did the other Class Is acknowledge CN's right to examine

[3] *See* CN-30, FD 36873 (filed Oct. 9, 2026).

[4] In fact, all of the remaining UP and NS witness depositions currently scheduled in this case will occur between October 15 and October 29, 2026. Thus, by the time of the next conference on October 30, CN will have been irreparably harmed and the relief CN seeks will be moot.

[5] None of BNSF, CPKC, or CSXT shares the allotments of time with CN prior to the depositions (sometimes not even until five hours into a deposition), making it impossible for CN to know whether they considered CN's requests in allocating the seven hours.

[6] *See* Exhibit A (Sep. 21, 2026 email from L. Bohl).

the witness and allow CN to reserve 45 minutes. During the deposition, CN used only 20 of its requested 45 minutes. BNSF, CSXT, and CPKC, by contrast, ran over their allotted time and squeezed out the other participating parties. Regardless of who is to blame for the Novak shortfall—a question on which CN takes no position—BNSF, CSXT, and CPKC plainly failed to comply with the Discovery Guidelines: they exceeded the time they sought during the conferral and unilaterally denied other parties their requested time.

The McClellan Deposition. CN's negotiation for time at the deposition of Mr. McClellan was similarly fraught. Consistent with the Discovery Guidelines, CN made a reasonable request for 30 minutes in advance of the deposition; counsel for the other noticing parties did not respond. At 8 p.m. on the evening before the deposition, when counsel for CN reconfirmed the time allocation, counsel for BNSF and CSXT asserted for the first time that CN should not be afforded ***any*** opportunity to question the witness within the seven-hour time limit.[7] Counsel for CN again asserted CN's rights under the Discovery Guidelines. And although CN's counsel attended the McClellan deposition in person, Class I counsel departed from the established protocol of having in-person counsel question the witness first, instead affording every other party attending the deposition–including remote participants–an opportunity to question the witness and leaving CN to go last with whatever time remained. Ultimately, counsel for CN ceded its time back to other Class I counsel because the topics of interest to CN had already been covered by other parties' questioning.

The Gehringer Deposition. The deposition of Mr. Gehringer on October 13, 2026, is the latest—and most egregious—example of this abuse. CN counsel wrote to counsel for BNSF, CSXT, and CPKC to request 20 minutes of time.[8] No one responded to the email, whether to object or otherwise. On the day of the deposition, off the record, CN counsel reminded the participating parties that CN had requested 20 minutes. Counsel for BNSF immediately rejected the request, stating that any time CN might want would have to be coordinated with counsel for UP outside the deposition because it was not permitted within the seven hours. This objection was improper substantively because CN is entitled to deposition time, but it was especially improper procedurally—any concerns or objections should have been raised during the conferral process, not during the deposition. Counsel for CPKC eventually acknowledged off the record that CN was entitled to ask questions. Yet after the Class Is finished their questioning, only 40 minutes remained. Counsel for Metra had (unbeknownst to CN at the time) requested 45 minutes, and CN had requested 20; there was not enough time for both. Counsel for Metra then took the remaining time. CN's counsel asked counsel for UP to make Mr. Gehringer available for another 20 minutes so that CN could examine him, but that request was denied. As a result, CN was left with no option but to state its firm objection to the allocation of time on the record and to note that the issue would need to be raised with the ALJ.[9]

II. CN Requires Declaratory Relief Regarding Participation in Depositions.

There is no basis to exclude CN from the examination process when it complies with the Discovery Guidelines, as it has for every deposition to date. The only requirements to examine a

[7] *See* Exhibit B (Oct. 5, 2026 email from L. Bohl).

[8] *See* Exhibit C (Oct. 12, 2026 email from L. Bohl).

