

BEFORE THE
SURFACE TRANSPORTATION BOARD

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COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY D/B/A METRA
– TERMINAL TRACKAGE RIGHTS –
UNION PACIFIC RAILROAD COMPANY

METRA OPENING STATEMENT AND EVIDENCE

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**I.
INTRODUCTION**

Congress established statutory criteria for the Board to follow in determining whether to require the use of a rail carrier's terminal facilities by a local government authority when it passed the ICC Termination Act of 1995 (“ICCTA”). Metra believes that each of those criteria is met here. The public interest is part of that statutory framework. In conferring jurisdiction on the Board to require use of a carrier's terminal facilities, Congress recognized “a local transportation authority's request would virtually always satisfy the public interest standard.” H.R. Rep. No. 104-422, at 184 (1985) (Conf. Rep.). That recognition by Congress was prescient and directly on point for this case.

Metra¹ submitted its Application for Terminal Trackage Rights, because its historical Purchase of Service Agreement (“PSA”) with Union Pacific Railroad

¹ Metra is the service mark for two Illinois state governmental corporations: the Commuter Rail Division (“CRD”) of the Regional Transportation Authority (“RTA”) and the Northeast Illinois Regional Commuter Railroad Corporation

Company (“UP”) is set to expire on June 30, 2025, with no agreement or mechanism in place to ensure that Metra’s service on UP’s lines continues after that date.

Metra’s commuter rail service plays a critical role in the Chicago region’s economy and social fabric, including more than 13 million annual passenger trips on the UP-North, UP-Northwest, and UP-West lines (“UP Lines”).

As the Board is aware, Metra and UP have been negotiating for several years for Metra to assume operation of commuter rail service on the UP Lines, following UP’s decision in 2019 to discontinue providing the service under the PSA² to Metra, which the Seventh Circuit upheld in 2023.³ The parties have made substantial progress in some areas, but not all. As part of the transition, Metra has absorbed hundreds of UP personnel responsible for operating the commuter service over the past several years. As of May 16, 2025, Metra for the first time will be solely responsible for operating the commuter rail service on the UP Lines.

Despite their efforts, the parties have not reached agreement on the conditions and compensation that should apply in a post-PSA agreement for Metra’s use of the UP Lines after June 30, 2025. UP will not allow Metra to operate on the UP Lines without an agreement, and Metra cannot agree to UP’s demand for economically unreasonable and monopolistic rates to continue using the UP Lines

(“NIRCRC”). NIRCRC is the rail carrier. Capitalized terms in Metra’s Opening Brief have the same meaning as in Metra’s Application unless otherwise noted.

² A copy of the base PSA, as amended and restated in 2010, is included in Metra’s Opening Workpapers (“Op. WPs”).

³ *Union Pac. R.R. Co. v. Reg’l Transp. Auth.*, 74 F.4th 884 (7th Cir. 2023).

for its public service after the PSA has expired. Accordingly, Metra has come to the Board seeking to invoke its statutory rights to obtain relief under established principles and standards.

A decision granting Metra's Application will establish a foundation and framework for the parties to reach a prompt, transparent, and reasonable resolution of the remaining issues, including UP's compensation. Once Metra's right to use UP's facilities is secured, if the parties proved unable to resolve their remaining issues, Congress provided authority for the Board to "establish conditions and compensation for use of the facilities." 49 U.S.C. § 11102(a). Absent the grant of its Application, Metra would be left to resolve the conditions and compensation for its future use of the UP Lines at UP's sole discretion, which is not the public interest Congress intended.

II. SUMMARY OF ISSUES

Congress provided a statutory roadmap for the Board's decision-making in this proceeding, and Metra meets all the requirements for obtaining terminal trackage rights that Congress specified:

The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

49 U.S.C. § 11102(a).

First, Metra is eligible to obtain trackage rights under 49 U.S.C. § 10501(c)(3)(B) as a local governmental entity providing public transportation that would not have been subject to state regulation as of December 31, 1995. UP did not take a specific position on the Board's jurisdiction to grant the requested trackage rights in its Reply. *See* UP Reply at 9.

Second, Metra will utilize the UP Lines as terminal facilities consistent with the requirements of § 11102(a), that is, as an enclosed, contained, and integrated system for the local collection and distribution of passengers operating within a cohesive commercial area at multiple points of loading/unloading, where the cars generally remain intact with the train, and not as line-haul facilities for hauling freight on the interstate rail network. The UP Lines form part of a larger terminal area for freight and passenger service that the Chicago Transportation Coordination Office ("CTCO") oversees to avoid congestion and gridlock in the Chicago region. The Chicago downtown freight terminal district may be an appropriate terminal area for freight purposes, but not for how Metra's trains operate. Even if the freight terminal district were found to be the governing terminal area and portions of the UP Lines fall outside the terminal area, those portions are still within "a reasonable distance outside of a terminal." UP also did not take a specific position on the terminal facilities issue in its Reply.

Third, use of the track for passenger rail is practicable, as evidenced by over 150 years of joint freight-passenger use, including the last 50 years under the PSA. To Metra's understanding, UP does not dispute that the use of the UP Lines for

commuter service has been and would remain practicable within the meaning of the statute.

Fourth, granting Metra trackage rights will not substantially impair UP's use of the facilities for its own business for effectively the same reasons that Metra's use is practicable. To Metra's understanding, UP acknowledges that Metra's ongoing use of the UP Lines for Metra's commuter service would not substantially impair UP's ability to handle its own business.

Fifth, continued service to Chicago commuters and other passengers is in the public interest, as Congress expressly intended. H.R. Rep. No. 104-422, at 184 (Conf. Rep.). The evidence for the public interest supporting Metra's continued use of the UP Lines to serve large populations centers that rely on the availability of the commuter rail service for their economic well-being and daily life is compelling.

UP sees it differently and devoted most of its Reply to the public interest issue. Specifically, UP asserts in its Reply that the Application should not be granted, because the discretionary nature of the public interest requires that Metra *first* compensate UP based on UP's view of the "fair market value" of access to the UP Lines (UP Reply at 3) (emphasis added) – although Metra already is using the same lines and no compensation metric has been established. UP also argues that the Application should be denied because UP has "offered to arbitrate compensation" (UP Reply at 2, 9) even though Metra and UP have no arbitration agreement for the issues presented by Metra's Application. UP has been on notice for several years that Metra does not agree that determination of the terms and

conditions for its future use of the UP Lines through private arbitration is appropriate. As discussed below, the issues raised in UP's Reply regarding the public interest element are not factually supported or consistent with § 11102 or other applicable law.

III. EVIDENCE

Metra provided considerable factual background in its Application. Based on UP's Reply and its discovery responses, some of the issues for determination on Metra's Application may not be subject to meaningful evidentiary dispute. In addition to the Application, which Metra incorporates by reference in its Opening Statement and Evidence, Metra is submitting five verified statements to provide background and further support:

- Verified Statement of James M. Derwinski ("Derwinski VS"), Metra's Chief Executive Officer and Executive Director. Mr. Derwinski provides an overview of Metra and describes Metra's efforts to preserve and protect its service on the UP Lines. He also addresses the critical importance of Metra's service to the Chicago region's economy and social fabric and why it is in the public interest for the Board to grant Metra's Application.
- Verified Statement of Jennifer Kane ("Kane VS"). Ms. Kane is Metra's Director, Rail Contract Management & Special Projects, and is responsible for overseeing Metra's contractual agreements with other railroads, including UP. Ms. Kane provides background information on Metra's existing contractual agreements with UP and the status of the parties' negotiations for their post-PSA contractual relationship. She also addresses incorrect statements in UP's Reply that the "parties have agreed to all material terms" (UP emphasis) for such arrangements, except compensation, and that "Metra refuses to engage" on the compensation issue.
- Verified Statement of Aaron G. Maertins ("Maertins VS"), Metra's Director of Operations Planning & Project Management. Mr.

Maertins explains how Metra's and UP's joint operations on the UP Lines are planned, coordinated, and integrated; that the continued shared use of the UP Lines is practicable; and that the transfer of commuter service operations from UP to Metra in connection with the expiration of the parties' existing PSA should not impair UP's ability to handle its own business over the shared use facilities.

- Verified Statement of Steve M. Cork, Metra's Chief Safety & Regulatory Compliance Officer, and Greg J.M. Godfrey, Senior Director, TRACC ("Cork/Godfrey VS"). Messrs. Cork and Godfrey, who have decades of relevant operating experience explain the combined operations and integration of commuter and freight traffic on the UP Lines, the interconnection of those lines and Metra's operations generally with other freight carriers, intercity passenger service, and other commuter railroad traffic in the Chicago region, and how the combined service on the UP Lines functions individually and collectively as a single, unified terminal area within the larger unified terminal district area.
- Verified Statement of Joseph P. Schwieterman, PhD ("Schwieterman VS"). Dr. Schwieterman is a Professor in the School for Public Service, and chair of the Master of Public Administration degree at DePaul University, Director of the Chaddick Institute for Metropolitan Development, co-director of the Sustainable Urban Development Master's Program at DePaul, and President of the Chicago Chapter of the Transportation Research Forum. He has published more than 40 technical articles and authored five books, including *Terminal Town*, an illustrated history of Chicago's train stations, airports, bus depots, and transportation systems since 1939, and *When the Railroad Leaves Town*, addressing the impacts on towns and cities in the years following rail line abandonment. Dr. Schwieterman explains the historical planning and development of the UP Lines as part of Chicago's hub-and-spoke rail system that led to Chicago's emergence as the nation's railroad hub, their integration into Chicago regional rail system, and the incorporation of the UP Lines into the unified and combined Chicago regional rail system that constitutes an interdependent and unified rail service complex. He also addresses how the PSA was critical to the survival of UP's predecessor, the Chicago & North Western Railway (CNW), in the mid-1970s.

**IV.
METRA’S APPLICATION MEETS THE
CRITERIA OF 49 U.S.C. § 11102 AND SHOULD BE GRANTED**

**A. METRA IS ELIGIBLE FOR TERMINAL TRACKAGE RIGHTS
UNDER 49 U.S.C. § 11102**

Congress struck a bargain in ICCTA regarding commuter and passenger service. That bargain provides the jurisdictional basis for the Board to grant Metra’s Application.

First, ICCTA deleted former Sections 10908 and 10909 that required regulatory review and approval before a railroad could discontinue passenger service. UP premised its discontinuation of passenger rail service over the UP Lines on the removal of those provisions, and the courts upheld UP’s position on that basis. *Union Pac. R.R. Co. v. Reg’l Transp. Auth.*, No. 19-C7957 (N.D. Ill. Sept. 23, 2021), 2021 WL 4318106, *aff’d*, 74 F.4th 884, 887 (7th Cir. 2023).

Second, ICCTA generally eliminated the Board’s jurisdiction over “public transportation” provided by a “local governmental authority.” Under the statute, “[e]xcept as provided in paragraph (3), the Board does not have jurisdiction under this part over – (A) public transportation provided by a local governmental authority.” 49 U.S.C. § 10501(c)(2). As explained in the legislative history, “[t]his provision adopted by the Conference changes the statement of agency jurisdiction to reflect curtailment of regulatory jurisdiction in areas such as passenger transportation.” H.R. Rep. No. 104-422, at 167 (1995) (Conf. Rep.) (addressing § 10501). “As noted in connection with section 10501, local government authorities

are to be excluded from economic regulation (rates, fares, entry, and exit) under the amended statute.” *Id.* at 184 (addressing § 11102).

Third, ICCTA expressly established a protective remedy, which Metra’s Application invokes, for local government authorities to obtain terminal trackage rights and reciprocal switching under 49 U.S.C. § 11102 and switch connections under 49 U.S.C. § 11103 under certain circumstances:

The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996.

Id., § 10501(c)(3)(B).⁴ In this respect, Congress intended that “local transportation authorities satisfying the requirements of section 10501 could invoke the remedies of this section [11102] and section 11103 with respect to both freight and passenger transportation uses of railroad facilities.” H.R. Rep. No. 104-422, at 184 (1995) (Conf. Rep.); *Commuter Rail Serv. Continuation Subsidies & Discontinuance Notices*, EP 564 (STB served June 12, 1997), at 2 n.4. ICCTA took effect January 1, 1996 (ICCTA, Pub. L. No. 104-88, § 2), and the last portion of the above-quoted

⁴ Prior to 1995, NIRC was recognized as a rail carrier subject to the jurisdiction of the Interstate Commerce Commission (“ICC”) and the Railroad Retirement Board (“RRB”). See *Reg’l Transp. Auth. – Directed Service – Chi., Rock Island & Pac. R.R. Co., Debtor (William M Gibbons, Trustee) over Chi. Commuter Line*, 360 I.C.C. 777 (1980); *Commuter Rail Div. of the Reg’l Transp. Auth. of Ne. Ill., D/B/A METRA – Exemption – Tariff Filing Requirements*, NOR 41506 (ICC served Feb. 24, 1995) (“*Tariff Filing Exemption*”); *Employer Status Determination Ne. Ill. Reg’l Commuter R.R. Corp.*, B.C.D. No. L81-160 (Aug. 28, 1981) (copy included in Op. WPs).

statutory language references the ICC's jurisdiction immediately before ICCTA took effect.

The Board thus has jurisdiction to grant Metra trackage rights provided Metra meets “all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the [ICC] that were in effect” on December 31, 1995, the day before the ICCTA took effect. Metra meets those “standards and requirements,” which implicate several closely intertwined statutory provisions.

Metra first needs to be a local governmental authority. Under 49 U.S.C. § 10501(c)(1)(A), “the term ‘local governmental authority’ – (i) has the same meaning given that term by section 5302 of this title [49].” Former § 5302(6) (current 5302(11)) defined “local government authority” to include “a political subdivision of a State” and “an authority of at least one State.” Metra, along with CRD and NIRCRC, were created by the Illinois legislature and are local government authorities.⁵ Metra satisfies this initial requirement.

Metra next needs to have been “a rail carrier providing transportation” under § 10501(c)(3)(B). Former § 10102(22) (current § 10102(5)) defined “rail carrier” as “a person providing railroad transportation for compensation,” which Metra did then and still does. Former § 10102(28) (current § 10102(9)) defined “transportation” to

⁵ *E.g.*, 70 ILCS 365 (RTA Act)/1.01 (defining RTA), 1.02 (defining Service Boards, of which Metra is one), 1.04 (establishing RTA subject to referendum), 2.01 (authorizing Service Boards), 3B.01 (establishing CRD within RTA, and NIRCRC within CRD), and 2.20 (CRD to continue NIRCRC as a separating operating unit on behalf of CRD).

include “(A) a locomotive, car, ... or equipment of any kind related to the *movement of passengers* or property, or both, regardless of ownership or an agreement concerning use; and (B) *services related to that movement*, including . . . delivery, . . ., handling and interchange of *passengers* and property” (emphasis added). Under the PSA, Metra has provided the rolling stock and transportation services for the movement of passengers. UP has provided services to Metra under the PSA for many years, but it is Metra that has provided the transportation service for compensation to its passengers.⁶

The Board thus has jurisdiction to grant Metra trackage rights, if the transportation was “subject to the [ICC’s] jurisdiction” as that jurisdiction was “in effect” on December 31, 1995. Metra falls within that jurisdiction, as specified in additional statutory provisions.

As to the jurisdictional transportation, former § 10501(a) gave the ICC “jurisdiction over transportation – (1) by rail carrier that is – (A) only by railroad . . . and (2) to the extent such jurisdiction is not limited by subsection (b) of this section or the extent the transportation is in the United States and is between a place in – (A) a State and a place in another State.” Metra’s interstate transportation on the

⁶ *E.g., Union Pac. v. Metra*, 74 F.4th at 885; *Tariff Filing Exemption* (noting end of Illinois Commerce Committee certification (discussed below), and granting Metra exemption from tariff filing requirements for services Metra provides to passengers utilizing the PSA); *id.*, (STB served Mar. 29, 1996) (following motion for reopening and reconsideration, discontinuing proceeding on grounds that ICCTA eliminated the filing requirement).

UP-N Line across the state line between Illinois and Wisconsin (Kenosha) is “between a State and a place in another State” and eligible for trackage rights.

Subsection (b) in former § 10501(a), referenced in the preceding quote, generally denied the ICC jurisdiction over intrastate transportation, subject to a carve-out that is relevant for present purposes:

(b) The *Commission does not have jurisdiction* under subsection (a) of this section over –

(1) *the transportation of passengers or property, or the receipt, delivery, storage, or handling of property, entirely in a State* (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country *except as otherwise provided in this subtitle*;

Former § 10501(b) (emphasis added). The “otherwise provided” referred to former § 10501(b)(4)(B) that gave the ICC jurisdiction over intrastate transportation where a state did not exercise jurisdiction:

Any intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

Former § 10501(b) provided a standard and procedure for state authorities to obtain ICC certification to regulate intrastate rates, and the certified state regulation of those intrastate rates displaced ICC regulation. The Illinois Commerce Commission obtained ICC certification on January 14, 1983, and recertification on August 15, 1989, but then requested to be uncertified on September 27, 1994, and the ICC assumed jurisdiction over Illinois intrastate transportation on December

12, 1994. *State Intrastate Rail Auth. – P.L. 96-448*, 367 I.C.C. 149 (1983); *Intrastate Rail Auth. – Ill.*, EP 388 (Sub-No. 7) (ICC decided Aug. 15, 1989); *Intrastate Rail Auth. – Ill.*, EP 388 (Sub-No. 7) (ICC served Dec. 12, 1994). Accordingly, the ICC, and not the Illinois Commerce Commission, had jurisdiction over Illinois intrastate rail transportation for more than a year before ICCTA’s effective date.

A final exclusion from the ICC’s pre-ICCTA jurisdiction merits consideration but is not an impediment to Metra’s Application. Former § 10504(b) provided that:

(b) The Interstate Commerce *Commission does not have jurisdiction* under this subtitle over mass transportation provided by a local governmental authority if –

(1) the Commission *would have jurisdiction but for this section*;
and

(2) the fares of the local governmental authority, or its authority to apply to the Commission for changes in those fares, is *subject to the approval or disapproval of the chief executive officer of the State* in which the transportation is provided.

As explained in connection with § 10501(c)(1)(A) and (c)(3)(B), Metra is a “local government authority,” and its services constitute “mass transportation.”⁷ As explained above, the ICC “would have had jurisdiction” over Metra’s transportation by virtue of former § 10501(a) (interstate transportation) and former § 10501(b)(4)(B) (intrastate transportation not regulated by the ICC), thus satisfying § 10504(b)(1). Metra’s fares were not subject to the approval or disapproval of the chief executive officer (*i.e.*, the governor) of Illinois. Former § 10504(b)(2) thus did

⁷ Former § 5302(7) defined “mass transportation” to mean “transportation by a conveyance that provides regular and continuing general or special transportation to the public.”

not negate ICC jurisdiction. Since former § 10504(b) is stated in the conjunctive, the exclusion from ICC jurisdiction would not apply to negate ICC regulation of Metra's intrastate transportation at the time of ICCTA.

The preceding analysis demonstrates Metra's statutory eligibility under the Board's jurisdiction for the grant of terminal trackage rights.

The preceding analysis also illustrates that jurisdictional issues for commuter rail in the pre-ICCTA world could be complicated and depend on facts that might change over time. The ICC found in one case that Metra was not a carrier for purposes of leasing a rail line, but the D.C. Circuit remanded in *United Transp. Union – Ill. Legislative Bd. v. ICC*, 52 F.3d 1074 (D.C. Cir. 1995). On remand, the Board stated that “the issue of whether Metra was a carrier under the prior law may have been a close question,” but the Board found no need to resolve the issue at the time as the remand was essentially moot because it was beyond the Board's post-ICCTA jurisdiction. *Norfolk and W. Ry. Co. – Petition for Declaratory Order – Lease of Line in Cook & Will Cntys., IL, to Commuter Rail Div. of the Reg'l Transp. Auth. of Ne. Ill.*, FD 32279 (STB served Feb. 3, 1999) (citing, *inter alia*, the NOR 41056 decision served Mar. 29, 1996).

It bears noting that Metra's services take place over UP rail lines that are incontestably part of the interstate rail network, as distinguished from those in, for example, *Napa Valley Wine Train., Inc. – Petition for Declaratory Order*, 7 I.C.C.2d 954 (1991). The UP Lines also operate in close proximity to Amtrak, which crosses the UP-NW mainline track at Mayfair. The UP Lines all originate/terminate at

Metra's Ogilvie Transportation Center ("OTC"), located within short walking distance (just over 300 feet) from Amtrak's Chicago Union Station ("CUS"), and the CUS and the OTC are physically connected.⁸

**B. THE UP LINES CONSTITUTE TERMINAL FACILITIES,
INCLUDING MAINLINE TRACKS FOR A REASONABLE
DISTANCE OUTSIDE OF A TERMINAL, UNDER 49 U.S.C. § 11102**

Under 49 U.S.C. § 11102(a), the Board is authorized to grant terminal trackage rights over "terminal facilities, including main-line tracks for a reasonable distance outside of a terminal." Since the statute "does not define 'terminal facility' or what is a reasonable distance outside of a terminal," and "terminal facility" is technically "any property of a carrier that assists in the performance functions of a terminal," standard analysis focuses on whether the facilities are located and the activities occur in a "terminal area."⁹

⁸ See, e.g., *Cal. High-Speed Rail Auth. – Construction Exemption – In Merced, Madera & Fresno Cnty., Cal.*, FD 35724 (STB served Apr. 18, 2013) (denying authority's motion to dismiss for lack of jurisdiction), and *id.* (STB served June 13, 2013) (granting exemption for construction); *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., Llc – Petition for Exemption – Passenger Rail Line Between Dall. & Hous., Tex.*, FD 36025 (STB served July 16, 2020) (reopening and finding that proposed high-speed rail in Texas operating on dedicated lines that now had a voluntary coordination and joint reservation and ticketing arrangement with Amtrak is subject to the Board's jurisdiction). Metra has no formal joint ticketing arrangement with Amtrak, but little imagination is required to think that some passengers use the UP Lines to get to and from Amtrak.

⁹ E.g., *Dakota, Minn. & E. R.R. Corp. & Cedar Am. Rail Holdings, Inc. – Control – Iowa, Chi. & E. R.R. Corp.*, FD 34178 (STB served Feb. 3, 2003), at 28 n.65; *Rio Grande Indus., Inc. – Purchase & Related Trackage Rights – Soo Line R.R. Co. Line Between Kan. City, Mo. and Chi., Ill.*, FD No. 31505 (ICC served Nov. 15, 1989), at 10-11 ("*Rio Grande*"); *Golden Cat Div. of Ralston Purina Co. v. St. Louis Sw. Ry. Co.*, NOR 41550 (STB served Apr. 25, 1996).

The Board has not adopted a bright-line rule or automatic test for determining what constitutes a terminal area, including a reasonable distance for main-line tracks outside of a terminal under 49 U.S.C. § 11102, and instead treats such determinations as inherently fact-specific. “In other words, a ‘terminal area’ is defined by the scope and nature of its functions, rather than, for example, distance limits, and the assessment of related issues may be fact-specific.” *Reciprocal Switching for Inadequate Serv.*, EP 711 (Sub-No. 2) (STB served Apr. 30, 2024), at 70-71. (“*Reciprocal Switching*”)¹⁰ “The questions of what is a terminal area and what is switching are factual ones requiring consideration of all the circumstances surrounding a particular case.” *Midtec Paper Corp. v. Chi. & N. W. Transp. Co.*, 3 I.C.C.2d 171, 179 (1986) (quoted in *Reciprocal Switching* at 71 n.30). “Since our power to make the terminal facilities of one carrier available to another is remedial in nature, the term should be construed liberally.” *Id.* (citation omitted).

As explained below, all the UP Lines fall within the terminal area, whether defined as the lines themselves or the considerably larger area overseen by the CTCO. Even if the terminal area is defined narrowly, such as the downtown freight terminal district, any portions of the UP Lines falling outside the terminal are still located within a “reasonable distance,” consistent with the broad remedial purpose

¹⁰ In *Reciprocal Switching*, because of the unique circumstances involved with the Board promulgating new access rules for rail shippers experiencing inadequate service, which included additional performance standard eligibility restrictions, the Board decided not to “include[] tracks for a reasonable distance outside of a terminal.” *Id.* at 69. Accordingly, the *Reciprocal Switching* rules are inapposite, and Metra’s discussion of *Reciprocal Switching* and the associated regulation is for illustrative purposes only.

of 49 U.S.C. § 11102(a).

The statute does not define “terminal facilities” or “terminal area.” In April 2024, the Board, relying on *Midtec* and other precedents, adopted the following definition for terminal area in *Reciprocal Switching for Inadequate Service*:

Terminal area means a commercially cohesive area in which two or more railroads engage in the local collection, classification, and distribution of rail shipments for purposes of line-haul service. A terminal area is characterized by multiple points of loading/unloading and yards for such local collection, classification, and distribution. A terminal area (as opposed to main-line track) must contain and cannot extend significantly beyond recognized terminal facilities, such as freight or classification yards. A point of origin or final destination on the rail system must be within a terminal area to be eligible for a prescription under this part.

49 C.F.R. § 1145.1. This definition is tailored for freight operations and car switching and requires some adjustment for determining whether the UP Lines constitute terminal facilities. The Board added that its definition “is not intended to exclude from consideration all areas across the network that have some portion of main-line track, if that track is used for local movements that are incidental to a line-haul move and other requirements for a terminal area are met. *See, e.g., Midtec*, 3 I.C.C.2d at 179-80.” *Reciprocal Switching* at 72 n.42.

The core concept is that the terminal area is used for local movements for local activities, even if the area or included lines are also used for main-line service. The § 1145.1 definition addresses when a freight shipper or second railroad may obtain trackage rights to reach a location to remedy first-mile/last-mile and related service inadequacies, not when a party seeks to preserve an existing service. The definition, and similar language in prior cases, was specifically tailored for freight

purposes and cannot be directly applicable to the UP/Metra relationship, or that between any commuter/passenger railroad and a host freight railroad.

Freight and commuter rail operations have fundamental differences. Freight cars are typically removed from a train so that they can be loaded, unloaded, interchanged, collected, classified, distributed, and/ or otherwise switched. Unit trains (as opposed to manifest trains) may remain intact for loading, etc., but they generally are not loaded and unloaded on or immediately adjacent to main line track, cannot be loaded and unloaded within a few minutes, and generally travel a substantial distance between stops, even when engaged in shuttle service. Cork/Godfrey VS at ¶¶ 16.

Metra's commuter rail service operates very differently in these respects. Passenger cars are generally not switched while in service, as the trains, comprised of six to eight cars, generally remain intact during the length of the trip while transporting passengers. There is no local collection, classification, and distribution of cars as such, or yards for that purpose. (There are yards for storing, staging, and servicing the cars and locomotives.) Collection, classification, and distribution do occur, but they are of and done by the passengers as they enter and exit the cars at the appropriate stations. Freight and commuter rail perform analogous functions, but they accomplish them very differently. *Id.* at ¶¶ 19-26.

The key difference is that Metra's operations are inherently local, even if performed within the region. The passenger stations are located close together, and

travel time between stations is short, usually only a few minutes.¹¹ Individual station stops (dwell in freight parlance) are also very short, often two minutes or less. Unlike freight cars, the passenger cars remain on the local system and do not travel outside on to the surrounding interstate rail network. *Id.* In these respects, the UP Lines, Metra's other lines, and Metra's hub and spoke system as a whole, consist only of inherently local operations that serve and are integrated with the Chicago region, and they fit well within the bounds of the terminal area concept articulated at § 1145.1 and in *Reciprocal Switching*.

In stating that “a local transportation authority’s request would virtually always satisfy the public interest standard” (H.R. Rep. No. 104-422, at 184 (1985) (Conf. Rep.)), Congress intended to ensure that commuter and passenger carriers would be able to obtain terminal trackage rights. It would be inherently unreasonable to conclude that the same facilities in use for Metra’s commuter service at the time of ICCTA under the PSA would not constitute “terminal facilities, including main-line tracks for a reasonable distance outside of a terminal,” 49 U.S.C.A. § 11102(a), for purposes of Metra’s post-PSA use following UP’s discontinuance of the service.

¹¹ Metra’s timetables for the UP Lines show most stations are separated only by no more than five minutes. Some trains skip some stations for express or similar reasons, but travel time from one station to the next does not exceed 20 minutes. Metra’s timetables are available at <https://metra.com/schedules>.

1. The UP Lines function and operate as a terminal area or as part of the larger Metra system terminal area

Metra's operations on the UP Lines utilize UP's main-line track, but constitute a separate, self-contained, and integrated system. The UP Lines as utilized by Metra constitute a "terminal area" for purposes of § 11102(a).

The core concept and purpose of terminal area trackage rights as stated by the Board at 49 C.F.R. § 1145.1 is that one railroad is ordered to allow another railroad to use the first railroad's tracks, or the first railroad is ordered to provide reciprocal switching for the second railroad, in a defined area for a limited purpose and scope of activities that is "practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." Those activities are to be local in nature. The first carrier's use of the area for line-haul activities has little relevance, as the second carrier's use is appropriately limited. *Fla. E. Coast Ry. Co. v. U.S.*, 256 F. Supp. 986, 989 (M.D. Fla. 1996), *aff'd*, 368 U.S. 8 (1967) ("The key is the use to be made of the track," and the fact that first railroad "also uses portions of the tracks as main-line track is irrelevant.").

Metra's operations on its other lines are, like its operations on the UP Lines, inherently local in nature. The trains generally travel intact over the short distances between stations in minutes, and make very brief stops, also measured in minutes. Total transit time, including stops, from one end to the other does not exceed two hours. Main-line trains operate very differently. Even local freight switching trains do not approach these efficiencies. *Cork/Godfrey VS* at ¶ 22.

The commuter operations on the Lines are separate and distinct from UP's freight operations and do not present operational conflicts. Cork/Godfrey VS at ¶ 14, Maertins VS at ¶¶ 19-22. The UP Lines have been used for passenger transportation from their inception. The dual freight-passenger use, and coordination of that dual use, on the UP Lines and Metra's other lines was a critical component of historical planning under the "Burnham Plan" and was instrumental in Chicago's development into a major regional and interstate rail hub. Schwieterman VS at 3-4.

UP's passenger operations over the UP Lines, and Metra's continuation of those operations using terminal trackage rights, fit well within the terminal area definition at 49 C.F.R. § 1145.1. The passenger operations are "characterized by multiple points of loading/unloading." The difference is that the cars remain intact and are not switched, but passengers exit and enter the cars at the stations. The terminal facilities utilized by Metra consist of multiple points for loading and unloading passengers along with associated yards for storing and serving Metra's rollingstock used to transport those passengers and ancillary facilities for the passengers (platforms, depots, bridges, parking lots) that are not utilized for freight operations. Cork/Godfrey VS at ¶ 20. Those facilities are linked by connecting track that UP also uses for hauling freight. The ICC has defined "terminal facilities" to include "everything necessary for the convenience of passengers and the safety and prompt transportation of freight" and noted numerous cases "holding that depots,

platforms, ... are parts of railroad facilities.” *Hastings Commercial Club v. Chi., M & St. P. Ry. Co*, 69 I.C.C. 489, 492 (1922).

UP uses the tracks on the UP Lines differently, as part of its own main-line track and to connect to the larger interstate rail network for freight purposes.

Cork/Godfrey VS at ¶ 18. The UP-N and UP-NW freight lines go to Wisconsin, and the UP-W freight line goes first to Clinton, Iowa, and then to Omaha, Nebraska.

These lines are thus very much part of UP’s “open” interconnected network.

Schwieterman VS at 7-10.

In contrast, Metra’s passenger operations on the UP Lines constitute a “closed system” or terminal area that runs from OTC to the end points of the UP Lines. Commuter/passenger railroads, like Metra, seldom interchange cars with other systems, nor do they (or have any ability or authority to) operate beyond the bounds of their arrangements with host carriers. While passengers might switch to Metra’s other lines or connect to other transportation modes or carriers, the (non-Amtrak) passenger railroad is, by its very nature, self-contained and functions as its own terminal area. Cork/Godfrey VS at ¶¶ 19-20.

Metra’s entire system, including the three UP Lines and the eight non-UP Lines, functions as and constitutes a unified terminal in this manner. Metra’s eleven lines form and function as a “hub and spoke system” emanating from the five major stations (OTC, CUS, Millennium, LaSalle, and Van Buren) in the downtown area. Schwieterman VS at 6-7; Cork/Godfrey VS at ¶ 27. The lines together provide “commuting ties” to serve the greater region and provide a means to travel to and

from downtown Chicago and throughout the region. With very limited exceptions, the individual Metra lines do not intersect or interchange with each other apart from their emanation points, *e.g.*, OTC in the case of the three UP Lines.

Cork/Godfrey VS at ¶ 7. Some of Metra's lines (or the lines that Metra uses) cross, as described by Cork/Godfrey VS at ¶ 29, but there are no common stations where the crossings occur.

The UP Lines over which Metra operates function thus individually and collectively as a single, unified terminal within the larger unified passenger terminal district. Cork/Godfrey VS at ¶ 56; *Rio Grande Indus. – Purchase & Trackage Rights – Chi., Mo. & W. Ry. Line between St. Louis, Mo. & Chi., Ill.*, 5 I.C.C.2d 952, 983 (1989) (“*RGI/CMW*”) (finding the 60-mile freight line used by Metra's Heritage Corridor and Electric lines to be a terminal). The same Metra trains, composed of the same locomotive(s) and usually between six and eight passenger cars, move intact between OTC and the endpoint and then often back. There is rarely any need for car switching, *i.e.*, passengers get on and off at individual stations, but once a train commences, individual cars are not set out or picked up in the normal course. Transit times on the UP Lines are short. The schedule for a trip between OTC and the most distant endpoint generally does exceed two hours. Cork/Godfrey VS at ¶¶ 19-25.

Metra's operations are not main-line trains that happen to haul passenger cars instead of freight cars. Freight trains and their crews do not usually shuttle back and forth multiple times during the day, do not do so without switching cars in

and out, and do not make multiple rapid stops of no more than a few minutes each. Metra's operations cannot be mistaken for conventional freight service.

Cork/Godfrey VS at ¶ 16.

Another factor illustrating how the UP Lines form a cohesive terminal area is that the outermost portions function as key elements of the integrated and unified operation. For example, Mike Payette, UP's Assistant Vice President for Government Affairs, Central Region, explained in a 2011 email the retention of Kenosha as part of the UP-N Line:

The reason that Kenosha was retained by RTA was that the yard, *and all of the terminal facilities were located there*. The Waukegan Yard is capacity limited, so if Kenosha had been eliminated, a new yard would have had to be built near or north of Winthrop Harbor. *RTA decided that the capital costs of building a new yard and terminal facilities [sic]* in the Winthrop Harbor area would be much more costly than continuing to operate the trains to Kenosha. There also could have been negative community reaction to a yard in the Winthrop Harbor area, and it might never get sited. The Waukegan Yard couldn't hold all of the trains, and even if it could, there would be deadheading costs from Waukegan to Winthrop Harbor, and then south again for the trains that served Winthrop Harbor.

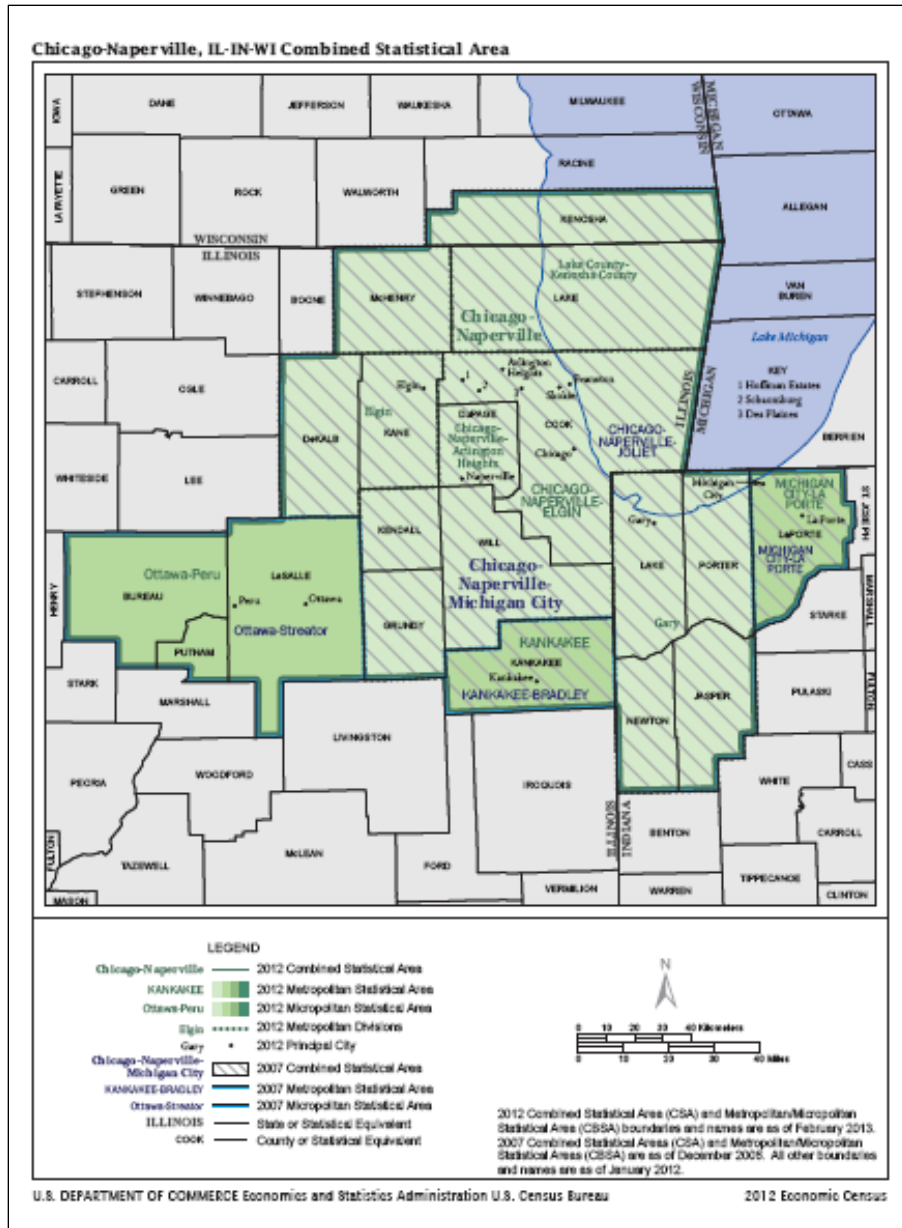
Email from Mike W. Payette, July 19, 2011. *See* Op. WPs. The UP-NW and UP-W Lines also have yards located at their endpoints (Harvard, McHenry, and Elburn). Cork/Godfrey VS at ¶ 10. The ICC clarified that “[t]he Commission has traditionally included in the term “terminal facility” any property of a carrier which assists in the performance of the functions of a terminal.” *CSX Corp. – Control – Chessie Sys., Inc.*, 363 I.C.C.2d at 585. The UP Lines function in a unified and integrated manner, as even the endpoints “assist[] in the performance of the functions of [the] terminal” and should not be viewed as the distant ends of main-line track.

Metra's operations also occur within a commercially cohesive area with the purpose and result of providing that cohesion. To find that the UP Lines or Metra's system do not constitute a terminal because there is no distinction between local switching and regular service of railcars would prevent virtually any local commuter/passenger rail system from being eligible for terminal trackage rights, in derogation of the public interest treatment specified by Congress.

a. The UP Lines and Metra's system terminal areas exist within a commercially cohesive area

Under § 1145.1, terminal areas exist within a "commercially cohesive area." The UP Lines, as well as the Metra system, exist within a much broader "commercially cohesive area," specifically the Chicago Metropolitan Statistical Area ("MSA") or Chicago–Naperville–Elgin, IL–IN–WI Metropolitan Statistical Area. OMB Bulletin 23-01, Appendix at 11, <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>. Schwieterman VS at 3-4.

The following Census Bureau map depicts the Chicago MSA:



https://www2.census.gov/geo/maps/econ/ec2012/csa/EC2012_330M200US176M.pdf.

The map shows that the Chicago MSA includes the counties of Kenosha (endpoint of the UP-N Line), McHenry (endpoints of the UP-NW Line at Harvard and McHenry), and Kane (endpoint of the UP-W Line at Elburn). The MSA is often called “Chicagoland.” *E.g.*, https://metropolitan.fandom.com/wiki/Chicago_metropolitan_area.

The United States Census defines MSAs to “consist of the county or counties (or equivalent entities) associated with at least one urban area of at least 50,000 population, plus adjacent counties *having a high degree of social and economic integration with the core as measured through commuting ties.*” See

<https://www.census.gov/programs-surveys/metro-micro/about/glossary.html>

(emphasis added). The “high degree of social and economic integration with the core as measured through commuting ties” establishes that the region served by Metra and the UP Lines constitutes a “commercially cohesive area.” The UP Lines provide those “commuting ties,” as the UP Lines provide more than 13 million passenger rides annually. Maertins VS at ¶ 8 Table 1.

The UP Lines, as well as the other regional rail lines operated by Metra, also played a critical role in the emergence of the Chicago MSA and remain central to its continued function as a commercially and otherwise cohesive area. The UP Lines and other Metra lines are thoroughly integrated into and are a component of the Chicago MSA. Schwieterman VS at 11-12.

UP has conceded that the continued operation of Metra’s service over the UP Lines is vital for the Chicago region’s economic and social well-being. In originally seeking judicial support for its decision to discontinue its operation of Metra’s commuter service under the PSA, UP acknowledged that “[t]his transportation service, which accounts for 27 million passenger trips each year, is important to the economic well-being and quality of life in the communities along these lines,” and that “Union Pacific has no desire to play any role in disrupting the lives of the

people and communities who have come to rely on Metra's commuter rail service on its lines." UP Complaint (ECF No. 1), *Union Pac. R.R., v. Commuter Rail Div. of the Reg'l Transp. Auth. v. Union Pac. R.R.*, No. 1:19-cv-07957 (N.D. Ill. filed Dec. 5, 2019), at ¶¶ 1, 7.

b. The UP Lines are not too long to be considered terminal facilities

The UP Lines exist within a terminal area and are not too long to be considered terminal facilities. The ICC previously determined that relatively extensive lines in length used by Metra constitute terminal trackage. The ICC granted terminal trackage rights for freight traffic purposes along the 60-mile segment between Joliet, IL, and Kensington/Markham, IL, *RGI/CMW*, 5 I.C.C.2d at 983. CN (Illinois Central) now owns the segment between Joliet and downtown Chicago, over which UP has trackage rights, and Metra owns the segment from downtown Chicago to Kensington/Markham. Metra utilizes the first segment for its Heritage Corridor or "HC" Line and the second for its Electric District.

The UP Lines are comparable to the railroad line in *RGI/CMW*. Starting at the OTC origin, the length of the UP-N Line to Kenosha is 51.6 miles, the UP-NW Line to Harvard is 62.8 miles and to McHenry is 65.8 miles, and the UP-W Line to Elburn is 43.5 miles. The UP Lines are not too long to be considered terminal facilities under § 11102(a) area based on precedent.

2. The UP Lines are part of the larger Chicago rail terminal area

The Board adopted the terminal area definition at § 1145.1 for a specific and limited purpose, granting reciprocal switching to allow a second carrier to provide

relief for inadequate freight service by the incumbent, which has nothing to do with Metra's Application. The Board and its predecessor have never addressed terminal trackage rights for a commuter railroad.

The Board emphasized in *Reciprocal Switching* its broad discretion and authority to order terminal trackage rights and reciprocal switching to protect the public interest. "The public interest standard in section 11102(c) gives the Board broad discretion to determine when to prescribe reciprocal switching agreements." *Id.* at 9. The Board further characterized the public interest standard as "expansive," a "supple instrument," and allowing "the agency to respond to changes in the industry and to the interplay of complex factors, consistent with policy objectives that Congress established by statute." *Id.* (citing, *e.g.*, *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 219 (1943), *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 137-38 (1940), *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 396 (1940), *Gen. Tel. Co. of Cal. v. FCC*, 413 F.2d 390, 398 (D.C. Cir. 1969), and *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 439 (5th Cir. 2021)).

The Board, thus, can utilize a flexible interpretation of terminal facilities here that accounts for the close degree of coordination and integration that is required for the Chicago-area rail hub to handle 25% of all United States freight trains and 50% of the nation's intermodal trains, as well as commuter trains. Chicago Metropolitan Agency for Planning, *On to 2050 Snapshot* (Chicago Metropolitan Agency for Planning 2017), <https://cmap.illinois.gov/wp-content/uploads/FY17-0095-Freight-Snapshot.pdf>, at 5. "Since our power to make

the terminal facilities of one carrier available to another is remedial in nature, the term should be construed liberally . . . In classifying a track as a terminal facility, we look to the use to be made of the track.” *Midtec*, 3 I.C.C.2d at 179 (quoting *CSX Corp. – Control – Chessie Sys., Inc., & Seaboard Coast Line Indus., Inc.*, 363 I.C.C. 521, 585 (1980)).

The Board also should define “terminal facilities” in a manner that comports with the statutory intent that “a local transportation authority’s request would virtually always satisfy the public interest standard.” H.R. Rep. No. 104-422, at 184 (1985) (Conf. Rep.). As the STB’s predecessor explained long ago:

Every statute should be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object.

Hastings Commercial Club v. Chicago, M & St. P. Ry. Co, 69 I.C.C. 489, 492 (1922).

In *Hastings*, the ICC adopted a broad definition of “terminal facilities” to include “everything necessary for the convenience of passengers and the safety and prompt transportation of freight,” noted numerous cases “holding that depots, platforms, spur or side tracks, station grounds, and elevators are parts of railroad facilities,” found that “[c]ars and trains were said to be facilities,” and “that which aids or assists in the prompt transportation of freight is a railroad facility.” *Id.* at 494. The ICC later reiterated that the term “terminal facilities “was defined as everything necessary for the convenience of passengers and the safety and prompt transportation of freight.” *Erie R.R. Acquisition, etc.*, 275 I.C.C. 679, 687 (1950). The

ICC also clarified that “[t]he Commission has traditionally included in the term “terminal facility” any property of a carrier which assists in the performance of the functions of a terminal.” *CSX Corp. – Control – Chessie Sys., Inc.*, 363 I.C.C. at 585.

Accordingly, the terminal facilities area is properly defined as encompassing the interaction of the various individual rail lines in the Chicago area to allow them to function as an integrated whole to maintain reliability and avoid interference and congestion. The intercarrier mechanism that the industry established to address this vital need is the CTCO that the Chicago Planning Group (“CPG”), a consortium of freight, passenger, and commuter railroads, established in 2000 to monitor freight and passenger train performance and develop solutions to daily operating problems to promote efficiency and safety. The Association of American Railroads (“AAR”) established the CPG following the North American blizzard of 1999. *E.g.*, <https://www.supplychaindive.com/news/chicago-freight-rail-congestion/542019/>.
Cork/Godfrey VS at ¶ 34.

In December 2015, the railroads that make up the CPG and the CTCO opened the Chicago Integrated Rail Operations Center (“CIROC”). CIROC operates a 24/7 command center that continually collects real-time information from across the network to enable participating carriers to work together to anticipate potential operational problems, forecast events that reduce speed and capacity, review train routing and schedules, and mobilize the right equipment and personnel to keep traffic moving through the city, especially during rush hour. UP and Metra are both

members and active participants in CPG, CTCO, and CIROC. Cork/Godfrey VS at ¶¶ 34, 37.