[9] *See* Exhibit D (excerpt of the rough transcript of E. Gehringer deposition).

witness are to give notice of the intent to participate and to confer on an allocation of time. CN has done both. Rather than respond and confer in time to resolve any disputes before a deposition, BNSF, CPKC, and CSXT refuse to confer and then unilaterally deny CN the right to examine the witness. BNSF, CPKC, and CSXT have stated that CN is not entitled to participate in the examination of UP or NS fact witnesses, based on the mistaken premise that the Settlement MOU between CN and UP means CN is no longer entitled to participate in discovery in this proceeding. While it is no secret that CN has signed a Settlement MOU with UP regarding certain conditions related to the Proposed Transaction, CN bears the burden of supporting the conditions it is requesting from the Board in this proceeding. The Settlement MOU provides for CN access to remedy certain competitive harms, but the precise form of such access is ultimately a decision for the Board. And CN and UP may not agree on the precise form such remedies should take.

The notion that CN is so "aligned" with UP that it is not entitled to any time at depositions is unfounded. Were CN and UP truly so aligned, one would expect counsel for UP to make its witnesses available to CN beyond the seven-hour limit; it does not. Squeezing CN out prejudices its ability to support its proposed conditions—conditions on which CN alone bears the burden—and to clarify the record on the parameters of the Settlement MOU. The only way to ensure that CN is not improperly excluded from depositions is declaratory relief from the ALJ confirming that CN is entitled to participate. Absent the ALJ's intervention, CN will continue to be prejudiced by the conduct of the other Class Is.[10]

III. Conclusion

For the foregoing reasons, CN respectfully requests that the ALJ grant declaratory relief confirming, in no uncertain terms, that CN must be allocated time in accordance with the Discovery Guidelines and consistent with its need to carry its burden in support of its requested conditions, and that other participants may not cut CN out.

Respectfully submitted,

/s/ Sara Y. Razi
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Abram J. Ellis
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CANADA

[10] CN reserves the right to seek costs from BNSF, CPKC, and CSXT, and to recall Mr. Gehringer for testimony in line with its request.

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Attorneys for CN

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of October 14, 2026, I caused a true and correct copy of the foregoing to be served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General, and Administrative Law Judge Jenifer Soulikias.

/s/ Andrew Bernstein
Andrew Bernstein
Simpson Thacher & Bartlett LLP

Exhibit A

From: Bohl, Lindsey C.
Sent: Monday, September 21, 2026 4:31 PM
To: McCarrick, T.J.; Donovan, Daniel T.; Thompson, McClain; Joseph, Neil; Matelis, Joseph J.; David Meyer; Aluise, Dylan M.; van Houwelingen, Luke; Enson, Eric; Fanchiang, Eric; kjd@sloverandloftus.com; Amlin, Don (ATR)
Cc: Razi, Sara Y.; Ellis, Abram J; Gridi, Avia
Subject: RE: FD 36873 - Katherine Novak Deposition

T.J.,

We are available tomorrow from 1-2 pm to meet and confer.

Lindsey

From: McCarrick, T.J. <tj.mccarrick@kirkland.com>
Sent: Monday, September 21, 2026 3:31 PM
To: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Aluise, Dylan M. <aluised@sullcrom.com>; van Houwelingen, Luke <lvanhouwelingen@crowell.com>; Enson, Eric <eenson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; kjd@sloverandloftus.com; Amlin, Don (ATR) <don.amlin@usdoj.gov>
Cc: Razi, Sara Y. <Sara.Razi@stblaw.com>; Ellis, Abram J <AEllis@stblaw.com>; Gridi, Avia <Avia.Gridi@stblaw.com>
Subject: RE: FD 36873 - Katherine Novak Deposition

*** External Email ***

Thanks, Lindsey. Can we please meet and confer tomorrow on this? 90 minutes is a substantial amount of time for a party-aligned deponent.

T.J. McCarrick

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tj.mccarrick@kirkland.com

From: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>
Sent: Monday, September 21, 2026 10:58 AM
To: Donovan, Daniel T. <ddonovan@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Aluise, Dylan M. <aluised@sullcrom.com>; van Houwelingen, Luke <lvanhouwelingen@crowell.com>; Enson, Eric <eenson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; kjd@sloverandloftus.com; Amlin, Don (ATR) <don.amlin@usdoj.gov>
Cc: Razi, Sara Y. <Sara.Razi@stblaw.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
Subject: FD 36873 - Katherine Novak Deposition

Counsel,

CN intends to participate in the deposition of Katherine Novak on September 24. We plan to attend in person. We would like to reserve 90 minutes for questions. Let us know if it would be helpful to confer consistent with Section C.4.d. under the Discovery Guidelines.

Best,
Lindsey

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Exhibit B

From: Bohl, Lindsey C.
Sent: Thursday, October 8, 2026 9:41 PM
To: Thompson, McClain; Eric Enson
Cc: Donovan, Daniel T.; McCarrick, T.J.; Joseph, Neil; Joseph J. Matelis; David Meyer; Dylan M. Aluise; Luke van Houwelingen; Eric Fanchiang; kjd@sloverandloftus.com; Brown, Judson; Razi, Sara Y.; Ellis, Abram J; Gridi, Avia
Subject: RE: FD 36873 - CN Participation in Depositions

Whether or not we have a common interest on some topics is besides the point of this discussion. CN has reserved time consistent with the discovery rules. We are a party entitled to discovery. We bear the burden of supporting our conditions, and the discovery we are seeking is relevant and in furtherance of our rights.

These are questions that could and should have been raised when we conferred on allocation of time, and your late-night efforts to cower us out of our discovery rights are wholly inappropriate.

See you in the morning.

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, October 8, 2026 8:53 PM
To: Eric Enson <EEnson@crowell.com>
Cc: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Joseph J. Matelis <Matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Dylan M. Aluise <aluised@sullcrom.com>; Luke van Houwelingen <lvanhouwelingen@crowell.com>; Eric Fanchiang <efanchiang@crowell.com>; kjd@sloverandloftus.com; Brown, Judson <jdbrown@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Ellis, Abram J <AEllis@stblaw.com>; Gridi, Avia <Avia.Gridi@stblaw.com>
Subject: Re: FD 36873 - CN Participation in Depositions

*** External Email ***

Lindsey - Is CN (i) a party to a common interest agreement with UP and/or NS, or (ii) claiming any common interest or joint defense privilege with UP and/or NS?

McClain Thompson

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---
mcclain.thompson@kirkland.com

On Oct 8, 2026, at 8:40 PM, Enson, Eric <EEnson@crowell.com> wrote:

If CN is going to take time to rehabilitate the UP/CN witnesses, as CN did with Hunt, CN can ask UP/NS for a special allocation of time to do that beyond the time the other Class I's get.
Eric

From: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>
Sent: Thursday, 08 October 2026 19:36:10
To: Thompson, McClain <mcclain.thompson@kirkland.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Joseph J. Matelis <Matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Dylan M. Aluise <aluised@sullcrom.com>; van Houwelingen, Luke <lvanhouwelingen@crowell.com>; Enson, Eric <EEnson@crowell.com>; Fanchiang, Eric <efanchiang@crowell.com>; kjd@sloverandloftus.com <kjd@sloverandloftus.com>; Brown, Judson <jdbrown@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Ellis, Abram J <AEllis@stblaw.com>; Gridi, Avia <Avia.Gridi@stblaw.com>
Subject: RE: FD 36873 - CN Participation in Depositions

We are fine with BNSF going first, but it is not your 7 hours. It is the witnesses time, and CN is a party entitled to take discovery within the 7 hours of witness time, like any other. We met and conferred, consistent with the discovery protocol and reserved 30 minutes. BNSF may not unilaterally change the discovery rules.

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, October 8, 2026 8:17 PM
To: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>
Cc: Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Joseph J. Matelis <Matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Dylan M. Aluise <aluised@sullcrom.com>; Luke van Houwelingen <lvanhouwelingen@crowell.com>; Eric Enson <EEnson@crowell.com>; Eric Fanchiang <efanchiang@crowell.com>; kjd@sloverandloftus.com; Brown, Judson <jdbrown@kirkland.com>; Razi, Sara Y. <Sara.Razi@stblaw.com>; Ellis, Abram J <AEllis@stblaw.com>; Gridi, Avia <Avia.Gridi@stblaw.com>
Subject: Re: FD 36873 - CN Participation in Depositions

*** External Email ***

No. And that wouldn't need to take 15 minutes, unless CN as a merger supporter is now intentionally trying to frustrate our ability to take discovery. BNSF will go first. CN time isn't counting against our 7 hours.