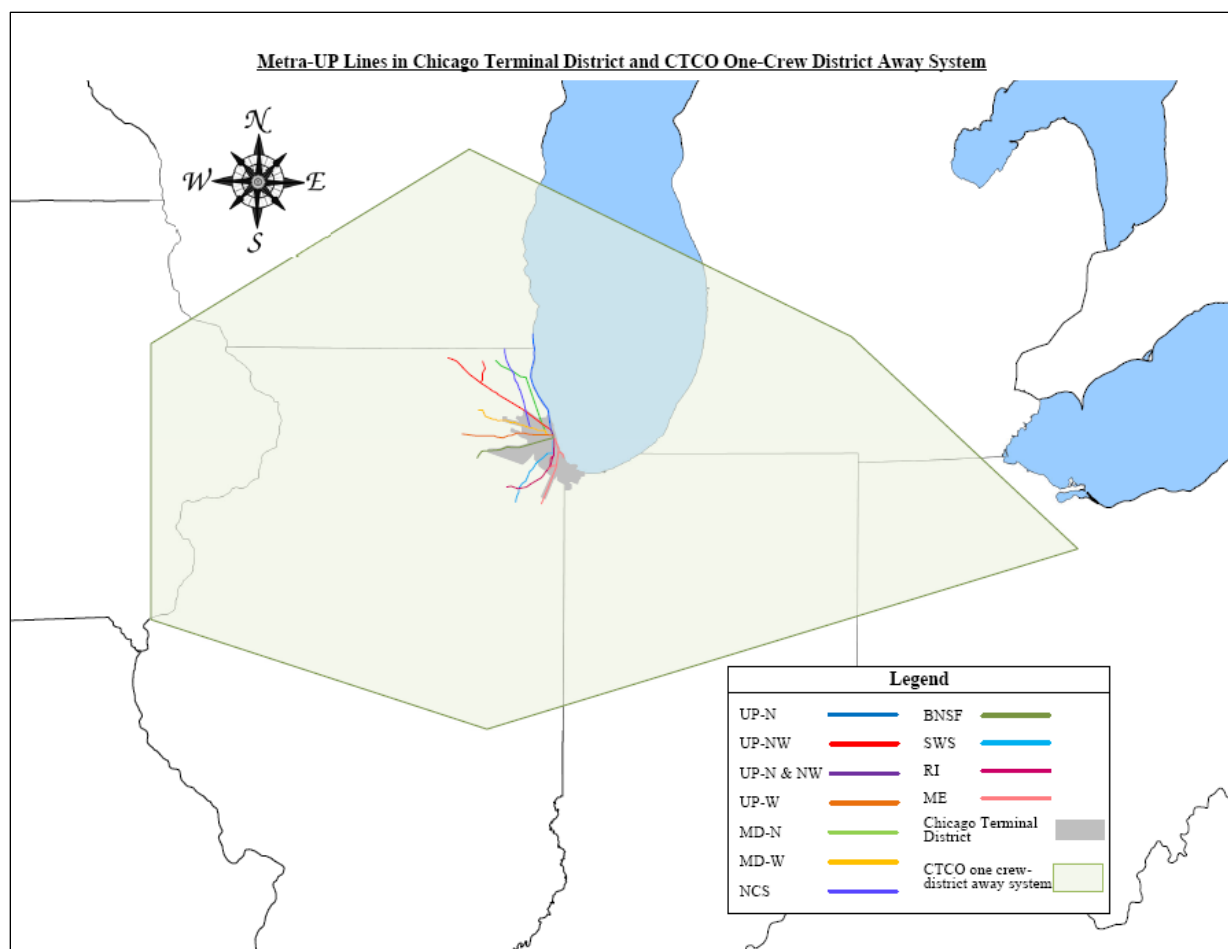
The CTCO defines its territory as extending one crew district from the downtown Chicago freight terminal district:

Chicago Terminal: Chicago Terminal is a compilation of yards and corridors contained within the outer belt route of the CN (former EJ&E). **The fluidity of the Terminal depends heavily on other factors, including commodity operations and the ability to freely move trains into and out of the Terminal Limits. It is for this reason that this Operating Protocols Agreement also incorporates commodity operations and extends further out to the Terminal's primary feeder routes into and out of Chicago employed by line-haul carriers to the first road crew change or outer boundary.**

All carriers operating within defined limits of the Chicago Terminal are dependent on the Chicago Terminal Intermediate Carriers as well as bilateral relationships between themselves to affect interchange and to move overhead traffic through the Terminal.

CTCO Operating Protocols Agreement (effective February 5, 2018), at 16 (emphasis added). Cork/Godfrey VS at ¶ 45, Exhibit SC-GC 1.

The resulting system of “routes into and out of Chicago employed by line-haul carriers to the first road crew change point” extends far from downtown Chicago, and far from the endpoints of the UP Lines, as shown on the following map:



The map shows that the three UP Lines are well within the confines of the Chicago terminal as a functioning unit. The surrounding terminal area may have a large footprint than the downtown freight terminal district, but the size reflects what is needed to maintain fluidity so that the Chicago Terminal District and other facilities in the area function adequately. Cork/Godfrey at ¶¶ 49-55. Gridlock and congestion can be avoided only through situational awareness of the conditions extending up to one crew district away.

3. The terminal area for the UP Lines is not limited to the Chicago Freight Terminal

UP presented its position on the terminal area in discovery as follows:

“Although Union Pacific agrees that a portion of the UP Lines over which Metra operates falls within a portion of Chicago that constitutes a terminal area, other portions of the UP Lines fall outside a reasonable distance from a terminal.” UP Response to Interrogatory No. 6 (Apr. 14, 2025). *See* Op. WPs. Metra’s Interrogatory asked “[i]f UP’s answer is that only a portion of the UP Lines constitutes or falls within terminal facilities, please delineate the specific portion of each of the UP Lines that UP believes constitutes or falls within terminal.” UP did not answer this portion of the Interrogatory. Metra anticipates that UP will contend that the portion “of Chicago that constitutes a terminal area” is freight terminal district that is depicted in gray on the preceding map of the CTCO one-crew district area.¹²

Even if the freight district constitutes a terminal area for purposes of 49 U.S.C. § 11102 and 49 C.F.R. § 1145.1 for freight, that does not preclude finding a different terminal area in the Chicago region for passenger purposes. Precedent holds that the tenant’s use, not the host’s or landlord’s use, governs whether the lines are and operate as a terminal facility. *Fla. E. Coast Ry. Co. v. U.S.*, 256 F. Supp. at 989 (stating that the fact that the host/landlord “also uses portions of the

¹² Ironically, the Chicago freight terminal arose because existing rail lines were not well-equipped to handle growing freight volumes in the area, as the existing lines originally were built primarily to handle passenger traffic. *E.g., Can. Nat’l Ry. – Control – EJ&E W. Co.*, FD 35087, STB Final Environmental Impact Statement (Dec. 5, 2008) (“FEIS”), at 1-4.

tracks as main-line track is irrelevant). UP's use of portions of the three UP Lines for line-haul purposes does not preclude them from being treated as terminal facilities for Metra's use.

Because interstate freight and local commuter operations are so different, their terminal areas need not be identical. Passenger and freight operations use and have different cars, train lengths, stations, stop frequency, dwell time, frequency of service, and operating hours, *etc.* Interchange, reciprocal switching, classification, demurrage, etc., all have a logical place in freight operations, but commuter cars are not switched as part of their regular passenger service, as the trains remain intact. Cork/Godfrey VS at ¶¶ 19-20.

Car-related switching occurs in a freight terminal because such a terminal exists to receive, interchange, and send freight cars that can come from and go anywhere. As explained earlier, a freight terminal serves as a "closed" portion of an otherwise open freight system. In contrast, a commuter operation is essentially "closed" throughout. It is built and designed to handle passengers and cars that begin and end their trips on its system. *Id.* at ¶ 19. A freight terminal is not a suitable proxy to delimit a terminal area for passenger purposes.

Additionally, Metra's commuter train operations inside the freight terminal district are identical to those outside of the district. For example, commuter cars are not switched to or interchanged with a different line inside the district or otherwise. While OTC is an endpoint and a crew change point, those same activities occur at the opposite endpoint. If the OTC activities are enough to define a terminal for the

passenger trains, then those same activities should be sufficient to define the various other endpoints of the UP Lines as terminals, as well.

4. The UP Lines outside the Chicago Freight Terminal are within a reasonable distance of a terminal

Metra's position is that the UP Lines are located within a terminal area and thus eligible for trackage rights. But even if the Board decided to adopt a different applicable terminal area, such as the downtown freight terminal district, § 11102 would still apply. First, it would necessarily apply to the portions of track indisputably within the terminal area, as UP has admitted. UP Response to Interrogatory No. 6 (Apr. 14, 2025) ("Union Pacific agrees that a portion of the UP Lines over which Metra operates falls within a portion of Chicago that constitutes a terminal area"). Second, as to those portions of the UP Lines that may fall outside the terminal area, the Board would need to determine which portions fall within a "reasonable distance" of the terminal area for purposes of § 11102.

The STB and its ICC predecessor have not established any definitive rule as to what is a "reasonable distance" with precision. In different contexts (involving freight, not commuter operations), the Board has authorized segments of 12 and 14 miles but noted that 42 miles had not been recognized within the fact patterns the Board previously granted. *Rio Grande* at 9-10.

In the context of commuter operations, "reasonable distance outside of a terminal" should be longer than it would be for freight trains. Metra's trains on the UP Lines and its other lines are shorter, travel quickly between stations, and have shorter stops at stations. They operate with an efficiency beyond what freight trains

can achieve on a regular basis, especially within an area like Chicago. Cork/Godfrey VS at ¶¶ 21-22. The FEIS observed that a CN freight train at O'Hare (within the freight switching district) might require more than 24 hours to travel about 30 miles to a point near Blue Island, Illinois, also within the freight switching district. FEIS at 1-4. In a relatively base case scenario, a freight train exercising terminal trackage rates would take two hours, or much more, to complete a spot or pull 14 miles away, as the train would typically need to be assembled at the terminal, perform an air test, wait for an available slot, travel the "reasonable distance," obtain clearance and enter the yard or industry track, spot or pull the cars, and perform another air test. The process could take much longer.

Metra's trains operate much more efficiently. Consider for example Metra's "314" train on the UP Line, as shown on timetable at <https://schedules.metrarail.com/pdf/UP-N.pdf>. (UP-N timetable). The weekday train leaves Kenosha at 7:08 am and reaches Evanston (in the freight terminal district) at 8:11, 63 minutes later, making 12 interim stops. The distance between Kenosha and Evanston is 41.2 route miles. Without adjustment for dwell time at the stations, the train averages 0.65 miles per minute or 39 miles per hour. For the third week of April 2025, UP reported to the STB average train speeds of 20.3 miles per hour for manifest trains and 23.2 miles per hour for system average, <https://www.stb.gov/wp-content/uploads/files/rsir/UP/UP%20Data%202025-04-16.xlsx>. Those are average figures that reflect a mix of the train-miles spent in Chicago and other cities and

those spent in areas with fewer grade crossings and less line convergence, where the reduced congestion likely translates into faster speeds. Cork/Godfrey VS at ¶ 24.

The UP velocity figures also exclude terminal dwell time. *See* <https://www.stb.gov/wp-content/uploads/UP-Methodology-EP-724-03.01.22.pdf>.

Because the Metra trains make interim stops (12 in the case of Metra's 314 train), the disparity is even greater. *Id.*

C. METRA'S USE OF THE UP LINES IS PRACTICABLE

The UP Lines were planned, designed, and have been used for transporting passengers from their inception. Derwinski VS at 7-8; Schwieterman VS at 9; Maertins VS at ¶ 10. The dual-freight passenger use of the UP Lines and the other railroad lines in the region is part of the "Burnham Plan" developed over a century ago. That plan has been realized in both Chicago's role as the nation's railroad hub and the center of the nation's third largest MSA. Schwieterman VS at 4. Metra's use of the UP Lines for passenger trains is not only practicable, but vital for Chicago, the surrounding region, and beyond. Derwinski VS at 7-8.

The practicability of joint freight and commuter service on the UP Lines has been demonstrated under the operation of the historic PSA, and the grant of the requested terminal trackage rights in this proceeding will not alter that paradigm. Coordination between the services has improved in recent decades with the installation of Centralized Traffic Control, Automatic Block Signaling, and Positive Train Control. Substantial capital improvements have been made to renew and improve the infrastructure on the UP Lines, with Metra's support. Maertins VS at ¶

16. Metra also models its operations to avoid conflicts through tools, such as Rail Traffic Controller, and any future changes in traffic volumes or patterns can be reasonably accommodated and met. *Id.* at ¶ 15.

The history of the UP Lines, including the ongoing shared improvements and investments in their operation, ensure that the joint use by passenger and freight trains can continue to be managed and integrated safely and efficiently, and Metra's future right to use of the UP Lines, as requested in this proceeding, is practicable. To Metra's knowledge, UP does not dispute this conclusion.

D. METRA'S USE OF THE UP LINES WILL NOT IMPAIR UP'S ABILITY TO HANDLE ITS OWN BUSINESS

Metra's use of the UP Lines will not substantially impair UP's ability to handle its own business on the UP Lines for all the reasons that Metra's use of the lines for passenger service has been and will remain practicable. The UP Lines have been used for joint passenger-freight use from their inception, and 150 years of experience, the last 50 under the PSA, shows that the dual use does not impair UP's ability to handle its own business.

The trackage rights will enable Metra to conduct its own operations, rather than contract with UP to operate the same service. Little else will change. The rolling stock, stations, ridership, train operations, and personnel will stay much the same. What is practicable the day before will be no less practicable the day after. The parties have been phasing in the switchover, starting with equipment maintenance, then passenger service, and now train crew personnel, and Metra and

UP publicly and repeatedly have committed to ensuring that the switchover remains seamless.

Metra and UP historically have cooperated closely to coordinate usage on the UP Lines and avoid conflicts, including agreeing on Service Plans and updates to those plans, subject to UP's approval. Maertins VS at ¶ 19. UP has not raised concerns that the historical operation of commuter rail services on UP Lines has substantially impaired UP's ability to handle its own freight business. Transferring service to Metra should have no impact on UP's freight service that is not currently experienced from the historic use. Maertins VS at ¶ 20.

Following termination of the PSA, UP will still control dispatching, and the schedules for Metra's trains will still require UP's advance approval. Maertins VS at ¶ 21. In all material respects, the operations will be unaffected. Should capacity constraints or new service requirements emerge, Metra will continue to cooperate with UP to identify and implement any needed capital improvements and/or operating or scheduling changes, to ensure that UP's freight operations are not impaired. Maertins VS at ¶ 22. To Metra's knowledge, the practicability of its future post-PSA use of the UP Lines also is not in dispute.

E. METRA'S USE OF THE UP LINES IS IN THE PUBLIC INTEREST

1. Granting the requested use is in the public interest

The governing statute, 49 U.S.C. § 11101(a), requires a "public interest" finding for granting terminal trackage rights.

The ICCTA Conference Report states that: “It is the Conference’s intent that *a local transportation authority’s request would virtually always satisfy the public interest standard.*” H.R. Rep. No. 104-422, at 184 (1985) (Conf. Rep.) (emphasis added). Illinois established Metra, CRD, and NIRCRC as “unit[s] of local government, body politic, political subdivision and municipal corporation,” making each a “local government authority” under § 10501(c)(1)(A).

The devastating public consequences inherent in the loss of Metra’s commuter service on the UP Lines emphasize the wisdom of Congress’s intent. In 2024, the UP Lines served 66 stations in Northeastern Illinois and Wisconsin and provided more than 13 million passenger trips. Derwinski VS at 7-8. Dozens of communities in Metra’s service area were planned and built along the UP Lines and still rely on them for daily life and economic well-being. *Id.* Loss of Metra’s service on the UP Lines, even temporarily, would have devastating and far-reaching economic and social impacts in Illinois and beyond. *Id.* Cessation of Metra’s commuter service also would strand the productive use of massive amounts of capital improvements in the UP Lines, including public dollars. *Id.*

2. *Midtec* does not apply because Metra seeks to preserve an existing use that does not involve the addition of a new competitive carrier

Metra’s Application seeks trackage rights to preserve the existing commuter service that UP has decided to exit, not to compete with UP’s valuable freight franchise. The *Midtec* requirement to show “anticompetitive” conduct does not apply. *Midtec Paper Corp. v. Chi. & N. W. Transp. Co.*, 1 I.C.C.2d 362 (1985), as

superseded, 3 I.C.C.2d 171 (1986), *aff'd sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988).

Midtec applies only when a party seeks to introduce or obtain new competition, not where a party seeks to preserve existing service. In *RGI/CMW*, the ICC refrained from applying its “competitive access rules,” and explained that those rules “address the addition of another carrier to the market outside the context of acquisition or merger proceedings,” not situations where the terminal trackage rights are “critical to service continuation.” Metra seeks rights that are “critical to service continuation,” even more so than in *RGI/CMW*, so that service to tens of thousands of daily riders on the UP Lines can be preserved.

In contrast, UP’s refusal to allow Metra to use the UP Lines to provide commuter service that UP, itself, will no longer supply would be anticompetitive. Conduct by a firm with monopoly power to foreclose entry or rivals without reasonable commercial justification is anticompetitive. *E.g., Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 452-53 (7th Cir. 2020). UP’s treatment of Metra, which requires access to the same facilities and competes for the same track space, in this fashion is even more problematic since Metra seeks only to continue the commuter passenger service supplied under the PSA for the past 50 years – Metra is not in the freight business.¹³

¹³ UP noted the lawsuit Metra filed in court the same day as its application. UP Reply at 4 n.4. Metra’s suit seeks declaratory relief as to (a) the more than \$1 billion in outstanding federal funding investments in the UP Lines, which UP has described as “gifts,” and (b) the antitrust laws for UP’s anticompetitive conduct. As

3. UP's compensation argument is premature and speculative

UP appears to recognize the public interest in preserving Metra's service on the UP Lines, but only if it *first* receives what it deems to be adequate compensation based on the "fair market value" for Metra's use. UP Reply at 3-5. By statute, the Board can establish "conditions and compensation" for terminal trackage rights under § 11102 only *after* it first grants the trackage rights, and the parties who "are responsible for establishing the conditions and compensation for use of the facilities," in the first instance, "cannot agree." Thus, UP has put the cart before the horse, as the Board under § 11102(a) should not determine the appropriate compensation to be paid for Metra's use of UP's facilities at this point in the proceeding. *See Midtec*, 857 F.2d at 1499-500.

UP relies on other language in § 11102(b) providing that "[t]he compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section," UP Reply at 5, 8-9. This language addresses a different situation than the one presented, because Metra already is using UP's facilities with UP's consent. Taken to its logical conclusion, UP's position implies that Metra's service somehow should be discontinued during the pendency of this proceeding, or until the appropriate post-PSA compensation is

to the latter, Metra noted it also had filed this Application with the Board and stated, "to the extent [UP] agrees that the STB has the power – if warranted – to compel [UP] to allow Metra's use . . . of the entirety of the UP Lines, Metra would then acknowledge that no essential facilities doctrine is available." Compl. ¶ 105, *Commuter Rail Div. of the Reg'l Transp. Auth. v. Union Pac. R.R.*, No. 25-cv-2439 (N.D. Ill. filed Mar. 7, 2025), at 47 n.1.

determined and paid, which by all appearances would be *contrary* to the public interest.

UP has ample protection in any event. Metra's other trackage rights providers do not require Metra to post bonds, Metra has not required bonds where it grants trackage rights to others, and to Metra's understanding neither has UP. Metra is open to discussing the issue of security with UP, if it remains a concern, at an appropriate time, *i.e.*, after the Board has granted the Application and if the parties cannot establish "conditions and compensation" themselves. But alleged security issues do not bear on whether the trackage rights are in the public interest, which is the issue presented under § 11102(a).

UP also argues that past precedent "is entitled to no weight" such that access could never be granted before compensation is set. UP Reply at 7-8. UP's analysis is speculative on the law and inconsistent with the facts here, where Metra already is using the UP Lines. Even if UP were correct as to § 11102, and Metra disagrees with UP's reading of the statute, the Board still could order relief as of July 1, 2025, and address compensation later under §§ 1132(b) or 11123. *E.g., Hasa, Inc. v. Union Pac. R.R. Co.*, NOR 42165 (STB served Aug. 21, 2019) (granting relief requested the day before under §§ 1321(b) and 11123, and setting procedural schedule).

The status quo undercuts UP's related conjectures regarding its potential harm. UP currently earns a positive return under the PSA, as shown on Schedule 210 of its R-1s. So long as UP continues to recover its costs plus any margin (which

the *SSW Compensation* formula ensures), UP would be better off, not worse, with continued Metra service contributions, and would not face a cross-subsidy.

Metra's trackage rights would not result in any "taking" or "condemnation" of anything of value to UP (UP Reply at 7-9) for the same reasons. Metra will not compete with UP for freight traffic, and Metra's commuter service does not hinder or otherwise impair UP's freight operations, which UP concedes. UP has determined to discontinue its operation of the commuter service, and Metra's payments to UP while operating that service on UP's facilities will be additive, not a taking. UP would be worse off without Metra's contributions

4. The parties have no agreement for private arbitration

UP's position that its "offer[] to arbitrate" compensation should be considered as part of the Board's § 11102 determination (UP Reply at 2, 9) is *ultra vires*. Private arbitration is only by consent. "Arbitration is a matter of contract and consent, and we have long held that disputes are subject to arbitration if, and only if, the parties actually agreed to arbitrate those disputes." *Coinbase, Inc. v. Suski*, 602 U.S. 143, 145 (2024). Metra and UP have no arbitration agreement for and Metra has never agreed to arbitrate the conditions or compensation for its post-PSA use of the UP Lines. The Board has no power to compel Metra to do so under § 11102(a) or otherwise. The Board also does not outsource its statutory obligations, as recently noted in *Union Pacific R.R. v. S.T.B.*, 113 F.4th 823 (8th Cir. 2024).

Even if the Board could defer to private arbitration, it should not do so in this case. Metra is a governmental authority accountable to public stakeholders,

including taxpayers. The conditions and compensation for Metra’s future use of the UP Lines have major consequences for those stakeholders, Metra’s riders, and the Chicago region. Metra believes that an issue so thoroughly steeped in the public interest should not be determined in a private setting, without due process protections or the prospect of meaningful judicial review.

The Board also has an interest in ensuring that its *SSW Compensation* formula is applied fairly and appropriately. Use of private arbitration undermines that interest. *BNSF Ry. Co. – Petition for Enforcement – Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50) (STB served April 28, 2025), at 6 (denying UP motion to have merger-related access dispute with BNSF resolved through private arbitration allowed under the agreement based on “potential policy implications”). “The stability of the regulatory environment has limited the number of disputes requiring resolution by this agency.” *Atchison, Topeka & Santa Fe Ry. Co. – Op. Rights – Southern P. Transp. Co.*, FD 22218 (“*Kern-Mojave*”) (UP Final Brief dated April 15, 2025), at 2-3.

Private arbitration invites inconsistent and even conflicting outcomes, another reason for entrusting decisions to agencies that have a duty to explain departures from prior decisions. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009). UP should not be able to pick which compensation disputes go to arbitration or the Board. *Kern-Mojave* (UP Petition to Reopen filed Jan. 6, 2023).

5. The parties have not agreed to all material terms except compensation and Metra has fully engaged to reach agreement for use of the UP Lines

UP incorrectly asserts that “the parties have agreed to all material terms related to Metra’s continued use . . . with one notable exception: compensation.” Reply at 2 (UP emphasis). On the contrary, the parties have not agreed on various other fundamental contract issues including, for example, the basic structure of their post-PSA contract, *i.e.*, whether the agreement will use a fixed fee or some other approach for UP’s recovery of its below-the-wheel engineering costs. Kane VS at ¶¶ 6-7. Other unresolved issues include the treatment of future publicly funded capital improvements to the UP Lines, UP’s performance standards, service change protocols – even a point as fundamental as the agreement’s term. *Id.* Compensation may be the only issue in UP’s eyes, but it is not the only issue on the table.

Similarly, while UP alleges that Metra “refuses to engage” in discussions about its compensation, Metra has exchanged multiple proposals for a post-PSA contractual relationship, including compensation terms, and the parties have actively engaged in compensation negotiations. Kane VS at 7-8. Metra’s Application is not, as UP incorrectly asserts, “an attempt to circumvent necessary private commercial negotiations.” UP Reply at 2. Rather, the parties’ negotiations have persisted for a period of years and included Board-sponsored mediation. Metra filed its Application with the PSA’s June 30, 2025, expiration on the horizon, because Metra was concerned that the parties would not reach an agreement in time, in part based on UP’s inflexible and economically unreasonable compensation demands.

6. UP's arguments on Metra's finances are outside the statutory criteria

UP's focus on Metra's potential financial challenges in its Reply are outside the statutory criteria for determination in this proceeding. Terminal trackage rights, like other Board authorizations, also are permissive, and the fact that the Board orders them does not require Metra to use them. To the extent Metra in the future could not pay for or afford the trackage rights (which contradicts five decades of experience under the PSA), Metra would not use them. If Metra's public funding were further constrained, and Metra were required to reduce its commuter service on the UP Lines, Metra actually would owe less usage-based compensation to UP. In any event, in the unlikely case that "the amount of the [established] compensation [were] not paid promptly," which again contradicts history, UP would be entitled to "recover . . . in a civil action" under § 11102(b).

**V.
CONCLUSION**

For these reasons stated, the Board should grant Metra's Application

Respectfully submitted,

/s/ Peter A. Pfohl
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*Attorneys for the Commuter Rail
Division of the Regional Transportation
Authority d/b/a Metra*

Dated: May 5, 2025

Verified Statement of
James M. Derwinski

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36844

**COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY D/B/A Metra
—TERMINAL TRACKAGE RIGHTS—
UNION PACIFIC RAILROAD COMPANY**

VERIFIED STATEMENT OF JAMES M. DERWINSKI

I am James M. Derwinski. I serve as the Chief Executive Officer and Executive Director of both the Commuter Rail Division of the Regional Transportation Authority (CRD) and the Northeast Illinois Regional Commuter Railroad Corporation (NIRCRC). My business address is 547 W. Jackson Boulevard, Chicago, IL 60661. I am a long-time employee of Metra. I was first employed by Metra in 1996 in the Mechanical Division and eventually became Chief Mechanical Officer. Prior to my Metra employment, I worked at Union Pacific Railroad Company (UP) and before that Chicago & North Western Railway Company (CNW) as a locomotive electrician.

I am a founder and Chair of the Commuter Rail Coalition, an association of commuter rail agencies, operators, and other interested parties, and I serve on the Board of the American Public Transportation Association and several of its committees. I am Co-Chair of the Surface Transportation Board's Passenger Rail Advisory Committee.

The purpose of this statement is to: (1) provide the Board with background on Metra and its operations, including on three rail lines (UP Lines) that are owned by UP; (2) describe Metra's efforts to preserve and protect its passenger service on the UP Lines; and (3) demonstrate why the public interest supports approval of Metra's Application to require its continued use of these facilities.

I. Background on Metra and the UP Lines

A. Metra Background

Metra's oversight entity, the Regional Transportation Authority (RTA), replaced and eventually unified a complicated and patchwork commuter rail network operating in the greater Chicago metropolitan area starting in the mid-1970s to avoid a catastrophic collapse in commuter service caused by bankruptcies

and economic failure in the U.S. freight rail industry. Created by statute and approved by referendum, the publicly funded and managed passenger rail system remains in place today and has grown and expanded over the past 50 years.

Metra was formally created in 1984 and celebrated its 40th anniversary last year. It consists of two different governmental entities: CRD and NIRCRC. Pursuant to the Regional Transportation Authority Act (RTA Act), CRD is a division created within the RTA and the RTA Act authorized NIRCRC, which predated CRD, to continue as a separate operating unit to operate commuter rail on behalf CRD. “Metra” is a service mark owned by CRD. CRD uses the “Metra” service mark to brand its passenger rail services, which NIRCRC and other railroads, including UP and BNSF Railway Company, provide under agreements with CRD.

Metra is an integral part of the Chicago regional economy providing millions of passenger trips each year to local residents and visitors, who rely on Metra to get to-and-from work or who use Metra as an alternative to the automobile to move around the greater metropolitan area.

Metra is the largest commuter rail system geographically in the United States and the fourth largest in terms of ridership. Metra provides commuter rail service to more than 100 communities in its service area. In 2024, Metra provided approximately 35 million passenger trips in six counties in northeastern Illinois and one county in southeastern Wisconsin over a service area of 3,700 square miles.

Metra operates one of the most complex commuter rail systems in North America. The complexity is due in part to its operational interface with the extensive freight and intercity passenger rail network that converges on Chicago. Metra’s rail system consists of 243 stations over 11 lines totaling approximately 500 route miles and 1,200 miles of track. A map depicting Metra’s lines is shown below:

B. Commuter Rail Service on the UP Lines

UP owns three of Metra's lines: UP-North (UP-N), UP-Northwest (UP-NW), and UP-West (UP-W). Approximately 39 percent of Metra's total ridership occurs over the UP Lines. UP and its corporate predecessor, CNW, historically have operated commuter service over the UP Lines under Purchase of Service Agreements (PSAs) with Metra (or its predecessor, the RTA) since the mid-1970s.

UP's predecessors originally built the UP Lines in the mid-1800s during the initial development of the Chicago-area and U.S. rail networks.

- The UP-W line started as the Galena & Chicago Union in 1848. It was the first railroad in Chicago and the first to provide passenger service.
- In February 1851, the Illinois legislature incorporated the Illinois Parallel Railroad Company and empowered it to lay tracks north from Chicago along the shore of Lake Michigan to Waukegan and then to the Wisconsin state line. The line was soon renamed the Chicago & Milwaukee Railroad; its route evolved into today's UP-N line. The line provided passenger service from its inception.
- In February 1851, the same month the ancestor of today's UP-N line was chartered, the State of Illinois authorized the Illinois & Wisconsin Railroad to lay tracks on what became today's UP-NW line between McHenry County and a point on the Galena & Chicago Union Railroad. The line opened with passenger train service in 1854.

While multiple individual railroads owned these Lines in the early years, CNW (through a predecessor corporation) owned all three by 1883. During all this time, the UP Lines were consistently used for commuter or passenger service as well as freight and were (and are) an instrumental component of the Chicago regional economy.

C. Governance and Finances

Metra is a public entity answerable to taxpayers and the public-sector stakeholders it serves. Metra exists to serve the public and it is accountable to the public.

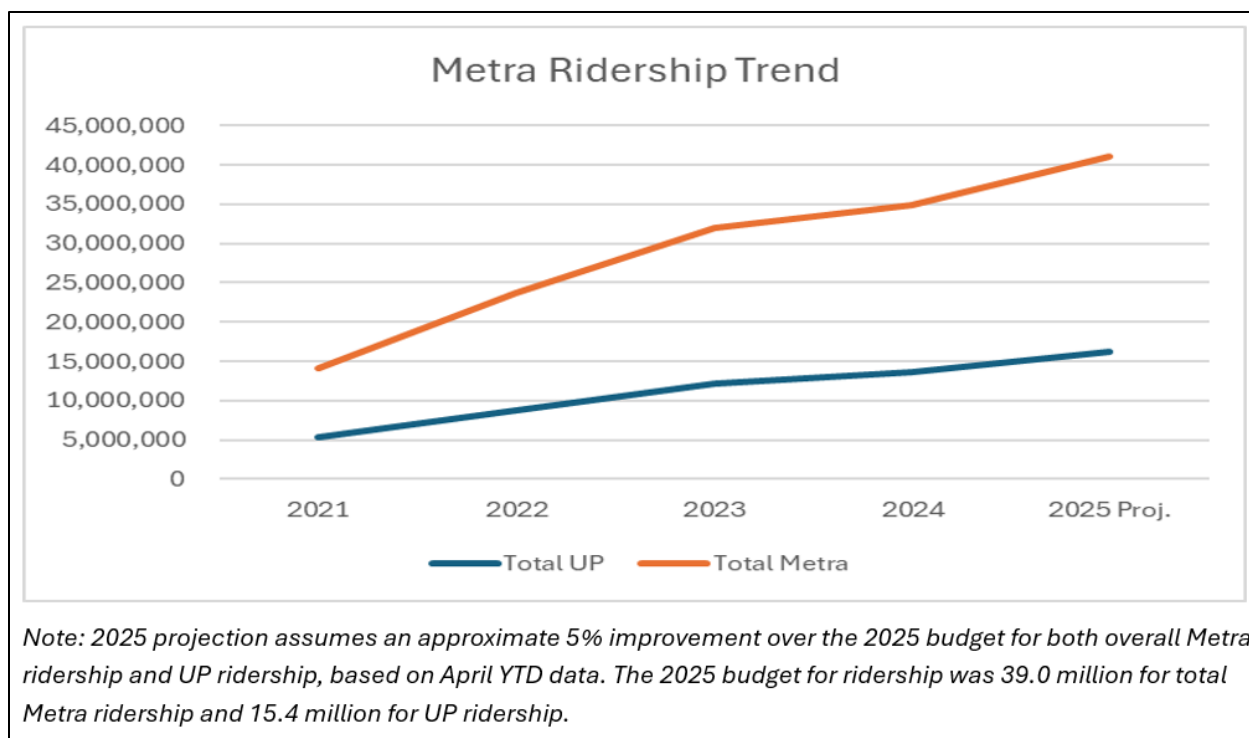
Metra is overseen by an independent Board of Directors composed of eleven political appointees representing the six primary counties Metra serves: Cook, DuPage, Kane, Lake, McHenry, and Will Counties. Among other responsibilities,

Metra's Board of Directors approves Metra's annual budget and the five-year capital program.

Pursuant to statute, Metra also is accountable to the RTA, the government agency the State of Illinois created in 1973 to coordinate financial oversight of the Chicago region's public transportation systems.

To fund its operations and capital activities, Metra relies on a combination of system-generated revenue and public funding. Historically, about half of operating costs normally are covered by system-generated revenue, primarily fares. The other half is covered by a sales tax collected in the region that Metra serves, plus a partial state match known as the Public Transportation Fund. Since 2020, Metra has been using federal COVID-19 relief funds to cover deficits caused by reduced ridership during and after the pandemic. Metra also receives capital funding, which is provided through a variety of federal, state, and local funding sources.

Metra, like other public transit agencies around the country, faces a looming budget shortfall as federal COVID-19 relief funding expires (which in Metra's case is projected to occur in 2026), sometimes referred to as a "fiscal cliff." Transit providers nationwide, including Metra, are seeking new, diversified, and sustainable funding sources for their operations. During the post-pandemic period, Metra's management has returned positive performance against its approved budget every year. At the same time, Metra's ridership has been on a consistent positive trendline since bottoming out in 2021. The UP Lines have played an important part in this recovery, as shown in the graph below:



Metra is committed to finding additional sustainable ways to fund transit and invest in our region's future. Metra believes the public in its service area and business leaders recognize the value and the inherent public good that a well-funded and well managed transit system brings, including on the UP Lines.

II. Metra's Efforts to Preserve and Protect Service on the UP Lines

A. Genesis of Current Dispute

In 2019, UP notified Metra that providing commuter service as a contractor to Metra no longer fits its business model. UP notified Metra of its intention to discontinue operating Metra's commuter service and transfer that obligation to Metra. Metra has been working with UP for a period of years now to seamlessly transfer operation of commuter service on the three UP Lines to Metra, which going forward will operate and provide the service directly to the public as it already does on seven of its eleven lines.

B. The Parties' Negotiations

Metra's priorities are to maintain safe, reliable, and high-quality service for its passengers while being a good steward of taxpayer dollars. Metra has worked in good faith with UP to establish reasonable conditions and compensation to allow Metra to operate its own commuter rail service over the UP Lines following the expiration of the parties' historical PSA, under which UP previously has provided

the commuter service. However, the parties to date have not been able to reach agreement on a number of issues involved. UP's compensation, *i.e.*, the economic return for Metra's use of the UP Lines, is one issue, but not the only one. It is Metra's position that the conditions and compensation incorporated into a new post-PSA agreement should be transparent, subject to public scrutiny, based on objective and reasonable standards, and in the public interest. Transfer of the service obligation should not result in a windfall for UP at Metra's stakeholders' and the taxpayers' expense.

Despite not being able to reach agreement on their post-PSA contractual relationship, Metra and UP have been working together and making progress toward the transfer of UP's commuter service obligations to Metra. To date, the parties have transferred the mechanical, storehouse, and customer services responsibilities and personnel involved in the commuter service to Metra. Additionally, as of May 16, 2025, Metra will be the sole operator of the commuter rail service on all three of the UP Lines for the first time. Metra, in coordination with UP, is doing everything it can to achieve a smooth and seamless transfer of service, so that its customers continue to receive exceptional and reliable service, and to ensure that Metra's continuing operations on the UP Lines do not interfere with or impair UP's freight business.

In the absence of a new agreement, or some form of judicial or regulatory relief, the PSA's expiration on June 30, 2025, would leave Metra with no ability to use the UP Lines to serve the public after that date.

III. The Public Interest Supports Metra's Continued Use of the UP Lines

Metra serves 65 stations along the UP Lines in Northeast Illinois and one station in Wisconsin. In 2024, these Lines supported more than 13 million annual passenger trips – 39 percent of Metra's total annual ridership. Metra has invested more than \$1 billion in public funds in the UP Lines to improve UP's infrastructure and to make it fully functional for combined passenger and freight use. Metra's investments in the UP Lines cover track, bridges, grade separations, retaining walls, rights of way, rights of way expansions, positive train control and other signals and communications, facilities, power, stations and platforms, and parking.

Dozens of Chicago-area communities historically were planned and built along the UP Lines, including the North Shore and the Northwest and Western suburbs. These population centers developed because of and still take advantage of and rely on the availability of commuter rail service on the UP Lines for daily life. Metra's commuter rail service supports economic development, tax base growth, and private employers. The UP Lines, along with the rest of Metra's system, help connect the entire region; reduce traffic congestion; reduce additional road and parking costs; protect the environment and public health; provide households with

access to-and-from work, school, and essential appointments; support job growth; create and facilitate housing opportunities; and provide an otherwise unavailable transportation option for low-income individuals and families.

We believe – and to our knowledge there is no dispute on this point – loss of Metra’s service on the UP Lines, even temporarily, would have devastating and far-reaching economic and social impacts in Illinois and beyond. The cessation of Metra’s commuter service also would strand the productive use of massive amounts of capital improvements in the UP Lines, including public dollars. In contrast, granting Metra’s Application and preserving service would cause no harm to UP and would provide an efficient public framework to enable the parties to reach agreement on appropriate conditions and compensation for Metra’s future use of the UP Lines.

VERIFICATION

I, James M. Derwinski, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. I am also qualified and authorized to file this statement.



James M. Derwinski

Executed on May 2, 2025

Verified Statement of
Jennifer Kane

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36844

**COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY D/B/A Metra
—TERMINAL TRACKAGE RIGHTS—
UNION PACIFIC RAILROAD COMPANY**

VERIFIED STATEMENT OF JENNIFER KANE

1. My name is Jennifer (“Jenny”) Kane. I am Director, Rail Contract Management & Special Projects for Metra. My business address is 547 W. Jackson Boulevard, Chicago, IL 60661.

2. I began working at Metra in September 2020 as Manager, Safety Reporting & Risk Reduction. In July 2022, I transitioned into a Senior Project Manager, Administration role before starting in my current position as Director, Rail Contract Management & Special Projects in November 2023.

3. Prior to Metra, I worked for over six years for Transportation Resources Associates, Inc., consulting on public transit system safety, security, and operations projects. Before that, I worked for two years with the Chicago Metropolitan Agency for Planning and the Urban Transportation Center at the University of Illinois at Chicago, engaging in research, evaluation, and outreach on public planning and transportation funding and policies. I also worked for more than five years in Washington, D.C., as a legislative staffer for two Members of the U.S. Congress and one U.S. Senator.

4. As Director of Rail Contract Management & Special Projects, I am responsible for oversight of Metra's contractual agreements with other railroads, including monitoring and maintaining existing contracts and the negotiation, execution, renewal, and/or termination of contracts. I also assist with ensuring that Metra's contracts with other railroads align with its business goals, legal requirements, and internal policies.

5. Among my responsibilities, I manage Metra's contractual relationship with the Union Pacific Railroad Company (UP) involving Metra's commuter rail service on the UP-North, UP-Northwest, and UP-West lines (UP Lines). I have participated in Metra's negotiations with UP over the parties' contractual arrangements for future Metra service on the UP Lines, following the discontinuance of UP providing commuter rail service on the lines on Metra's behalf and the expiration of the parties' historical Purchase of Service Agreement (PSA) on June 30, 2025.

6. The purpose of this statement is to: (a) provide background information on Metra's existing contractual agreements with UP; (b) explain the status of the parties negotiations with respect to their future contractual arrangements; and (c) correct certain factual errors in UP's Reply to Metra's Application for Terminal Trackage Rights. Specifically, on the last point, I address UP's statements at page 2 of its Reply that "the parties have agreed to all material terms related to Metra's continued use of Union Pacific lines with one notable exception: compensation," and that "Metra refuses to engage" in negotiations with

UP on the reasonable value of the compensation that Metra should be required to pay for the future use of the UP Lines. (Original emphasis).

Purchase of Service Agreement

7. The Parties' principal agreement that governs commuter rail service on the UP Lines is the PSA. The PSA provides a framework for UP to deliver a virtually all-in commuter rail transportation service to Metra.

8. I am familiar with PSA's history, as part of my job responsibilities. In 1975, Metra's oversight agency, the Regional Transportation Authority (RTA), first entered into a PSA with then-Chicago and North Western Railway Company (CNW) to ensure that commuter rail service would continue on what are now the UP Lines during a period of economic upheaval in the U.S. rail industry. In 1995, UP merged with CNW and assumed commuter rail operations over the UP Lines. Metra and UP subsequently amended and extended the PSA to account for the merger and UP's assumption of CNW's commuter rail service obligations.

9. The PSA was most recently amended and restated in 2010. That base agreement, which remains in place, as amended, defines UP's contractual obligations and rights to compensation for the operation of commuter rail service for the Commuter Railroad Division of the RTA (CRD). Over the past several years, CRD and UP have been winding down the PSA as part of a planned service transfer under which CRD will become responsible for operating the commuter service on the UP Lines in UP's place. CRD's operating entity, the Northeast Illinois Regional Commuter Railroad Corporation (NIRCRC) will provide the commuter rail service.

10. The PSA has been extended by agreement numerous times on a short-term basis over the past several years as Metra and UP have planned the transition of operating responsibility for the commuter service to Metra, which the parties currently anticipate will be completed as of May 16, 2025. (UP remains responsible for engineering functions and dispatching as of this time.)

Status of the Parties' Negotiations

11. From an administrative perspective in Metra's view, the PSA is an outdated, overly complex, legacy contract that emerged to address the circumstances presented during a turbulent period in the U.S. rail industry. The PSA no longer serves as an effective or efficient business template to manage the economic relationship between Metra and UP, particularly after Metra has assumed operating responsibility for the commuter service on the UP Lines. Administration of the historical PSA has been problematic for both parties for many years, even before UP determined to discontinue providing commuter rail services to Metra.

12. The PSA, with its cost-plus structure, complex annual budgeting and accounting processes, and billing for expenses in arrears, is not a viable model for the parties' post-PSA relationship, in which Metra will be using the UP Lines to operate its commuter service rather than purchasing that service from UP.

13. In our experience, transitioning to a more modern contract template is the norm. When other railroads have ceased providing commuter rail services for CRD, the former PSAs were dissolved, and the parties entered into traditional trackage rights agreements to govern Metra's use of those railroad's lines for its

commuter service. Examples of such agreements between Metra and other freight railroads include Metra's SouthWest Service on what is now the Norfolk Southern Railway and its Heritage Corridor and North Central Service on what is now the Canadian National Railway.

14. In negotiations with UP, Metra has sought to replace the unwieldy "PSA model" with a more modern, fixed-cost approach (*e.g.*, based on car miles) that we believe is more standard in the railroad industry and would provide greater budget certainty for Metra as a public entity, as well as incent UP to find efficiencies below a fixed cost "cap." The freight railroads themselves have moved away from antiquated "actual-cost" agreements and toward "all-in" fixed rates determined by usage in their freight trackage rights arrangements.

15. After several years of negotiations, UP provided an initial draft template for a new post-PSA agreement between the parties at Metra's request in July 2024. The draft was incomplete and essentially followed the form of the prior PSA. Metra expressed concerns about the form and offered to draft a more appropriately structured agreement to reflect the parties' new relationship. To date, UP has not responded to Metra's offer to draft an alternative template or provided an updated template responding to Metra's concerns.

16. Based on discussions to date, Metra also understands UP is seeking to have the parties enter into a series of separate going-forward agreements that would impose charges on Metra for access to platforms, walkways, sidings, and yard tracks used in Metra's operations, which would be in addition to the overarching

“access” fee that UP proposes to charge Metra for use of UP’s system. Metra has stated its concern over the possibility of having to pay twice for use of the same assets that ordinarily would be included in a single, comprehensive agreement to operate on the UP Lines, which would include a cost allocation for expenditures, such as maintenance and capital investments. Those discussions and negotiations are advancing but are not yet complete.

Incorrect Fact Statements in UP’s Reply

17. For purposes of clarity, I would like to address two statements found in UP’s Reply related to the status of the parties’ negotiations. Specifically, UP’s Reply states that the parties have agreed to “all material terms related to Metra’s continued use of Union Pacific’s lines with one notable exception: compensation” and that “Metra refuses to engage” in negotiating the compensation for its future use of the UP Lines. (Reply at 2). These statements are factually incorrect and do not accurately reflect the status of the parties’ discussions.

18. First, fundamental issues other than compensation for Metra’s use of the UP Lines remain on the table and are unresolved. These issues include but are not limited to the basic structure of the agreement, *e.g.*, whether the agreement will use a fixed fee or some other approach. The parties have not yet reached agreement on how to treat and account for past and future capital improvements to the UP Lines made (or to be made) through Metra using public funds. Metra has requested a right-of-first-refusal, if UP were to seek to abandon or sell any portion of the UP Lines, which remains unresolved. Other unresolved issues include UP’s

performance standards, dispatching and incident response protocol, severe weather protocol, service change protocol, the term of the agreement, and contract administration, including how to administer UP's recovery of its below-the-wheel engineering costs should a fixed fee approach not be used. In short, while Metra agrees that the future compensation for its use of the UP Lines is an important unresolved contract issue, it is not the only one.

19. UP asserts twice in its Reply that it has "offered to arbitrate" the future compensation for Metra's use of its lines. (Reply at 2, 9). UP's Reply, however, omits that Metra and UP do not have and have never had an arbitration agreement for the compensation issue or the conditions for Metra's use of the UP Lines. UP provided and requested that Metra enter into a written Alternative Dispute Resolution Agreement regarding compensation in February 2025, following the parties' unsuccessful mediation, which Metra did not accept. UP's Reply also omits that UP has been on notice for several years at this point that Metra does not agree that determination of the terms and conditions for its future use of the UP Lines in a private arbitration setting is appropriate.

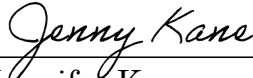
20. Second, UP's allegation that Metra "refuses to engage" in discussions on the issue of compensation is incorrect. Metra has exchanged multiple proposals with UP for a post-PSA contractual relationship, including compensation terms, over a period of years leading up to the parties' mediation. At page 1 of its Reply to UP's Application for Mediation, Metra detailed its concerns over the progress of the parties' negotiations, including from Metra's perspective, UP's failure to provide

“complete and sufficiently detailed financial information to support the substantially increased fees and costs that UP seeks to have Metra pay and assume under a new agreement.” While the parties’ negotiations during mediation remain confidential, compensation was the issue that UP sought to mediate in FD 36844, and its press release dated February 10, 2025, stated that the parties were continuing to negotiate the same point. (<https://www.up.com/media/releases/metra-service-transfer-nr-250210.htm>).