McClain Thompson

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M +1 917 545 6401
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mcclain.thompson@kirkland.com

On Oct 8, 2026, at 8:13 PM, Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com> wrote:

That's fine but if you'd like CN to go first, we'll need to add 15 minutes to our time allocation request as we had not factored in laying the deposition ground rules and general foundation.

From: Thompson, McClain <mcclain.thompson@kirkland.com>
Sent: Thursday, October 8, 2026 6:05 PM
To: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>; Donovan, Daniel T. <ddonovan@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Aluise, Dylan M. <aluised@sullcrom.com>; van Houwelingen, Luke <lvanhouwelingen@crowell.com>; Enson, Eric <eenson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; kjd@sloverandloftus.com; Brown, Judson <jdbrown@kirkland.com>
Cc: Razi, Sara Y. <Sara.Razi@stblaw.com>; Ellis, Abram J <AEllis@stblaw.com>; Gridi, Avia <Avia.Gridi@stblaw.com>
Subject: RE: FD 36873 - CN Participation in Depositions

*** External Email ***

CN Team – If you are asking questions tomorrow, you will go first. It starts at 8 AM.

McClain Thompson

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From: Bohl, Lindsey C. <Lindsey.Bohl@stblaw.com>
Sent: Monday, October 5, 2026 6:51 PM
To: Donovan, Daniel T. <ddonovan@kirkland.com>; Thompson, McClain <mcclain.thompson@kirkland.com>; McCarrick, T.J. <tj.mccarrick@kirkland.com>; Joseph, Neil <neil.joseph@kirkland.com>; Matelis, Joseph J. <matelisj@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Aluise, Dylan M. <aluised@sullcrom.com>; van Houwelingen, Luke <lvanhouwelingen@crowell.com>; Enson, Eric <eenson@crowell.com>; Fanchiang, Eric <EFanchiang@crowell.com>; kjd@sloverandloftus.com; Amlin, Don (ATR) <don.amlin@usdoj.gov>
Cc: Razi, Sara Y. <Sara.Razi@stblaw.com>; *AEllis@stblaw.com2 <AEllis@stblaw.com>; *Avia.Gridi@stblaw.com <Avia.Gridi@stblaw.com>
Subject: FD 36873 - CN Participation in Depositions

Counsel,

CN intends to participate in the depositions of David Hunt, Jeff Pincock, Michael McClellan, and Marybeth Flournoy this week on October 7, 8, and 9.

We will attend the Hunt, McClellan, and Flournoy depositions in-person in Washington, DC, and the Jeff Pincock deposition remotely.

CN would like to reserve 30 minutes for questions in each of these depositions. Let us know if it would be helpful to confer consistent with Section C.4.d. under the Discovery Guidelines.

Lindsey

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Exhibit C

From: Bohl, Lindsey C.
Sent: Monday, October 12, 2026 1:18 PM
To: Thompson, McClain; Eric Enson; Donovan, Daniel T.; McCarrick, T.J.; Joseph, Neil; Joseph J. Matelis; David Meyer; Dylan M. Aluise; Luke van Houwelingen; Eric Fanchiang; kjd@sloverandloftus.com; Brown, Judson
Cc: Razi, Sara Y.; Ellis, Abram J; Fresquez, Laurel; Davido, Allison
Subject: FD 36873 - CN Participation in Upcoming Depositions

Counsel,

CN plans to participate in the depositions of Eric Gehringer and Mark Israel this week, and the deposition of Jim Vena next week. CN also plans to participate in the depositions of Shawn Tureman and John Orr next week, and will revert with time allocation requests for those depositions.

- Laurel Fresquez will attend the deposition of Eric Gehringer remotely. CN would like to reserve 20 minutes.

- Allison Davido will attend the deposition of Mark Israel in-person. CN would also like to reserve 20 minutes.

- Abram Ellis will attend the deposition of Jim Vena in person, and would like to reserve 10 minutes.

Please let us know if it would be helpful to confer consistent with Section C.4.d. under the Discovery Guidelines in advance of these depositions.

Best,
Lindsey

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Exhibit D

WITHHELD FROM PUBLIC VERSION