21. Metra understands and respects that UP’s Reply includes an advocacy component, but the statement that Metra “refuses to engage” on the compensation question does not accurately state the facts.

VERIFICATION

I, Jennifer Kane, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. I am also qualified and authorized to file this statement.



Jennifer Kane

Executed on April 29, 2025

Verified Statement of
Aaron R.J. Maertins

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36844

**COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY D/B/A Metra
—TERMINAL TRACKAGE RIGHTS—
UNION PACIFIC RAILROAD COMPANY**

VERIFIED STATEMENT OF AARON R.J. MAERTINS

1. My name is Aaron Robert James Maertins. I am the Director of Operations Planning & Project Management for Metra. My business address is 547 W. Jackson Boulevard, Chicago, IL 60661.

2. I began working at Metra in 2014. As part of my job responsibilities since joining Metra, I have worked extensively with the data contained within Metra's data warehouse – Trains Operations and Performance System (TOPS) – and reviewed results produced by other industry commercial software tools, including Rail Traffic Controller (RTC), to model, test, and plan railroad operations and train schedules for feasibility, efficiency, and other criteria.

3. I have been in my current role as Director of Operations Planning & Project Management since 2023. I report directly to the Deputy Executive Director, Operations. My responsibilities include managing service design and scheduling; utilizing data analytics to evaluate operational issues and support service planning decisions; and planning and executing projects in support of on-time performance and transit movement improvements and efficiencies on all Metra lines, including

on the UP-North line (UP-N), the UP-Northwest (UP-NW) line, and the UP-West (UP-W) line (collectively, UP Lines or Lines).

4. My position's function is to monitor ridership, operations data, and customer feedback on all lines to explore opportunities for improvement in scheduling and optimize rail operations. In doing so, I have responsibility to interface with our host and tenant railroads, including Union Pacific Railroad Company (UP), and to engage in service data analytical assessment to help ensure safe and efficient joint passenger and freight operations and coordination of train schedules.

5. As Director of Operations Planning & Project Management, and in my previous positions for Metra, I have gained personal knowledge of train operations, planning, dispatching, and scheduling over the UP Lines.

6. The purpose of this statement is to: (a) provide an overview of existing commuter operations on the UP Lines; (b) describe the practicability of the continued shared freight and commuter use of the UP Lines; and (c) demonstrate that the transfer of commuter service operations from UP to Metra in connection with the expiration of the parties' existing Purchase of Service Agreement (PSA) should not substantially impair UP's ability to handle its own business over the shared use facilities.

Existing Commuter Service on the UP Lines

7. The lines over which Metra provides commuter rail service are owned by Metra in some cases and in other cases by freight railroads (host railroads). In

the case of the UP Lines, UP owns the lines. UP's freight traffic and the commuter rail service it historically has provided for Metra both operate on the UP Lines. The three UP Lines cover 166.5 route miles and 398 track miles, with between 1 and 4 tracks on each segment.

8. Metra service is conducted from 66 passenger stations on the UP Lines, 25 on UP-N, 21 on UP-NW, 18 on UP-W, and two shared between multiple UP Lines. **Table 1** below presents the route and track miles of the UP Lines, and annual passenger trips on the UP Lines in 2024:

	UP-N	UP-NW	UP-W
Route Miles	51.6	70.5	43.6
Track Miles	107.5	169.1	144.2
Annual Passenger Trips (2024 millions)	4.8	5.2	3.7

(<https://assets.metra.com/s3fs-public/2025-03/January-2025-Ridership-Trends-and-2024-Annual-Ridership-MemoV1.1.pdf?VersionId=Dyn2a7P0AVmirrs2xA5udjwZia2m48gV>).

9. Metra owns the rolling stock used for its commuter rail service on the UP Lines, including a fleet of diesel locomotives and approximately 335 passenger cars. It is my understanding that Metra previously contracted with UP for maintenance of the rolling stock under the PSA, and in June 2024, UP transferred

its mechanical maintenance obligations and the employees performing that work to Metra. As of May 2025, I understand that the two sides expect to complete the transfer of operating responsibility for the commuter service previously provided by UP to Metra, although UP will remain responsible for certain functions, including dispatching.

Practicability of the Continued Shared Use of the UP Lines

10. The UP Lines were planned, designed, and developed for joint passenger and freight service, and to my understanding the dual passenger-freight service has operated on each of the UP Lines since the inception of the lines in the mid-to-late nineteenth century.

11. The passenger stations and platforms on the UP Lines, with a few exceptions, have been in place for over a century. The same is true for most of the maintenance and storage yards, crew change locations, and sidings for storage of passenger equipment. Where necessary, Metra has built additional, modern storage facilities to achieve more efficient operations and to support anticipated growth in ridership, such as the Woodstock Layover Yard Project currently being planned on the UP-NW Line. (<https://metra.com/woodstockyard>).

12. Over the years, UP and its predecessors have installed modern Centralized Traffic Control or Automatic Block Signaling on the UP Lines depending on location to make passenger and freight operations safer and more efficient. In addition, the installation of modern radio and wayside communication systems have enabled and facilitated data exchange, dispatcher communications,

and coordination of movements.

13. More recently, to my knowledge, the UP Lines also have been equipped with Positive Train Control (PTC) systems to allow PTC communications between the freight and commuter operations. The Metra fleet of diesel locomotives operating on the UP Lines are equipped with onboard PTC. The PTC and signaling systems provide train separation, and enforce positive train stop and speed restrictions, as needed.

14. Implementation of these improved, modern operational systems and equipment has facilitated the improvement and optimization of combined passenger and freight traffic flow on the UP Lines and identification of where capital infrastructure improvements should be made.

15. Like Metra, UP in my experience maintains and uses high quality modeling tools, including modern dispatching and rail traffic controller simulation software tools, such as RTC, and other modern technologies to ensure that that the combined passenger and freight rail use, along with expected growth or traffic changes, can be reasonably met.

16. Substantial capital expenditures to renew and improve the infrastructure of the UP Lines have been made over the years. For example, with Metra's support, UP installed a new third main line on the UP-W Line spanning six miles from Geneva to West Chicago to expand capacity. It is my understanding that Metra's 2025 construction program includes completion of that project, along with 18 crossing replacements, installation of nearly 74,000 ties (UP-NW Line),

continued replacement of 11 bridges (UP-N), repair and replacement of signal cables (UP-W), and installation of new crossovers. <https://metra.com/newsroom/metra-unveils-2025-construction-program>.

17. These ongoing shared improvements and investments help ensure that the passenger trains and UP freight trains that operate over the UP Lines annually are managed and integrated safely and efficiently.

18. Based on my experience with and knowledge of operations on the UP Lines, the continued shared use of the UP Lines for freight and commuter traffic is practicable and any future changes in traffic volumes or patterns could be reasonably accommodated and met.

Transfer of Commuter Service Operations to Metra Will Not Substantially Impair UP's Ability to Handle Its Own Business

19. Metra and UP have cooperated closely to coordinate usage on the UP Lines and avoid conflicts. Historically, Metra has submitted to UP, before May 1 of each year, a Service Plan for the coming calendar year that includes service changes from the prior year. That plan is subject to UP's approval. In addition, Metra can request a Service Change by delivering appropriate notice to UP of the proposed change. UP has discretion in approving service changes. Metra has used these processes to periodically change or increase service levels in response to changing ridership demand, including increasing midday, evening, and weekend changes in recent years

20. In my experience, UP has not raised concerns that the historical operation of commuter rail services on UP Lines has substantially impaired UP's

ability to handle its own freight business. Transferring the commuter rail service from UP to Metra should have no impact on UP's freight service that is not currently experienced from the historic use.

21. Following termination of the PSA, UP will still own, dispatch, and control scheduling on the Lines. It is my understanding that any periodic service changes going forward would continue to be subject to appropriate notice and review by UP, and appropriate modeling and planning, to ensure, prior to implementation of service changes, that no unreasonable impairment to UP's operations will occur.

22. Should any capacity constraints or new service requirements emerge, Metra would work cooperatively with UP, as it has in the past, to identify and implement any needed capital improvements and/or operating or scheduling changes, to ensure that UP's freight operations are not impaired.

VERIFICATION

I, Aaron R.J. Maertins, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. I am also qualified and authorized to file this statement.

Aaron Maertins

Aaron R.J. Maertins

Executed on May 2, 2025

Verified Statement of
Steve M. Cork and Greg J.M. Godfrey

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36844

**COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY D/B/A Metra
—TERMINAL TRACKAGE RIGHTS—
UNION PACIFIC RAILROAD COMPANY**

VERIFIED STATEMENT

**STEVE M. CORK
AND GREG J.M. GODFREY**

1. My name is Steve M. Cork. I am the Chief Safety & Regulatory Compliance Officer for Metra. My business address is 547 W. Jackson Boulevard, Chicago, IL 60661. I have been employed by Metra since December 2016. My first position at Metra was Director of Safety from December 2016 through June 2020. I then transitioned to the position of Director PSA Interline Operations & Compliance from June 2020 until August 2022. To clarify, PSA refers to the separate Purchase of Service Agreements that Metra has with two freight railroads, Union Pacific Railroad Company (UP) and BNSF Railway Company (BNSF). I was then promoted to Senior Director Interline Management, Co-Chair Chicago Planning Group (CPG)/(CTCO) and held that role from August 2022 through April 2025. CTCO refers to the Chicago Transportation Coordination Office. On April 15, 2025, I was promoted to Chief Safety & Regulatory Compliance Officer for Metra.

2. In my interline management and operations positions for Metra, I have been responsible for ensuring the safe and efficient movement of trains in

collaboration with other carriers sharing trackage rights and operational interests, including all freight and passenger carriers operating in the greater Chicago Metropolitan area, where Metra conducts its commuter rail operations. I have served as a Metra representative in CPG and CTCO programs, meetings, and projects, including the Chicago Integrated Railway Operations Center (CIROC) and the Chicago Regional Environmental and Transportation Efficiency (CREATE) public/private program. I had similar responsibilities in my prior positions for Iowa Interstate Railroad (IAIS) and Canadian Pacific Railway Company (now Canadian Pacific Kansas City Limited) (CP), as described below.

3. In addition to my work at Metra, I have over 20 years of experience in operations for Class I and Class II freight railroads. I served as Division Superintendent – Illinois for IAIS, a regional railroad operating between Chicago and Omaha, from September 2013 to February 2016. Before that, I worked for CP for 23 years, in operating positions of increased responsibility, including Superintendent and General Superintendent Operations – East Region. My work included extensive involvement in Chicago area operations. I served as Service Area Manager – Chicago Service Area (April 2008 – October 2010), Manager Operations – Central Region (October 2005 – April 2008), Assistant Director – Interline Management (March 2001 – October 2005), Senior Trainmaster (in Bensenville, IL) (January 1999 – January 2001), and Corridor Manager – South (January 1996 – January 1999).

4. My name is Greg J.M. Godrey. Since April 2025, I have been the Senior Director of TRACC at Metra. TRACC stands for Train Reporting & Customer Communications. My business address is 547 W. Jackson Boulevard, Chicago, IL 60661. I have been employed by Metra since December 2019. I was Director System Operations at Metra's Consolidated Control Facility (CCF) from December 2019 through March 2025. CCF is Metra's Dispatching Office, responsible for operating and overseeing functions related to the movement of trains across the Metra system. I also have participated as Metra's representative in CPG and CTCO programs, meetings, and projects, including CIROC and CREATE.

5. Prior to joining Metra, I worked for approximately one year for HDR, Inc., as a senior railroad project manager consulting on commuter and freight railroad operations with planning and strategy services. Before that, I worked for Amtrak for 16 years in various positions, including as a train dispatcher, a network and operations specialist, Director Commuter Operations – Caltrain (March 2011 – June 2012), and Assistant Superintendent Train Movement (20012 – January 2019). While at Amtrak, I also participated in CPG and CTCO programs, meetings, and projects, including CIROC and CREATE.

6. The purpose of this joint statement is to describe: (a) how Metra operates the UP-North (UP-N), UP-Northwest (UP-NW), and UP-West (UP-W) lines (UP Lines), Metra's operations are coordinated and integrated with UP on those Lines, and Metra's operations causes those Lines to function as their own terminal area; and (b) how Metra's and UP's operations on the UP Lines are coordinated and

integrated with those of other Class I, Class II, and Class III freight railroads, intercity passenger service, and other commuter railroad traffic in the Chicago region and form part of the larger, combined and integrated Chicago terminal area for freight and passenger rail service.

The UP Lines and the Metra System Comprise A Distinct Terminal Area

7. Each of the UP Lines originates from Metra's Ogilvie Transportation Center (OTC) in downtown Chicago. From OTC, UP-N runs to Kenosha, Wisconsin (MP 51.6); UP-NW runs to Harvard, Illinois (MP 62.8), with a branch to McHenry, Illinois (MP 58.2 to MP 65.8); and UP-W runs to Elburn, Illinois (MP 43.5).

8. The UP Lines have been engaged in combined freight/passenger service lines since their inception over 170 years ago. The commuter and freight operations are integrated and co-exist. For many years, under prior Line ownership of the Chicago and North Western Railway (CNW), the same trains served both freight and passengers, although the freight and passenger trains have been separated for many decades.

9. The train crews for the freight trains on the UP Lines to Metra's understanding come from UP's Chicago Service Unit, which manages and operates freight rail services in the Chicago region, including on the UP Lines. The crews for commuter service on the UP Lines historically have come from UP's Chicago Commuter Operations unit. Recently, eligible UP employees, who were certified to operate in UP's Chicago Commuter Operation unit, have been allowed to transfer to Metra. These transfers have supported the transition of UP's former commuter

service operations to Metra. As of May 16, 2025, Metra will be the sole operator of the commuter service for the first time on the UP Lines.

10. UP currently still maintains 11 yards that support passenger car storage, light maintenance, fueling, and crew change for the commuter service. The yards are as follows:

- UP-N: Kenosha, Waukegan
- UP-NW: Harvard, Crystal Lake, McHenry, Barrington
- UP-W: Elburn, California Avenue, M19 Diesel Shop

Metra is also constructing a new storage yard on UP-NW, known as the Woodstock Layover Yard.

11. Centralized Traffic Control, Automatic Block Signaling, and Positive Train Control (PTC) systems are installed on the UP Lines, and the locomotives operating on the lines have onboard PTC equipment. The system of modernized signals and computerized dispatching allows for full control of train movements and automatic train separation, with PTC providing a safety system overlay, to ensure the passenger and freight trains on the UP Lines are safely and efficiently managed.

12. UP and Metra coordinate line usage through detailed service plans, which UP controls, designed to ensure that joint passenger and freight operations do not interfere with one another and remain fluid. Those plans are subject to day-by-day, hour-by-hour, and minute-by-minute fluctuations, depending on events and circumstances occurring both on the UP Lines themselves and on the larger rail system in which the operations exist.

13. UP controls dispatching on the UP Lines and will continue to do so after commuter operations service transitions to Metra. Dispatching is combined and integrated for combined freight/commuter service on the UP Lines. UP's dispatchers prioritize and balance the needs of freight and passenger trains, according to operating rules and procedures and the parties' service plans. Dispatchers handle temporary track restrictions and manage delays caused by weather, maintenance, service interruptions, or other factors, including accidents and incidents on the Lines and the multiple intersecting rail lines.

14. While Metra's passenger and UP's freight service both occur on the UP Lines, the two carriers operations are separated and coordinated to avoid conflict.

15. Typically, freight cars need to be removed from a train so that they can be loaded, unloaded, interchanged, collected, classified, distributed, and/or otherwise switched. For that reason, freight systems need to have multiple points for loading/unloading, and yards and interchange tracks, for local collection, intercarrier interchange/transference, classification, and distribution of cars.

16. As opposed to manifest trains, freight unit trains may shuttle intact between origin and destination, but they generally are not loaded and unloaded on or immediately adjacent to main line track, cannot be loaded and unloaded within a few minutes, and generally travel a substantial distance between stops, sometimes for thousands of miles.

17. A freight train operating in the Chicago freight terminal district would be expected to take two hours, or much more, to complete a spot or pull 14 miles

away, as the train would typically need to be assembled at the terminal, perform an air test, wait for an available slot, travel the “reasonable distance,” obtain clearance and enter the yard or industry track (unless it is an open gate), spot or pull the cars, and perform another air test. The process could take much longer.

18. Freight cars can, and often do, travel long-distances on UP’s freight system and the larger interstate rail network. Freight railroads are inherently “open” systems designed to service the continental United States (including Alaska) and the rest of North America.

19. Metra’s passenger operations on the UP Lines, in contrast, constitute a “closed system” or terminal area that runs from OTC, sometimes referred to as Chicago Passenger Terminal (CPT), to the end points of the UP Lines. Commuter railroads, like Metra, seldom interchange cars with other systems, and do not operate beyond the bounds of their arrangements with host carriers.

20. Metra’s passenger cars generally are not switched while in service and trains remain intact during the length of the trip while transporting passengers. Collection, classification, and distribution occurs, but it is done by the passengers themselves as they enter and exit the cars at the appropriate stations. Therefore, yards are not needed for that purpose, they are needed for inspecting, servicing, maintaining, and cleaning the cars and locomotives.

21. Metra’s trains on the UP are shorter, travel quickly between stations, and have shorter stops at stations than freight trains. They achieve an efficiency beyond what freight trains can achieve on a regular basis, especially within an area

like Chicago. Metra's timetables for the UP Lines show most stations are separated by no more than five minutes. Express trains skip some stations, but travel time between stations does not exceed 20 minutes.

22. The transit time from OTC/CPT to the end of the line, and vice versa, does not exceed two hours. Station stops are also short, often less than two minutes. Metra trains, composed of a locomotive(s) and between six and eight passenger cars, move intact between OTC/CPT and the endpoint and then back. Freight operations do not approach this level of efficiency.

23. Consider for example Metra's "314" train on the UP Line, as shown on Metra's timetable posted at <https://schedules.metrarail.com/pdf/UP-N.pdf> (UP-N timetable). The weekday train leaves Kenosha at 7:08 am on weekdays and reaches Evanston (in the freight terminal district) at 8:11, 63 minutes later, making 12 intermediate scheduled stops. The distance between Kenosha and Evanston is 41.2 route miles. Without adjustment for dwell time at the stations, the train averages 0.65 miles per minute or 39 miles per hour.

24. UP reported to the STB for the third week of April average train speeds of 20.3 miles per hour for manifest trains and 23.2 miles per hour for system average, according to <https://www.stb.gov/wp-content/uploads/files/rsir/UP/UP%20Data%202025-04-16.xlsx>. Those are average figures that reflect a mix of the train-miles and time spent in Chicago and other cities and those in spent in less dense areas, where the reduced congestion likely translates into faster speeds.

25. The UP velocity figures also exclude terminal dwell time, according to <https://www.stb.gov/wp-content/uploads/UP-Methodology-EP-724-03.01.22.pdf>.

Since the Metra trains make interim stops (12 in the case of Metra 314), the difference in effective velocity is even greater. The less than two hours to traverse the entire UP-N Line from OTC/CPT to Kenosha should generally be equivalent or less than the average time to complete a local switch movement in downtown Chicago.

26. In this manner, the Lines over which Metra operates function individually as a terminal, and Metra's entire system, including the three UP Lines and the eight non-UP Lines, functions as and constitutes a unified terminal.

The UP Lines and the Metra System Are Part of the Combined Chicago Terminal Area for Freight and Passenger Rail Service

27. Metra's 11 lines form and function as a "hub and spoke system" emanating from OTC/CPT and four other major stations in downtown Chicago. The lines together serve the greater area and provide a means to travel to and from the downtown area and throughout the region.

28. Besides Metra's interconnection with UP's operations, the lines also interconnect with and/or cross five other Class I railroads, four Class II and Class III railroads, Amtrak, and Northern Indiana Commuter Transportation District.

29. In total, Metra has 34 at-grade rail-over-rail crossing diamonds with other railroads on its system, five of which are on the UP Lines, as listed below:

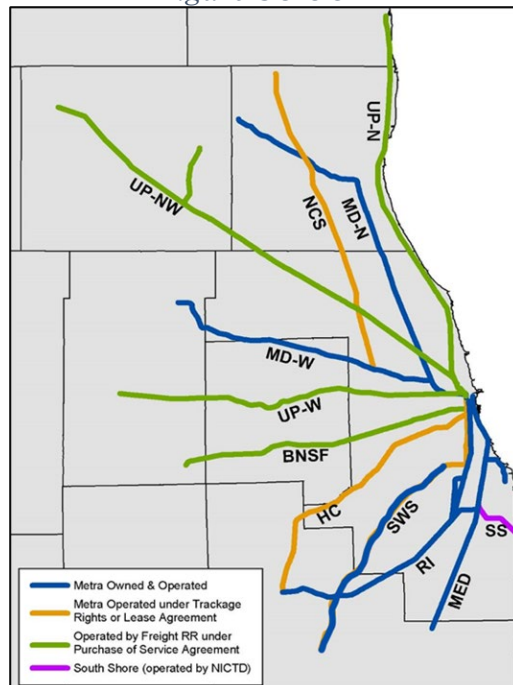
Figure SC-GG 1

34 TOTAL DIAMONDS										
34 - Diamond's Aren't a Railroaders Best Friend										
MED Diamond	RID Diamond	SWS Diamond	Heritage Diamond	BNSF Diamond	UP-W Diamond	UP-N Diamond	UP-NW Diamond	NCS Diamond	MD-W Diamond	MD-N Diamond
Kensington	16th Street	21st Street	21st Street		A2/ Western	A2/ Western	A2/ Western	A2	A2	A2
	EJE	Forest Hill	Brighton		Washington St.		Mayfair	Deval	B12	Grayland
	UD	Landers	Corwith				Deval	Leithton	Spaulding	Mayfair
		Ashburn	Lemoine				Barrington	Grays Lake		Rondout
		Chicago Ridge	Canal							Prairie Crossing
			Joliet							
1	3	5	6	0	2	1	4	4	3	5

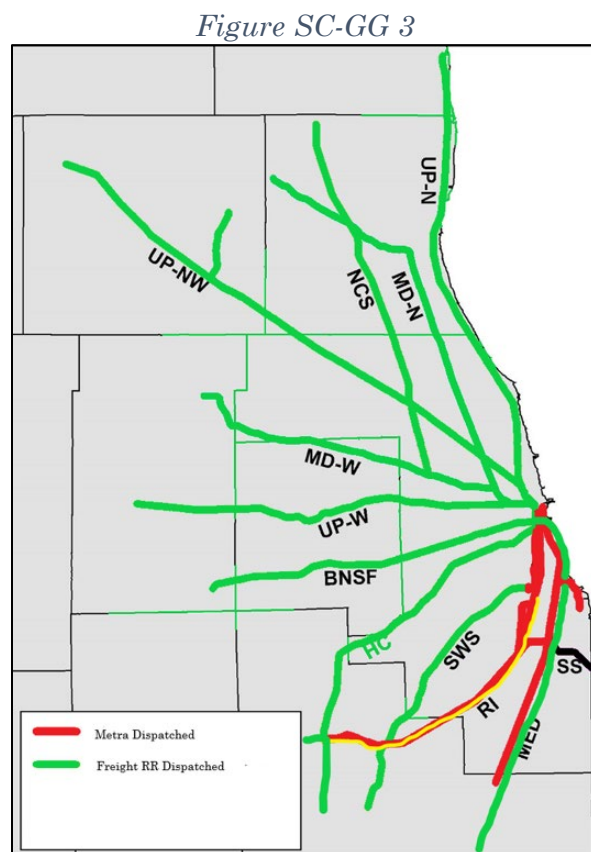
30. Operations over these diamonds require careful planning and coordination between railroads, and can create significant system delays without such coordination.

31. The majority of Metra's commuter rail services are conducted under a complex set of arrangements with other Chicago-area railroads, as identified on the schematic below:

Figure SC-GG 2



32. Metra does not have full rights to dispatch its commuter traffic on most of its lines, as shown on the schematic below:



33. In early 1999 the “New Year’s Blizzard” was one of the worst weather events ever to face the Chicago region, causing significant rail service problems throughout the area, exacerbated as rail carriers, unaware of the congestion building throughout the Chicago region, sent more trains into Chicago. The event impaired operations for months and highlighted the lack of communications and coordination amongst regional railroad participants.

34. Responding to requests from then STB Chairman Linda Morgan for initiatives to improve service performance in the region, the Association of American Railroads (AAR) created the CPG to study and recommend solutions to

the congestion issue. CPG is comprised of members of each Class I freight railroad servicing the Chicago region, plus area short line railroads, Amtrak, and Metra. CPG was organized at the direction of the AAR's Safety & Operations Management Committee, consisting of senior Chief Operating Officer-level railroad management, to facilitate improvements to rail operations throughout the Chicago region.

35. CPG studied potential improvements including improved signaling, expansion of main track capacity, and grade separation of some Metra operations from freight routes. It also authorized the development of a computer model to simulate freight and passenger operations in Chicago.

36. This initiative led to the establishment of CTCO in 2000. When establishing CTCO, CPG carefully included all Chicago region line-haul and switching freight carriers, intercity passenger carriers, and commuter carriers, recognizing the interrelated nature of all of the regional traffic operations, the historic design limitations of the regional network, and the lack of redundant infrastructure and facilities within that network.

37. CTCO consists of Metra, UP, BNSF, CSX Transportation Company, Norfolk Southern Railway Company, Canadian National Railway Company, CP, Belt Railway of Chicago, Indiana Harbor Belt Railroad Company, and Amtrak – together with the Illinois Department of Transportation, the Regional Transportation Authority, and the Chicago Transit Authority.

38. From the beginning CTCO's members have actively coordinated studies and operating data simulations to analyze operations in the Chicago region.

CTCO has investigated the root causes of traffic flow issues and recommended various projects and plans for major Chicago corridors that became part of the larger Chicago region CREATE Program. Such initiatives help the combined system infrastructure to be able to safely and efficiently support existing and planned traffic levels.

39. Besides planning, CTCO engages in constant oversight and monitoring of Chicago region operations to ensure the safe and efficient movement of all regional passenger and freight rail traffic. CTCO created CIROC, a high-tech, 24/7 command center that serves as a central clearinghouse of dispatching information for regional operations. The CIROC command center is where the collective passenger and freight railroads continually monitor real-time information of all rail operations in the region, fed from sensors placed across the lines. CIROC is located in the Metra dispatching center near Union Station, across-the-hall from Metra's CCF where Metra manages its train operations.

40. CTCO's core role is to monitor, evaluate, and direct member passenger and freight train movements to Chicago, through Chicago, and from Chicago, based on defined criteria, and work on solutions each day, each hour, and each minute to address operating issues and delays across the region. Each member railroad has a superintendent level senior manager assigned to CTCO.

41. CTCO employs the Clear Path System, developed by Railinc, an AAR subsidiary, to help plan, monitor, and execute the movement of trains through the Chicago Terminal (discussed below). Clear Path includes an on-line, integrated

train line-up system that all area railroads use to update information on train operations and to coordinate track, labor, and power resources at interchanges. CTCO also maintains a system for railroads to report incidents and problems.

42. CTCO members meet twice daily to plan, coordinate, and manage train operations, maintenance of way activities, temporary track restrictions, weather events, accidents, and other incidents that impact the combined system operations. CTCO issues a weekly maintenance of way plan drawing information from all member railroads, outlining planned actions for the upcoming week that may impact train operations. If an action will render a track unavailable for over four hours, railroads notify CTCO more than two weeks prior to the action, to allow CTCO to create a reroute matrix. Members also engage in regularly scheduled conference calls, in addition to multiple daily interactions coordinated by CTCO/CIROC, to coordinate and facilitate passenger and freight train movements.

43. Once a year, each railroad sends CTCO its annual plan for capital projects to allow CTCO to identify conflicting dates and help ensure that projects do not occur simultaneously, where possible. These plans for projects and dates are conveyed weekly and also featured on the members' twice daily conference calls.

44. CTCO also employs a terminal alert system, known as the Operating Conditions, to continuously monitor conditions across the combined systems. The Operating Conditions includes three alert levels, to help designate how railroads should proceed in certain congestion conditions, including reroutes according to an agreed-upon plan. For several years, CTCO has reported to the STB weekly average

terminal dwell in hours for 11 individual Chicago yards, an average of trains held for delivery to Chicago by each freight railroad, and changes in operating condition alert levels. The STB has posted the CTCO report for the week beginning April 20, 2025, at [https://www.stb.gov/wp-content/uploads/files/rsir/CTCO/Chicago%20Terminal%20\(AAR\)%202025-04-30.pdf](https://www.stb.gov/wp-content/uploads/files/rsir/CTCO/Chicago%20Terminal%20(AAR)%202025-04-30.pdf).

45. All CTCO's rules are included in the Chicago Terminal Operating Protocols Agreement (Protocols Agreement, often referred to as the OpCon Agreement). That Agreement established the framework and rules necessary to quickly identify and mitigate, to the degree reasonably practicable, current and potential operating conditions or events that would negatively impact rail traffic moving via the Chicago gateway through OpCon plan processes. The Protocols Agreement memorialized in one place the modified operating plans, interchange protocols, and other activities and rules previously agreed to by the members that were designed to increase efficiencies and minimize impacts to the greater Chicago terminal. A copy of the Protocols Agreement is included as Exhibit SC-GG 1 to this Statement.

46. The CTCO members also have agreed to a set of dispatching guidelines, known as the Chicago Train Operations Protocol Guidelines (Protocol Guidelines), a copy of which is included as Exhibit SC-GG 2 to this Statement. The Protocol Guidelines are designed to ensure the equal, flexible, and efficient handling of all trains of users and owners of the lines within the terminal. Trains are dispatched under the Protocol Guidelines based on a jointly developed operating

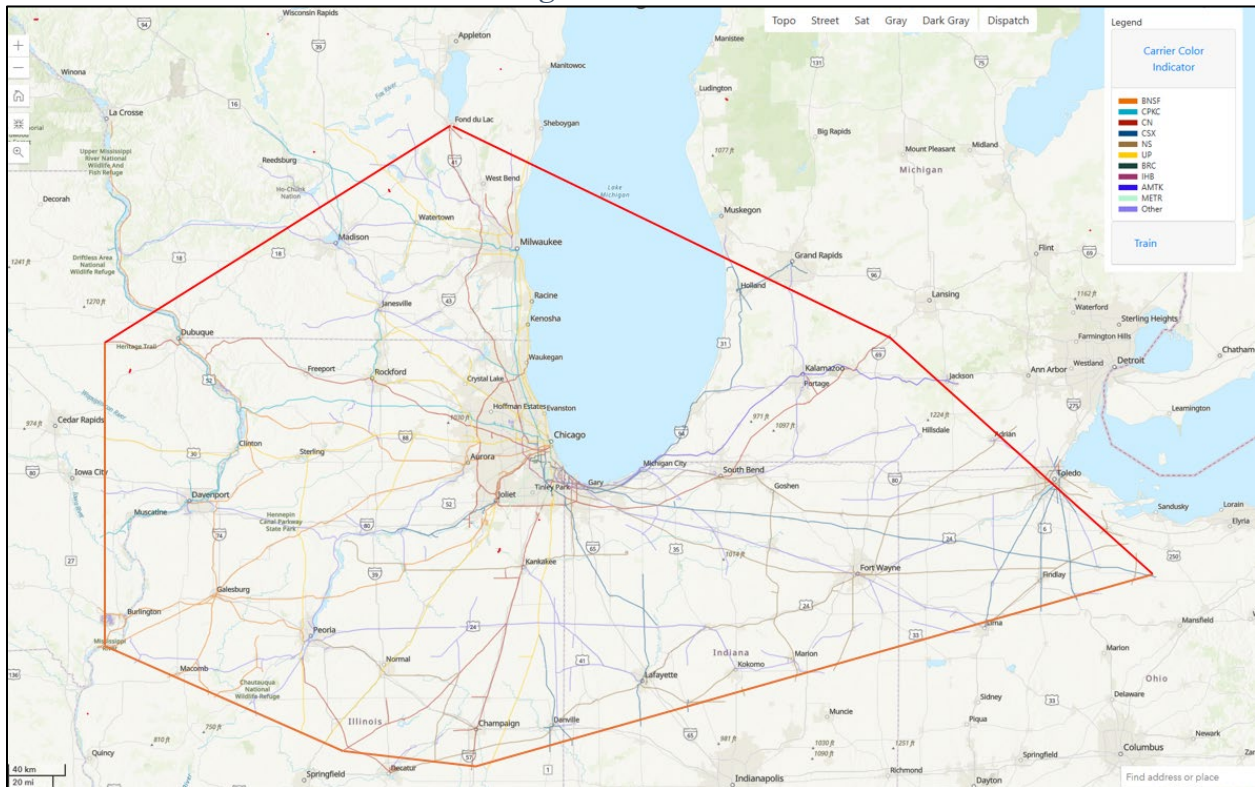
and service “Plan” governing service and train movements to ensure the most economical, efficient, and safe manner for movement of all trains of all of the members.

47. When establishing the Protocols Agreement and Protocol Guidelines, CTCO members carefully considered the geographic scope of coverage and how broadly the terminal needed to be defined for inter-railroad communication and coordination coverage in order to achieve the objective of economical, efficient, and safe movement of the members’ trains in and through the region.

48. In defining the terminal, the Protocols Agreement employs the “Outer Boundary/One Crew District” concept and terms to “define[] outer limits of the Chicago Terminal as it applies to OpCon.” In particular, CIROC monitors the flow of rail traffic up to one road crew district outside Chicago freight district for situations that can impact the complex and facilitates communication among railroads as situations arise. Specifically, Protocols Agreement at Section 8 specifies: “CIROC will monitor conditions and Vital Signs out to the first crew district outside of the City. These crew districts are defined by Railinc on the Clear Path Terminal. Reference Map as being within the Outer Boundary. Any qualifying trains held within the outer boundary will be considered in the Trains Held calculation for OpCon.”

49. The referenced Clear Path system reflects the Outer Boundary of the terminal as follows:

Figure SC-GG 4



50. The Members agreed to extend coordination and oversight out to the first crew district because, as specified in Section 8 of the Protocols Agreement:

The fluidity of the Terminal depends heavily on other factors, including . . . the ability to freely move trains into and out of the Terminal limits. It is for this reason that this Operating Protocols Agreement . . . extends further out to the Terminal’s primary feeder routes into and out of Chicago employed by line-haul carriers to the first road crew change point or outer boundary.

The Protocols Agreement’s outer boundary for the terminal encompasses the entirety of the Metra’s system, including the full length of the UP Lines, as shown in Figure SC-GG 4.

51. This “Outer Boundary” concept is further supported and reinforced in the Protocols Agreement’s definition and inclusion of “Corridors,” which Section 8 defines as “primary routes into, and/or through the Chicago Terminal.” The

Protocols Agreement clarifies the inclusion of these routes, because “[t]hese primary arteries, if operating under deteriorated conditions, will negatively impact fluid operations through the remainder of the Chicago Terminal.” The coverage also includes, “Feeder Routes,” defined in Section 8 of the Protocols Agreement as “[p]rimary routes flowing trains into and out of Chicago’s named corridors,” and “employed by line-haul carriers that generally extend to the first road crew change point.” Each of the UP-N, UP-NW, and UP-W lines in its entirety operates as an included Corridor and a Feeder Route under the Protocols Agreement.

52. Besides the CTCO, the Chicago Operating Rules Association (CORA), another organization comprised of the region’s freight and passenger operators (including Metra, Northern Indiana Commuter Transportation District, and Amtrak), also meets regularly and publishes an operating guide and rules in effect and governing all railroads conducting operations in the Chicago region. The CORA rules further help crews operate safely and efficiently across the system, making the whole Chicago area rail network safer and more efficient.

53. Metra participates in the CREATE program, initiated in 2003. As reflected in the founding Joint Statement of Understandings agreement, CREATE was established to enhance the collective railroad system and infrastructure in the Chicago metropolitan region, including commuter rail service on the UP Lines. CREATE projects reduce the many points of direct conflict between rail corridors, modernize and increase the capacity of rail facilities (track, signals, bridges, and yards), and connect corridors to each other more effectively. The projects foster the

smooth and efficient flow of goods and people within and throughout the region. A copy of the 2003 Joint Statement of Understandings Regarding the Proposed Create Project, which has been amended four times since that time, is included as Exhibit SC-GG 3 to this Statement.

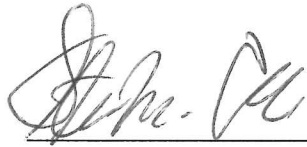
54. A recent CREATE regional project of direct benefit to Metra and its service on the UP Lines was CREATE's Union Pacific Third Mainline – Proviso Yard. The project involved construction of a 3.5-mile third main track on the UP-W Line, greatly enhancing operating flexibility and transit times on the busy UP-W line benefiting an estimated 60 daily freight trains involving five different common carrier railroads, and 59 daily UP-W Metra trains. A copy of the CREATE fact sheet for this project is included as Exhibit SC-GG 4 to this Statement.

55. The complexity of the rail network and operations in the Chicago region requires substantial coordination and integration among all the carriers, including Metra. The need for coordination extends beyond scheduling and dispatching on the individual lines where Metra shares track with UP and other carriers. The grade crossing of the different lines, the number of trains and their length, and the resulting train densities require regional integration mechanisms such as CTCO and CIROC so that the trains can operate safely and efficiently. No line, including Metra with its relatively short trains, can operate effectively in isolation. Metra's system, including the UP Lines, is necessarily integrated into the heart of Chicago's combined freight and passenger system.

56. The UP Lines over which Metra operates function as a terminal area both in isolation and as part of and within the larger unified passenger terminal district.

VERIFICATION

I, Steve M. Cork, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. I am also qualified and authorized to file this statement.



Steve M. Cork

Executed on May 5, 2025

VERIFICATION

I, Greg J.M. Godfrey, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. I am also qualified and authorized to file this statement.

A handwritten signature in black ink, appearing to read 'Greg J.M. Godfrey', written over a horizontal line.

Greg J.M. Godfrey

Executed on May 5, 2025

Exhibit SC-GG 1

CHICAGO TERMINAL OPERATING PROTOCOLS AGREEMENT

Chicago Terminal Intermediate and Class One Carriers
Effective: February 5, 2018
Last Updated: May 29, 2017

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Section 1 - Purpose and Objective

Critical levels, when reached, negatively impact train, transfer, and switching operations thus impacting performance of rail traffic moving to, from, or via the Chicago Gateway. Protocols outlined in this agreement are designed to re-establish operations in the event of any service interruptions. CIROC will issue advisories and revise the Terminal Operating Conditions (OpCon) as defined in this agreement. CIROC is charged with facilitating communication and implementing appropriate measured responses to challenges within the terminal in collaboration with Chicago Rail Carriers.

The Chicago Transportation Coordination Office (CTCO), with input from the CIROC, shall compile any lessons learned for continuous process improvement following completion of each winter season. Appropriate agreement revisions should be enacted to enhance the Terminal's ability to respond to future events. Safety Operations Management Committee (SOMC) will receive a summary report of any lessons learned and revisions incorporated in this document. All reports to be generated by the CTCO and Chicago Planning Group (CPG) shall be forwarded to SOMC via the Terminal Oversight Working Committee.

Section 2 - Safety Statement

Chicago Rail Carriers are committed to the safety and health of employees and the public. To fulfill this commitment, everyone must make safety and health the primary impetus of their daily routines. Personnel must take personal responsibility for their actions and adhere to safety policies, rules and regulations at all times. All employees must make a personal commitment to safety and perform their work in a manner that will prevent accidents to themselves, their fellow workers and the public.

No job is so important that we cannot take the time necessary to do it safely!

Section 3 - Escalation/Ownership

The structure of the Chicago Terminal Dispatch Centers and Command Centers is intended to resolve tactical challenges surrounding interchange trains at the lowest level possible. Escalation procedures are in place to ensure any extreme challenges that cannot be resolved at the lowest level have recourse to achieve resolution in the interest of protecting fluidity through Chicago Terminal. Appendix I outlines escalation points of contact to resolve tactical challenges during elevated operating conditions. Plan Owner Conference Calls will be a foundation for the escalation process to resolve challenges impacting multiple carriers across the Chicago Terminal.

Note: At a minimum, the CIROC shall update and disseminate Appendix I annually to ensure accurate contact information is available to all railroads.

Section 4 – Monitoring Conditions & Vital Signs

The CIROC is charged with the development, implementation, and daily oversight of the Chicago Terminal Operating Condition (OpCon). The CIROC will monitor Vital Signs and implement appropriate OpCon status changes as outlined in this agreement.

Monitoring Operating Condition.

Operating Conditions (OpCon). OpCon identifies the current status of the Chicago Terminal and/or its Components through continuous monitoring of key Vital Signs. In general, each OpCon identifier refers to the health of the terminal as follows:

OpCon Green: Fluid conditions with Vital Signs and key indicators falling within fluid operating parameters.

OpCon Yellow: Vital Signs and key indicators show Chicago Terminal and/or its Components are operating with some restrictions at less than fluid levels, but remain below any red line parameters.

OpCon Red: Vital Signs and key indicators show Chicago Terminal and/or its Components are operating above red line parameters falling into a critical operating status.

CIROC Monitoring. The CIROC will carefully monitor the status of the Terminal and initiate OpCon escalations as deemed appropriate per this agreement. The basis for any OpCon level setting will primarily come from the following sources:

- National Weather Service
- Automated Railinc Reporting:
 - Yard Inventory and Dwell
 - Corridor Metrics
 - Terminal Metrics
 - Trains Stopped
- Visibility Tools:
 - Track Views/Dispatch Screens
 - Railinc Terminal Reference Map
 - Railinc Train Line-up
- Carrier manual reporting:
 - Resource Availability
 - Trains Held / Plans to move
 - Incidents impacting
 - Re-routes
 - Reduced Capability
 - Other Issues impacting Terminal/Interchange

Vital Signs / Parameters impacting OpCon.

Within the first hours of elevated parameters, CIROC will facilitate coordination with respective command centers noting any plans and progress toward returning to fluid status.

Inventory, Trains Held, and Extreme Weather Conditions are the primary vitals currently outlined with specific OpCon triggers. Elevated OpCon parameters are established for each of these Vital Signs and will automatically trigger initiation of a Component or Terminal OpCon escalation.

Inventory Levels. Should a yard/Component remain at an elevated inventory level for 24 consecutive hours, CIROC will initiate the OpCon escalation process.

For purposes of this agreement, CIROC will use automated inventory levels as published on the Chicago Scorecard Report. 24 hours of elevated readings will be taken from three consecutive reports always starting with the AM report (1000, 2015, and next day 1000 report). Should any of the three reports reflect a change to fluid levels, the OpCon clock will be reset.

Inventory thresholds for OpCon Yellow and Red are outlined for each key yard on the Chicago Scorecard.

Trains Held. Should a yard/Component hold out two or more trains for greater than 12 hours as of the 1000 CT City Call, CIROC will initiate appropriate actions for the impacted Component(s).

CIROC will initiate OpCon Yellow Escalation on included trains meeting the following criteria:

- Interchange trains holding as a result of the receiving carrier's inability to take the train
- Scheduled trains or unscheduled bulk/unit trains held 12 hours past pre-defined spacing requirements

CIROC will follow protocols spelled out under Advisories in Section 6 for multiple trains classified as customer holds for a single customer.

Extreme Weather Conditions. Extreme weather conditions within Chicago Terminal will continue to be a crucial factor impacting rail operations. Extreme temperatures, high wind, heavy precipitation (snow, ice, rain, etc...) are the most prevalent conditions that have historically impacted operations within the Terminal. These conditions, as well as other phenomena, may require consideration for OpCon escalation and will be monitored and acted upon as needed.

National Weather Service forecasts shall be the sole data source for determining OpCon escalations for forecasted meteorological conditions. At a minimum, forecasts for the following conditions within 24 hours shall cause an OpCon escalation for the Chicago Terminal and its components in accordance with the defined Yellow and Red parameters. CIROC shall initiate conference calls with all Plan Owners daily in accordance with this agreement to review status of inbound storm systems. The following OpCon level will be established for any one of the conditions listed below:

OpCon Yellow:

- Forecast of at least 8 inches (up to 12 inches) of snow in a 24-hour period
- Accumulation of snow adversely affecting the rail operations in the Terminal with sustained winds greater than 25 mph.
- Forecast high temperatures between -5 °F and -19 °F.

OpCon Red:

- Forecast exceeding 12 inches of snow in a 24-hour period
- Accumulation of snow adversely affecting the rail operations in the Terminal with sustained winds greater than 35 miles per hour.
- Forecast high temperatures at or below -20 °F.

Other Conditions/Parameters. Conditions outside the scope of data collection capabilities may at times necessitate escalating OpCon status. Examples of such conditions include, but may not be limited to MoW, service interruptions, and weather phenomena. It will be the responsibility of individual Plan Owners to capture and report to the CIROC and all Chicago Plan Owners any operating challenges that may impact the ability to maintain fluid operations. The following list provides some of the most prevalent conditions that may occur:

Operating Conditions:

- Line interruptions (derailment, broken rail, closures, etc.)
- Signal/communication problems/system malfunction and/or degradation
- Planned interruptions (track maintenance, construction, rail/tie/ballast gangs etc.)
- Electrical outages
- Security related events

Network Health:

- Hump/production issues
- Trains/transfers staged for intermediate or direct delivery
- Resource availability (locomotives, manpower etc.)
- Departure performance – BRC, IHB
- Forecasted enroute (Railinc reports/Clear Path)
- Yard dwell
- Cross-town transit
- Other emergency situations impacting rail operations

Section 5 – OpCon Process

The ultimate objective under an elevated OpCon is to methodically return all Components of Chicago to fluid operating levels. The CIROC will continue to monitor the Terminal's health, engage carrier participation, and document recovery activities/results.

Initiating an OpCon Escalation.

Automatic Escalation. When qualifying OpCon parameters trigger an automatic escalation, CIROC will set the appropriate OpCon level for the Component(s) or Terminal and schedule a 1400 CT Plan Owners' Call.

Note: Where any discrepancies exist between automatic and manually derived CIROC information, automatic feeds shall prevail. Any grey areas/or discrepancies not specifically outlined in this agreement shall be resolved by the CTCO Director.

Manual Escalation. It remains the prerogative of any/all Plan Owners and CTCO Director to request a Plan Owners' call to discuss current conditions of the Terminal and/or its individual Components at any time. In these circumstances, not previously defined in this agreement:

- Individual Plan Owners retain authority to manually elevate their OpCon status for Components falling within their responsibility
- A Plan Owners two-thirds majority vote can escalate OpCon for the Terminal

Plan Owners should reach out to the CIROC directly should they wish to convene a Plan Owners' Call.

CIROC Communication. CIROC should keep the Plan Owners and CTCO up to date on any significant conditions in the City impacting Terminal fluidity.

Plan Owner/Stakeholder Communication. CIROC will send an email notification to all Plan Owners/OpCon Stakeholders regarding any initial Plan Owners' Calls and the parameters driving the call.

Command Centers Communication. At a minimum, CIROC will announce any OpCon changes on the City Calls and engage impacted carriers on their current/forecasted status.

Plan Owners Calls.

Plan Owner Conference Calls shall occur any time the Chicago Terminal and/or its Components experience deteriorated Operating Conditions as defined in this agreement. Additionally, any Plan Owner, and/or the CTCO Director may convene a Plan Owners' Call if in his/her opinion conditions within the Terminal warrant discussion and consideration by the group. Participants on these calls include, but may not be limited to: Plan Owners, Service Design, CTCO and CIROC. CIROC will be the primary facilitator on the call.

During an escalation to OpCon Yellow or Red, the goal is to communicate challenges and implement timely actions to restore fluid levels prior to initiating automatic countermeasures.

The first Plan Owners' Call and countermeasures may be waived for automatic Component level escalations as follows:

Deferral (Day 1): If impacted Plan Owner(s) have a solid plan for recovery and do not see a need to enact countermeasures, they may request waiving the 1400 CT Plan Owners Call by submitting a written summary of challenges, countermeasures in effect, and expected return to OpCon Green status.

Waiver requests need to be emailed to all Chicago Terminal Plan Owners and the CIROC by 1200 Noon CT. Upon receipt, plan owners shall review the submission and provide a response by 1300 CT indicating their approval or rejection of the request. Unless a majority of Plan Owners (5 or more) indicate approval to defer the call and actions, the Plan Owners' Call will remain as scheduled at 1400 CT.

Once a determination of the waiver request has been made, CIROC will send an email update on the call's status to the Plan Owners/OpCon stakeholders at least 30 minutes prior to the call. The Plan Owners' Call may only be waived once, on the first day of the escalation.

CIROC, Plan Owners, and Service Design/Network Operations will participate in a daily Plan Owners' Call immediately following the 1000 CT City Call until such time as OpCon Green is reestablished for all impacted Components. *(Note: The Day 1 Plan Owners' Call for automatic Component level escalations will generally convene at 1400 CT; all subsequent calls will immediately follow the 1000 CT City Call, unless otherwise specified).*

The primary focus of each Plan Owners' Call is to:

- focus on drivers pushing the OpCon escalation
- track commitments
- measure effectiveness of countermeasures in progress
- identify additional measures needed to restore fluidity to impacted areas
- set the appropriate OpCon level based on current condition

Plan Owner Voting/Majority Decision.

Should a Plan Owners' vote become necessary in the execution of this agreement, majority decision shall be defined as two-thirds majority of all eligible voting members unless otherwise specified in this agreement.

A plan owner may cast their vote under any of the circumstances delineated in this agreement as follows:

- Direct participation on the Plan Owners' Call
- Designated representative present on the Call, or
- Send email to CIROC and all Plan Owners indicating their inability to participate on the call and their position on OpCon status/activation of countermeasures

OpCon Escalation Timeline and Action Overrides.

Terminal Level Escalation.

Extreme Weather Conditions. CIROC will convene a Plan Owners' Call as needed to discuss current and forecasted weather conditions impacting the Terminal. In the event OpCon is automatically elevated in accordance with this agreement for Extreme Weather Conditions, Plan Owners will have an opportunity to defer countermeasures by a two-thirds majority vote at any time prior to a winter storm's projected arrival. If measured snow accumulation should meet the parameters specified for OpCon Yellow or Red, countermeasures must be enacted for the Terminal and/or impacted Components. For other extreme weather conditions, aside from snow accumulation, Plan Owners will make the decision to enact countermeasures with a 2/3rd Majority. *Note: Special Consideration should be made to enact countermeasures for any prolonged conditions.*

Multiple Deteriorating Components. Continuing deterioration of operating conditions across multiple Components will result in automatic escalation of the Terminal to OpCon Yellow or Red as outlined here:

OpCon Green: 0 - 3 Components at OpCon Yellow or Red

OpCon Yellow: 4 - 5 Components at OpCon Yellow or Red

OpCon Red: 6 or more Components at OpCon Yellow or Red

Should OpCon be elevated for the Terminal due to multiple deteriorating components, there will be no overrides to countermeasures as long as the Terminal is in an elevated OpCon status.

Other Conditions/Parameters. OpCon Level and countermeasure overrides will be determined by a two-thirds majority Plan Owner Vote for any conditions not identified specifically in this agreement. *See Other Conditions/Parameters (page 6)*

Component Level OpCon Escalation.

Manual Component OpCon Escalations. The OpCon status of a Component can be manually elevated with a request from the impacted Plan Owner and a Plan Owners' two-thirds majority vote. Should Vital Signs meet the criteria for automatic escalation for the impacted Component or the Terminal, the automatic escalation process will prevail as outlined in this agreement.

Automatic Component OpCon Escalations. For Component OpCon escalations enacted automatically by qualifying Vital Signs, countermeasures identified in the Action Plan Matrix (Appendix II) are triggered on Day 1 to take effect within 24-hours unless deferred as follows:

1st Possible Override (Day 1): Impacted Plan Owner(s) may unilaterally defer enacting countermeasures for the first 24 hours. To enact an override, the Plan Owner must outline their status, alternate plans and expected recovery to OpCon Green for the Plan Owners' group. This may be accomplished through email if the Plan Owners' Call is deferred or on the Day 1 Plan Owners' Call. *Also see Deferral (Day1) under Plan Owners' Call (page 8)*

2nd Possible Override (Day 2): Impacted Plan Owner(s) may request a Plan Owner vote to defer countermeasures for another 24-hour period. To request an override, the impacted Plan Owner(s) must outline on the (Day 2) Plan Owners' Call, their alternate plans and progress to return the impacted Component to OpCon Green.

3rd Possible Override (Day 3): If no other components are currently in an elevated OpCon status, the impacted Plan Owner may make a final request to the Plan Owners' group to defer countermeasures for another 24-hour period. To request an override, the impacted Plan Owner must outline on the (Day 3) Plan Owners' Call, their alternate plans and progress to return the impacted Component to OpCon Green.

If any specifically outlined parameters fail to return to normal by the (Day 4) Plan Owners Call, action items identified in the Action Plan Matrix (Appendix II) shall be triggered and must be implemented within 24 hours.

Automatic Component Escalation Timeline

CIROC will monitor Vital signs for elevated parameters and address with the applicable carriers as needed. If elevated parameters persist in accordance with this agreement, the CIROC will make the needed Plan Owner notifications and announce an OpCon escalation on the City Call.

Day 1 Actions: Vital Sign Parameters meet need to escalate Component(s) to an elevated OpCon

- CIROC sets appropriate OpCon level for qualifying components and provides appropriate notifications
- Plan Owners' Call scheduled for 1400 CT. Option: Impacted Plan Owner(s) may request Day 1 Plan Owners' call be deferred with agreement from Plan Owner group.
- Discuss current state, bi-lateral and actions needed (to be recorded by CIROC)
- Actions items/countermeasures triggered to begin in 24 hours unless deferred by the impacted Plan Owner(s).

Day 2 Actions:

- CIROC validates/level sets current OpCon status
- Plan Owners' Call following the 1000 CT City Call
- Discuss current state, bi-lateral and triggered actions taken/needed (to be recorded by CIROC)
- If actions were deferred Day 1, impacted Plan Owner(s) may request a 2nd deferral with a two-thirds majority vote of the Plan Owners.

Day 3 Actions:

- CIROC validates/level sets current OpCon status
- Plan Owners' Call following the 1000 CT City Call
- Discuss current state, bi-lateral and triggered actions taken/needed (to be recorded by CIROC)
- If actions were deferred Day 2, the impacted Plan Owner may request a 3rd deferral with a two-thirds majority vote of the Plan Owners if there are no other components currently in an elevated OpCon status.

Day 4 Actions:

- CIROC validates/level sets current OpCon status
- Plan Owners Call following the 1000 CT City Call
- Discuss current state, bi-lateral and triggered actions taken/needed (to be recorded by CIROC)
- If the Component(s) are still in an elevated OpCon status, mandatory action items/countermeasures are triggered.

Day 5 and Day 6 Actions:

- CIROC validates/level sets current OpCon status
- Plan Owners Call following the 1000 CT City Call
- Discuss current state, bi-lateral and triggered actions taken/needed (to be recorded by CIROC)
- Mandatory action items continue to be in effect until an OpCon status change takes effect

Day 7 Actions:

- CIROC validates/level sets current OpCon status
- Plan Owners Call following the 1000 CT City Call
- Discuss current state, bi-lateral and triggered actions taken/needed (to be recorded by CIROC)
- Any Component(s) in OpCon Yellow on Day 7 will be escalated to OpCon Red.
- Mandatory action items/countermeasures are triggered for OpCon Red to take effect in 24 hrs

Actions/Countermeasures.

In the event countermeasures are enacted for an elevated Operating Condition, all rail carriers agree to implement countermeasures specified in the Action Plan Matrix (Appendix II) within 24 hours.

The ultimate goal of these pre-determined action items is to reduce traffic by 15% for OpCon Yellow and 25% for OpCon Red.

The baseline comparison for the reduction percentage will be a 30-day running average. This will be applied to applicable Components as follows:

- Yards – reduction in car volume
- Corridors/Feeder Routes – reduction in headlight counts

Each carrier is responsible for ensuring plans are completed and documented to account for the reduction goals. While it is not mandated that every item listed on the matrix be implemented, it is expected and required of each carrier to enact sufficient remedial tasks to achieve the stated volume reductions. It is incumbent upon each delivering carrier to ensure sufficient protocols are available to achieve stated reduction objectives for each area of operation in which their respective companies are engaged.

It will be the responsibility of the delivering carrier to coordinate a response through collaboration with their interchange partners at the time of an OpCon escalation. If unable to achieve a viable plan should countermeasures be enacted, the burden shall not be placed on the receiving carrier to continue to accept normal traffic volumes. Rather it will be expected that the delivering carrier identify an internal method to achieve reductions.

Actions designed to improve the condition of the Terminal will be identified on the Plan Owners' Call. The participants on the call will relay these initiatives to their respective organizations for implementation. Each Plan Owner is ultimately responsible for ensuring corrective actions for their respective carrier address the conditions that warranted an elevated Operating Condition. This includes monitoring operations and following up with Service Design and applicable operating groups to ensure concurrence between departments and appropriate actions are being implemented. Plan Owners (or a designated representative) will participate on the daily Plan Owners' conference call for the duration of time Chicago Terminal or its Components remain in an elevated OpCon.

Adequate supply of resources applied to terminal operations is critical to ensure prompt, methodical recovery from any OpCon elevation. Plan Owners must remain cognizant of the need to maintain continuous supply of power, markers, and personnel to support the outbound programs. Particularly in the case of switching carrier operations in Chicago, failure to adequately supply outbound resources will negatively affect the overall Terminal recovery effort.

Further Escalation – OpCon Yellow to Red.

Conditions and Vital Signs may warrant an escalation from OpCon Yellow to OpCon Red. Further escalation should occur if:

- Any OpCon Red triggers are met for applicable vitals such as inventory and extreme weather conditions. *Note: Not all vitals have a pre-defined OpCon Red threshold.*
- Individual Plan Owner unilaterally escalates Components under their areas of responsibility
- A two-thirds majority Plan Owners' Vote
- Components and/or Terminal OpCon parameters have not returned to their fluid level threshold as of the (Day 7) Plan Owners' Call. OpCon Red reductions to be in place no later than Day 8.

Pre-defined action items for OpCon Red must be implemented within the next 24 hours of the upgraded OpCon level.

Exceptions to the OpCon Process.

Holiday Exceptions. Automatic triggers for inventory and trains held will not escalate a component into a higher OpCon status until 48 hours after the end of the holiday period, unless:

- Individual Component plan owners' request escalation and implementation of countermeasures.
- A Plan Owner or CTCO Director requests a Plan Owners' Call to discuss and vote on critical conditions impacting the Terminal.

De-escalation/Reduction of the Established OpCon.

Terminal De-escalation.

De-escalation criteria for Terminal OpCon will be dependent on recovery status. While no formal "cooling off" periods are established as part of the agreement, it is recommended that Plan Owners consider a 48 hour cooling off period between Red to Yellow and Yellow to Green to permit the Terminal to normalize at a controlled rate.

Plan Owners cannot override an elevated Terminal OpCon resulting from multiple deteriorating conditions. In this regard, the Terminal OpCon level is based solely on the number of Components experiencing a deteriorated condition per the key Vital Signs:

OpCon Green: 0-3 Components at OpCon Yellow or Red

OpCon Yellow: 4-5 Components at OpCon Yellow or Red

OpCon Red: 6 or more Component at OpCon Yellow or Red

OpCon de-escalation decisions outside of those controlled by deteriorated Multiple Components will be determined by a Plan Owners' two-thirds majority vote.

Plan Owners may also consider deactivating selected action items on a case-by-case basis as conditions warrant. Such requests must be presented to the Plan Owners during the daily Plan Owners' Call for consideration and a vote. Unanimous consent of all Plan Owners is required to approve any action item amendments.

Component Level De-escalation.

Each individual Component will de-escalate in accordance with the following criteria unless precluded by a Terminal OpCon Escalation as set by Extreme Weather Conditions or a Plan Owners' two-thirds majority vote majority vote.

All of the below parameters for each vital sign must be met for any OpCon Downgrade:

- **Inventory:**
 - Applicable inventory must be at the lower level for three consecutive scorecard reports after countermeasures have been enacted
 - If no countermeasures have been enacted, OpCon Green can be reset with two consecutive scorecard reports below their fluid level threshold.
- **Trains Held:** For any downgrade, applicable yards/Components should have taken any/all trains held out at the time OpCon was initially elevated and should not have any other qualifying trains held out for more than six hours with a firm plan and resources to take the train prior to 12 hours.
- **Other conditions:** No other current or forecasted conditions exist that would preclude a de-escalation. Such conditions not outlined in this agreement should be put to a Plan Owners' Vote.

Section 6 – Advisories

Advisories include significant issues and developing conditions that do not warrant a formal OPCON escalation, but still merit increased communication to impacted carriers in Chicago via an Advisory process to increase awareness. The intent is to provide carriers as much information as needed to plan their traffic and resources accordingly thereby mitigating any negative impact to Chicago operations.

Conditions below are the most likely conditions to warrant issuance of an advisory to Chicago Complex Plan Owners. CTCO Director, and/or CIROC may deem other conditions appropriate for advisory notifications. At a minimum, the following will initiate Advisory actions:

- **Trains Stopped**
 - One train stopped for greater than 24 hours
 - Three or more trains stopped for a single component, regardless of duration
 - Scheduled trains or unscheduled bulk/unit trains held 12 hours past pre-defined spacing requirements
 - Any train(s) holding that negatively impacts an identified Chicago Terminal Corridor
- **Customer Advisories**
 - Issued when a specific customer has two or more trains stopped for greater than 12 hours. This is only for trains holding due to a customer's inability to take a train and not a carrier's inability to deliver.

Actions

Procedures to follow in the event of an Advisory condition:

CIROC shall:

- Open a “Terminal Issue” in the Clearpath Dashboard Tool.
 - Update File as situation progresses/developments
- Announce the Advisory on the City Call and discuss with receiving carrier to ascertain any known issues and action plans
- Transmit email to all Plan Owners, CPG and CTCO concerning the Advisory:
 - Provide known details as provided by the Receiving Carrier
- Schedule Plan Owner Call, if requested by Plan Owners
- Provide Plan Owners, CPG and CTCO updates on the City Turnover as needed.
- Continue to provide updates and facilitate needed calls until Terminal issue is resolved and closed.

Plan Owners:

- No actions are required under the Terminal Advisory Program.
 - This is to alert Plan Owners to possible developing situations within Chicago
 - Allows informed decisions by each road regarding trains inbound to Chicago that may be impacted by the ongoing situation.
- Plan Owners may request of CIROC that a Plan Owner Call be convened
 - Further discuss and evaluate situation if deemed appropriate.
 - Request Manual OPGON protocol implementation in accordance with procedures in Section 5.

Section 7 – Rail Operations Coordination Center

In the event Terminal OPGON Yellow or Red Conditions are set per the terms of this agreement, CIROC shall announce activation of the Rail Operations Coordination Center (ROCC). This facility, co-located with the CIROC will provide a unique joint operating environment to assist with recovery efforts in the Chicago Terminal (“the Terminal.”)

The tasks assigned to this joint effort are as follows:

1. Enhance coordination between carriers for interchange activities;
2. Coordinate implementation and execution of appropriate OPGON countermeasures between carriers;
3. Improve cooperation between carriers to mitigate long-term impacts of degrading conditions to fluid operations through the Terminal.

CIROC shall activate the ROCC under one or more of the following conditions:

1. Weather conditions (forecast or actual);
2. At the request of Plan Owners.

Once activated, ROCC shall remain operational until the following conditions are met:

1. Plan Owners restore OPCON Green for the Terminal
2. Majority of participating Plan Owners* deem appropriate per discussions on 1400 Plan Owners' calls.

Participation in the ROCC will be at the discretion of each carrier operating in Chicago. While participation is voluntary, all carriers are highly encouraged to participate to maximize the effectiveness of the cooperative work environment.

**Participating Plan Owner is defined as a Plan Owner who maintains a representative in the ROCC.*

Section 8 - Key Definitions

Action Plan Matrix: The partners operating within Chicago expect to achieve prompt restoration of normal operations within the Terminal with the least possible impact to daily operations. The Action Plan Matrix contained in Appendix II identifies a series of pre-defined countermeasures/action items. These actions will be implemented in accordance with Section 5 of this agreement. Respective carrier Service Design teams are the primary members responsible for identifying remedial action items and assigning them to specific Components and/or the Chicago Terminal recovery plans.

Chicago Terminal: Chicago Terminal is a compilation of yards and corridors contained within the outer belt route of the CN (former EJ&E). The fluidity of the Terminal depends heavily on other factors, including commodity operations and the ability to freely move trains into and out of the Terminal limits. It is for this reason that this Operating Protocols Agreement also incorporates commodity operations and extends further out to the Terminal's primary feeder routes into and out of Chicago employed by line-haul carriers to the first road crew change point or outer boundary.

All carriers operating within defined limits of the Chicago Terminal are dependent on the Chicago Terminal Intermediate Carriers as well as bilateral relationships between themselves to affect interchange and to move overhead traffic through the Terminal.

Commodity: Common products/articles of trade. (i.e., Automotive, TTX Directives and Bulk Unit Trains).

Component: Defined as any one of the Key Yards, Corridors, Feeder Routes, and/or Commodities that make up the elements and operations associated with the Chicago Terminal.

Component OpCon Level: The OpCon status applied to each Component. All Components are considered to be at OpCon Green unless otherwise specified by the CIROC.

Corridor: Corridors are defined as primary routes into, and/or through the Chicago Terminal. These primary arteries, if operating under deteriorated conditions, will negatively impact fluid operations through the remainder of the Chicago Terminal. The core of Chicago's corridor system coincides with those identified in the Chicago Region Environmental and Transportation Efficiency (CREATE) Program. Additional routes have been added to the core network due to extensive interchange activity occurring with multiple rail partners. See Appendix II for a full list of Chicago Terminal Corridors.

Elevated OpCon: Refers to Terminal or Component when either in OpCon Yellow or Red.

Feeder Route: Primary routes flowing trains into and out of Chicago's named corridors. These are routes employed by line-haul carriers that generally extend to the first road crew change point.

Key Yard: Key Yards are defined as those major facilities dispersed throughout the Chicago Terminal that routinely accept, classify, and depart traffic originating from and/or departing to foreign trading partners. A significant percentage of daily operations at these facilities are impacted by traffic that is not exclusively controlled by the rail carrier having ownership of the yard from arrival to departure. Some yards, although significant in size, whose primary business operations center around traffic inventory exclusively operated by the proprietary road may not qualify as a Key Yard in spite of its inventory level. It will be the sole responsibility of the proprietary road to manage flow of traffic to, through and from these facilities. All Key Yards are identified on the Chicago Scorecard Report.

OpCon De-escalation: Refers to when the Terminal or Component is stepping down (de-escalating) from a higher OpCon level to a lower OpCon level. For example transitioning from OpCon Red to Yellow, Yellow to Green or Red to Green.

OpCon Escalation: Refers to when the Terminal or Component is advancing (escalating) from a lower OpCon level to a higher OpCon level. For example transitioning from OpCon Green to Yellow, Yellow to Red or Green to Red.

Outer Boundary/One Crew District: Terms used to describe the defined outer limits of the Chicago Terminal as it applies to OpCon. CIROC will monitor conditions and Vital Signs out to the first crew district outside of the City. These crew districts are defined by Railinc on the Clear Path Terminal Reference Map as being within the Outer Boundary. Any qualifying trains held within the outer boundary will be considered in the Trains Held calculation for OpCon.

Stakeholders: At a minimum, OpCon Stakeholders include CTCO, CIROC, CPG and Service Design. Upon request, carriers may have additional members added to the OpCon Stakeholder distribution list maintained by the CIROC.

Terminal OpCon Level: The OpCon status of the entire Terminal depicted as OpCon Green, Yellow or Red. An elevated OpCon to either Yellow or Red would require either an Extreme Weather Condition, a two-thirds majority Plan Owners' Vote, or four or more multiple deteriorating Components.

Vital Signs: Terminal and Component conditions and parameters monitored by the CIROC to determine the overall health of the Terminal. The primary vital signs capable of triggering an OpCon change include: high inventory levels, trains held and extreme weather.

Section 9 - Participants and Key Roles

Participating Carriers

The following carriers are signatory to this agreement:

AMTRAK	CSX Transportation
Belt Railway Company of Chicago	Indiana Harbor Belt Railroad
BNSF Railway	Metra
CN Railway	Norfolk Southern Railway
CP Railway	Union Pacific Railroad

Official representatives, including contact information, for each of the participating carriers is contained in Appendix I.

Key Roles

Safety and Operations Management Committee (SOMC): SOMC is the rail industry’s senior management committee. It is under the authority of this committee that the Chicago Terminal Operating Protocols Agreement is developed, implemented, monitored and managed. SOMC members, whose respective railroads operate in the Chicago Terminal, approve the Chicago Terminal Operating Protocols Agreement.

It is not intended that the SOMC group must approve amendments and/or changes to this plan. After initial approval, the Chicago Terminal Operating Protocols Agreement becomes a living document subject to revisions, modifications, amendments and other changes. Changes to the Plan may be promulgated by the CPG.

Chicago Planning Group (CPG): CPG reports to the Terminal Operations Working Committee of SOMC. The CPG provides management oversight and governance of the Chicago Transportation Coordination Office (CTCO). CPG is responsible for monitoring the activities and performance of the CTCO to ensure that all carriers in the Chicago Terminal receive equitable consideration to maintain a level “playing field” throughout the Terminal.

Chicago Transportation Coordination Office (CTCO): CTCO reports to CPG. The CTCO is responsible for the managing the agreement and making modifications as needed for approval by the CPG.

Chicago Integrated Rail Operations Center (CIROC): CIROC is part of the CTCO and therefore ultimately reports to the CPG. CIROC is responsible for the execution of this agreement. CIROC monitors the current and forecasted conditions and makes needed notifications on OpCon level setting and the coordination of Plan Owners’ Calls. CIROC coordinators host and facilitate the daily City Calls and Plan Owners Calls. They will record planned and executed actions for OpCon escalations.

Plan Owners: Plan Owners are defined as the most senior resident Operating Officer for each carrier that is party to the Chicago Operating Protocols Agreement. These individuals are assigned primary responsibility and accountability within their respective company for Chicago Terminal Operations. All Plan Owners are identified in Appendix I of this agreement. Plan Owners are responsible for executing OpCon remedial actions as indicated in Appendix II. Additionally, Plan Owners are authorized to defer actions associated with Automatic OpCon changes for the Chicago Terminal, and/or its Components in accordance with this agreement.

Service Planning & Design (Service Design): The Service Design Group is a collection of Service Design staff from all carriers that are party to the Chicago Terminal Operating Protocols Agreement. Service Design Groups have a key ownership stake in this agreement as they are critical to successfully identifying action items designed to maintain and/or quickly return the Terminal to OPCON Green. A critical Component of Service Design staff functions is effective communication with their respective counterparts on other rail properties to anticipate action items to be implemented should conditions within the Chicago Terminal deteriorate

The Service Design teams from each participating carrier to this agreement shall meet annually with the CTCO to review and update this document. This conference shall take place prior to the onset of winter conditions each year to ensure current and effective remedial actions are identified and disseminated to all Chicago rail carriers. Remedial actions shall be updated to ensure the most accurate and up to date opportunities are identified based on current year business expectations for each rail carrier. The outcome of this annual conference shall be an updated version of Appendix II made available to all Plan Owners, Service Design Teams and CPG. In addition to the annual meeting, regular reviews should take place concurrent with recurring Interchange Service Agreement (ISA) meetings taking place for the Chicago Terminal Operating agreements. During elevated operating conditions, impacted Service Design teams shall participate on daily Plan Owner conference calls as outlined in this agreement.

Appendix I – Escalation Points of Contact

The OpCon Contact for all key stakeholders is updated as needed and maintained in the CTCO SharePoint via Railinc. At a minimum, the contact list will be sent out once a year. CTCO/CIROC are responsible to provide contact updates to the CTCO Admin. Those needing access should make a request through their Railinc account.

Appendix II – OpCon Action Plan Matrix

The OpCon Action Plan Matrix is maintained in a separate Excel document in the CTCO SharePoint via Railinc. At a minimum, a copy will be sent out to all the key stake holders once a year. Service Design is responsible for providing changes/updates to their CTCO or the CTCO Director (if they do not have an assigned CTCO).

Appendix III – OpCon Change Process Flow Chart

An OpCon change process flow chart will be maintained as a separate Microsoft Visio document in the CTCO SharePoint via Railinc. The CTCO Director ensure any process flow charts are kept up to date and maintained in accordance with the criteria specified in this agreement.

Appendix IV – Document Control (Version History)

Current Version	Date	Superseded documents/descriptions/details
5.0	February 5, 2018	- Updated Section 6 - Inserted new Section 7 for Rail Operations Coordination Center
4.1	May 29, 2017	- Changed title language from Conditions to Protocols - Removed Trains Held Exceptions - Added Section 6 – Advisories with Customer Advisory Criteria - Changed previous Section 6 to Section 7 - Changed previous Section 7 to Section 8

Changes Since Last Version

Version	Date	Comments/Changes
4.0	Jan 4, 2017	- Escalation and De-escalation Plans Updated - Added Trains Held - Added CIROC - Holiday Exception modified - Added Table of Contents - Restructured format - Removed Contact List from primary document
3.1	Dec 1, 2015	- Automatic Component De-escalation Requirements - Expanded Action Item Matrix Definition
3.0	Jun 9, 2015	- Safety Statement - Structured Progressive Escalation Process - Holiday Exception - Manual Changes to OPGON Levels - Vital Signs - Plan Approval - Contact List
2.0	Nov 7, 2014	- Safety Statement - Structured Progressive Escalation Process - Holiday Exception - Manual Changes to OPGON Levels - Vital Signs - Plan Approvals - Contact Lists
1.0	Oct 31, 2014	Final DRAFT

Exhibit SC-GG 2

Chicago Train Operations Protocol Guidelines

Mainline Dispatching Operations

Scope: These protocols are guidelines that apply on all segments of Trackage used by all Rail Carriers operating within the Chicago Switching District.

Purpose: To ensure that Users and Owners trains are given equal dispatch without any prejudice, partiality, or discrimination in promptness, quality of service or efficiency, and in such manner as will afford the most economical and efficient manner for movement of all trains.

Train Operations: Trains will be dispatched on the basis of an operating and service "Plan" developed jointly through the Interline Service Management process with all Freight Rail Carriers operating in Chicago, taking individual service plans and designated routes into account. The Plan may be modified from time to time as traffic and service commitments require. Owners will be responsible for establishing train operating parameters over their line with respect to passenger operations windows, time required prior to HOS before entering line, Users acceptance of trains at end of line, etc. Users will provide current reliable information, including train arrival time and train characteristics, preferably through the Line-up System, electronic data interchange, or dispatching visibility of adjoining lines, sufficiently in advance to allow for efficient dispatching. Decisions as to terminal departure times, priorities for meeting and passing trains and destination terminal receiving times shall be made on a non-discriminatory basis.

Priorities: While it is understood that the Owner has full control of a line, all Rail Carriers agree that the dispatching of trains will respect the schedule of trains, as contained in the service "Plan". As day-to-day events may dictate, the Owner will dispatch trains consistent with the following train priorities:

- | | | |
|----------------|-----------------|---------------------------|
| (1) Passenger | (3) Automotive | (5) All Other Unscheduled |
| (2) Intermodal | (4) Merchandise | |

With respect to scheduled passenger service, trains will be dispatched to meet the schedules of the passenger service. Where passenger trains are operating outside of normal schedules, the lines will be dispatched consistent with the priorities listed above, and reasonable effort will be given to maintain the scheduled run-time of a passenger train across the line.

Entry to Owner's Trackage: At points where User's train enters Owner's track, entry will be provided by Owner based on the trains performance against it's schedule, and then, on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of all railroads. If operating circumstances make strict application of the principle difficult or uncertain, CTCO will work with Users and Owners to establish standards for determining sequence of entry to such Trackage. The Rail Carriers will communicate daily on any conflicts concerning entry to Trackage to gain resolution.

Review: Rail Carriers will review quarterly, through the ISM process, the performance of operations over the lines. During the ISM meetings, Rail Carriers will make adjustments bi-laterally with the Owners, where necessary, to operating plans over the lines to ensure that all lines are being utilized properly to optimize train operations in Chicago.

Modifications: The ultimate objective of these protocol guidelines is the equal, flexible, and efficient handling of all trains of Users and Owners within the Chicago Switching District, and these protocol guidelines may be modified at any time by mutual agreement between the Rail Carriers.

Exhibit SC-GG 3

JOINT STATEMENT OF UNDERSTANDINGS REGARDING THE PROPOSED CREATE PROJECT

PREAMBLE

The Chicago Regional Environmental and Transportation Efficiency Project (**CREATE**) (the Project) is a joint effort of (i) the Association of American Railroads (AAR), acting for and on behalf of The Burlington Northern and Santa Fe Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway Company (CP), CSX Transportation, Inc. (CSX), Norfolk Southern Railway Company (NS), Union Pacific Railroad Company (UP), and Commuter Rail Division of the Regional Transportation Authority (Metra), (ii) the Illinois Department of Transportation (IDOT), and (iii) the Chicago Department of Transportation (CDOT) (AAR, IDOT and CDOT are referred to collectively as the “Stakeholders”), to restructure, modernize and expand the freight and passenger rail facilities and highway grade separations in the Chicago metropolitan area (the “Region”) while reducing the environmental and social impacts of rail operations on the general public. The National Railroad Passenger Corporation (Amtrak) has been consulted in connection with the Project and may subsequently join in this effort, if it chooses to do so, on terms mutually agreeable to it and the parties hereto.

The Stakeholders recognize that the Region, as a place in the nation where six of the seven Class 1 freight railroads converge, is the predominant rail transportation hub of the United States. Nearly a quarter of the nation’s rail shipments move to or through the Region. The Region’s rail traffic (freight and passenger, including commuter) and highway traffic (commercial and personal) are all estimated to increase substantially in the future.

Over the past five years, the railroad industry has spent over \$1.2 billion benefiting the Region for capital replacement and infrastructure improvements. Further, with the creation of the Chicago Transportation Coordination Office (CTCO) and subsequent improvements in train planning and communications, the time required to move freight across the Region has improved significantly. However, to further improve velocity and to accommodate the growing demands placed upon it, including increasing intermodal traffic, railroad infrastructure in the Region must be enhanced. Expanded rail capacity will also remove the growth pressure on further highway improvements.

Freight transportation efficiency in the Region has a ripple effect on the movement of goods throughout the United States, into Canada and Mexico, and to other international destinations. Much of the traffic handled in Chicago moves to or from the Nation's coasts, including to or from every major seaport in the USA and Canada. Capacity and efficiency improvements in the Region are vital to both economic and security interests of the USA and, due to greatly increased international flows under NAFTA, also to the rest of the continent.

Chicago's growing passenger rail service is an integral part of the Region's and the nation's transportation services. It benefits the community by removing automobile traffic from roadways and, by virtue of removing automobile traffic, reducing automobile emissions. This, in turn, reduces air pollution across the metropolitan area. Existing at-grade rail crossings diminish the reliability, capacity, and growth capabilities of commuter and intercity passenger rail lines, especially on the south and southwest parts of the Region. The Project's proposed rail-over-rail grade separations will enable service to be added to these lines, improving reliability and reducing travel times. Proposed grade crossing improvements and rail/rail and rail/road grade separations also will improve safety.

The Project will include the development of five rail transportation corridors (the “Corridors”), as depicted in the drawing attached hereto as Exhibit A. Four of the Corridors (the Central Corridor, the Beltway Corridor, the Western Avenue Corridor, and the East-West Corridor) will be primarily for handling freight traffic in the Chicago metropolitan area. The Passenger Express Corridor will be primarily for handling commuter and interstate passenger traffic. The individual components (the “Components”) included in the Project are set out in the book entitled ‘CREATE: Chicago Region Environmental And Transportation Efficiency Project,’ dated June 6, 2003 (the “Plan”), which is incorporated herein by reference. The development of the Corridors will include the upgrading of existing track structure, the double-tracking or triple-tracking of certain lines, the construction of grade separations and flyovers, the installation of new or improved signaling, and various other additions and improvements totaling approximately 70 discrete projects within the Corridors. The Project also will include certain improvements (e.g., grade separation projects) on existing rail lines outside the Corridors.

This document is a Joint Statement of Understandings agreed upon by the Stakeholders as a basis for seeking funding for the Project.

I. Objectives

The Project has the following overall objectives:

1. To improve safety at proposed grade-separated locations and in rail operations;
2. To eliminate or to reduce many points of direct conflict between rail Corridors and the Region’s street and highway network, by grade-separating the crossing

points, and reducing conflicts at other crossing points by improving the velocity and flow of rail traffic;

3. To eliminate points of conflict between rail corridors, especially among the five principal Corridors, reducing congestion, delays, and adverse social and environmental impacts resulting from current inefficiencies, with points where Metra and Amtrak service are restricted by freight operations addressed in the Project by rail-over-rail grade separations;
4. To reduce fuel consumption by, and emissions from, both locomotives and waiting autos and trucks;
5. To limit the growth of traffic congestion on the Region's highways;
6. To reroute rail freight and intercity passenger operations off the rail corridor known as the St. Charles Airline, thereby reducing impacts of rail operations on the south lakefront and providing additional acreage for open space and other land uses;
7. To modernize and increase the capacity of rail facilities (track, signals, bridges, and yards) to more efficiently handle today's rail traffic and to meet the demands of future traffic increases;
8. To connect the Corridors to each other more effectively and to foster the smooth and efficient flow of goods and people within and through the Region, as well as to and from other parts of the United States, including international traffic moving through the country's major ports; and

9. To generally improve the efficiency and reliability of the Corridors to better serve national security.

II. Terms and Conditions

The Project is subject to the following overall Terms and Conditions, and the Stakeholders agree to pursue federal, state, local and private funding (in addition to the Railroads' funds)

("Additional Funding") on the basis of such Terms and Conditions:

1. The individual railroad members of AAR participating in the Project are BN, CN, CP, CSX, NS, UP, Metra, and Amtrak if it chooses to participate on mutually acceptable terms (collectively, the Participating Railroads). It is anticipated that the proposed Corridor construction will generally be on property owned by the Participating Railroads and the Switching Railroad subsidiaries of some of them, namely The Belt Railway Company of Chicago, the Baltimore & Ohio Chicago Terminal, and the Indiana Harbor Belt Railroad. The Participating Railroads agree to cause such Switching Railroads to take such actions as may be required to implement the Project on the terms set forth herein. In some instances the Project will require that third-party properties be acquired for the Project. The Participating Railroads and Amtrak will be the principal users of the Project lines.
2. The City of Chicago will participate in the Project through its Department of Transportation (CDOT), as will the State of Illinois through the Illinois Department of Transportation (IDOT).

3. In order to coordinate the Project and to assure compliance with governmental requirements, there will be a joint governance structure (Governance Structure), as agreed to by the Stakeholders.
4. The Project will include the construction and/or improvement of numerous individual Components, many of which have independent utility. However, the Project shall constitute one integrated Project that has been designed to foster improved commuter and intercity rail passenger service, improved street traffic fluidity through grade separations and other highway enhancements, a more efficient rail freight transportation system within and through the Region, with improved safety and security. Prior to or during implementation, it is anticipated that refinements in the planned Components will likely be necessary. However, Components shall not be added to or deleted from the Project or materially changed, without the unanimous consent of all Stakeholders.
5. Although the Participating Railroads will realize substantial benefits as a result of the Project, the general public will achieve the preponderance of the benefits through improved safety, air quality, security, and automobile commuting times, reduced truck congestion, continued growth of the Region's economy, and more efficient movement of rail freight across the nation and to Canada and Mexico and other international destinations. The Stakeholders agree that funding of the Project should be supplied by the various parties hereto in a manner commensurate with the distribution of these and other benefits. They further agree that substantial governmental funding will be necessary to implement the Project. IDOT and CDOT agree that the Project is a high priority for them and

commit to seek all necessary funding, and to expend such funding, if obtained, on the Project.

6. The preliminary estimated total cost of the design and construction of the Project is \$1.534 billion. Such estimate, which is based upon conceptual engineering, includes the estimated costs of environmental assessment and remediation, acquisition of third-party properties (or interests therein) required for the Project and relocation costs with respect thereto, and provision for project management, inflation and contingencies. The overall cost estimate will be refined as further information is developed. The Participating Railroads are willing to make a capital contribution over the construction period in an amount which reflects the benefits (as determined by the Participating Railroads and agreed to by CDOT and IDOT prior to the execution of this Joint Statement) they are expected to receive from the Project. Except as provided in paragraph 7 of this Section II, the parties hereto agree that the Participating Railroads' direct monetary contribution to the Project shall be \$232 million (Railroad Financial Contribution) based upon the agreement by the parties hereto as to the value of the expected benefits to the Participating Railroads. Except as provided in Section IV hereof, the Railroad Financial Contribution to the Project shall be contingent upon a binding commitment that establishes the availability, on terms and conditions satisfactory to the Participating Railroads, of all Additional Funding and of third-party properties necessary to complete the entire Project. If such commitment cannot be obtained by the targeted date for commencement of construction of the Project, changes in these Terms and Conditions, including changes in the timing for

funding the Railroad Financial Contribution and Component sequencing, satisfactory to all the Stakeholders, would be required for the Project to proceed. Additional Funding sources satisfactory to the Participating Railroads sufficient to pay for the balance of the then-current estimated project cost must be secured in order for the Railroads to be obligated to make the Railroad Financial Contribution. The Participating Railroads voluntarily are committing to contribute the Railroad Financial Contribution during Component construction for the benefits they will receive during the life of the Project, and they will own and maintain the railroad infrastructure Components once completed. Accordingly, it is the understanding of the parties hereto that the Railroad Financial Contribution to the Project shall be limited as stated above. Furthermore, the parties hereto do not intend that there be special user fees, taxes or other similar assessments targeted toward the Participating Railroads or their customers for the purpose of funding the publicly funded portion of the Project.

7. Since the Railroad Funding Contribution is limited to \$232 million, any increases in the estimated project cost developed as the result of final engineering and refining the estimated cost must be funded from Additional Funding; provided, however, that during the construction phase, the party having responsibility for construction of each Component as indicated on Exhibit B will be responsible for the on-budget and on-time completion of such Component in accordance with the plans and cost estimates based on final engineering, subject to events beyond the control of such party, including reasonably unforeseeable site conditions and *force majeure*. Additionally, an event beyond the control of such party would

occur when the lowest responsive and responsible public bid for a rail-to-rail grade separation project Component is above the final engineering estimate; provided, however, that the responsible party will, at the direction of the Stakeholders, use reasonable efforts to redesign the Component and/or to seek different assumptions reasonably acceptable to all Stakeholders that are incorporated into the design or staging of that Component. To the extent possible under applicable funding, savings on any Component (including unused contingency reserves), except on rail infrastructure Components of CN, may be used to offset overruns on other Components, such savings being first applied to Components in the same category (i.e., Railroad Components, Metra Components, and Public Components, all as further described in Exhibit B, which shall each constitute separate categories), and then subject to the approval of all the Stakeholders across such categories of Components. Because CN is the only Participating Railroad vacating its current route through Chicago and constructing a new route, CN savings, if any, on anticipated expenditures for rails, ties, ballast, signals, and related items on any of its rail infrastructure Components along the new Central Corridor route may be used only to offset overruns on such items on other rail infrastructure Components along the Central Corridor, and not for any other Project Component of any category. It is believed that the estimated Project cost includes sufficient contingencies to cover reasonably unforeseeable conditions, including *force majeure*. However, in the event of a cost overrun as the result of events beyond the control of the responsible party, including reasonably unforeseeable site conditions and *force majeure* that exceeds such

contingencies, additional funding from sources other than the Participating Railroads will be required.

8. The Stakeholders note that the success of the Project will be dependent upon public support, and agree to work cooperatively with each other, and with the appropriate federal, state, and regional officials, especially the other affected local governmental entities of the Region, to develop broad support for the Project. CDOT and IDOT shall take the lead in developing such public support.
9. To the extent that properties belonging to third parties need to be acquired (temporarily or permanently) in order to permit construction of the Project, CDOT and IDOT will take the lead in acquiring, and will acquire, such property (or interests therein), by voluntary transaction, condemnation or otherwise. All costs associated with such acquisition (including, without limitation, costs of land acquisition, permitting, environmental mitigation, and any relocation assistance) will be treated as costs of the Project. Notwithstanding the foregoing, if any Participating Railroad is liable for environmental mitigation of a pre-existing environmental condition on any such property, such Railroad shall be required to pay for such mitigation to the extent that it would be liable therefor in the absence of the Project; provided, however, that any additional mitigation costs resulting from the specific Project requirements or the Project construction shall be a Project cost. All such properties (or such interests) needed for highway-rail grade separation shall be retained by or transferred to the appropriate public entity. Any property (or such interests) so acquired that is needed for railroad rights-of-way or facilities shall be conveyed to the Participating Railroad(s) or Switching Railroad

that owns or controls such Corridor segment, subject to appropriate easements and other customary conditions and restrictions for publicly-owned highways and bridges, as a capital contribution to the Project (in addition to the Additional Funding). The Participating Railroads will convey to the public agency owning any highway or bridge, as a capital contribution to the Project (in addition to the Railroad Financial Contribution), appropriate rights, including easements or other property interests (subject to appropriate easements for Railroad access and other customary conditions and restrictions) in any Railroad property required for any project, highway or bridge that is to be publicly owned.

10. CDOT and IDOT shall also take the lead, with Participating Railroad assistance, in obtaining necessary environmental or regulatory approvals, and in performing any necessary environmental mitigation, as a cost of the Project. Notwithstanding the foregoing, if any Participating Railroad is liable for environmental mitigation of a pre-existing environmental condition on any property owned or controlled by a party hereto that is to be used for the Project, such Railroad shall be required to pay for such mitigation to the extent that it would be liable therefore in the absence of the Project; provided, however, that any additional mitigation costs resulting from the specific Project requirements or the Project construction shall be a Project cost. The Participating Railroads shall jointly or individually obtain any regulatory approvals needed from the Surface Transportation Board.
11. In accordance with the agreed Governance Structure, the Participating Railroads will be responsible for the design, construction and/or implementation of all Railroad Components, Metra will be responsible for design, construction and/or

implementation of all Metra Components, and IDOT or CDOT (or their designees) will be responsible for the design and construction of all Public Components. After completion of construction, each Component shall become the property of the party that owns or controls (via easement or otherwise) substantially all of the property on which it is constructed or installed, with the public highway portions or grade crossing safety overpasses of each grade separation owned by the appropriate public body. Each owner shall then be responsible for maintenance, operation, management and dispatch on its property.

12. CDOT and IDOT will be responsible for the Project Component entitled Viaduct Improvement/Grade Crossing Safety Program on Exhibit B hereto, receiving Project Component funding based upon an allocation to be approved by IDOT and CDOT.
13. In each case, the Participating Railroads, IDOT and CDOT shall each be permitted to review the design, construction and/or implementation of the Project Components developed by the other parties, with approvals needed from affected parties. Reviews must be accomplished in a reasonable amount of time, as determined by the Stakeholders, and approvals shall not be unreasonably withheld. In each case, the party responsible for construction shall ensure that construction does not unreasonably impair traffic flows, whether by highway or rail.
14. Sequencing of the Components shall be approximately as indicated on Exhibit C hereto, subject to such changes as may be agreed to by all the Stakeholders.

15. The Stakeholders acknowledge CN's need to access the CWI line for its Central Corridor operations and agree that the line shall be available for CN's use upon:
- (1) the satisfactory completion, in Metra and NS' reasonable judgment, of the Project's 74th Street and Englewood Components, or (2) prior to the completion of the Components, should Metra and NS determine in their sole and absolute discretion, after consulting with CN, to grant CN access to their respective properties. The Stakeholders further acknowledge the City's interest in the termination of rail operations on the St. Charles Airline. The Stakeholders agree that the termination of such operations shall occur upon (1) the satisfactory completion, in CN's judgment, of all elements of the Central Corridor, or (2) CN's determination, in consultation with the other owners of the St. Charles Airline, that the Central Corridor is completed to the level necessary for operation thereover.

III. Scope of Work

The scope of work for the Project is outlined in the Plan. CDOT and IDOT will coordinate a process to obtain comments from other governmental entities and civic organizations regarding the implementation of specific Components. Any changes in scope will require the approval of all Stakeholders.

IV. Additional Design

IDOT has agreed to contribute \$10 million and, upon IDOT's payment of such \$10 million, the Participating Railroads have agreed to contribute \$2.5 million, to developing more detailed engineering for the Components to be identified by the parties hereto within thirty (30) days of

the date hereof. The necessary documentation for such funding will be promptly executed by the parties hereto. Such contributions shall be credited against the respective parties' obligations hereunder.

V. Definitive Agreements

Except for the provisions of Article IV, which shall be enforceable upon execution of this Statement, the terms of this Joint Statement of Understandings will be implemented and become enforceable to the extent effectuated by definitive agreements, containing such terms and conditions as are mutually satisfactory to the parties hereto. If such definitive agreements have not been executed by December 31, 2004, this Statement shall be of no further force or effect.

VI. Counterparts

This Joint Statement of Understandings may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same statement.

VII. Effective Date

This Joint Statement shall be effective upon receiving the authorized signatures of each of the parties below.

VIII. Signatures

Illinois Department of Transportation: /s/ Timothy W. Martin
Date: 6/13/03

Chicago Department of Transportation: /s/ Miguel d'Escoto
Date: 6/13/03

Association of American Railroads: /s/ Ed Hamberger
Date: 6/13/03

Exhibit SC-GG 4

Union Pacific Third Mainline – Proviso Yard

May 2022

SCOPE OF WORK

This project constructed a 3.5-mile third main track on the UP Geneva Subdivision, including a new railroad bridge over Addison Creek, allowing for increased operating speeds on the connection between the Indiana Harbor Belt (IHB) and UP. Additionally, a new flyover connection from IHB to the UP was built to cross over the UP main line tracks and connect with the new third main track and Proviso Yard.

Control points were reconfigured at three locations and associated signaling for the new main track. The connecting track between the UP and IHB was upgraded to increase allowable speeds from 10 mph to 20 mph.

The Metra Berkeley and Bellwood passenger stations on the UP-West line were improved and pedestrian underpasses were constructed at both stations.

BENEFITS

The project increased the number of simultaneous train movements and routing options for passenger and freight traffic. Freight trains now have an additional track for mobility during Metra rush hour and avoid standing delays of 3 to 4 hours, which were common during the rush hour periods when Metra has priority. Previously, Metra had access to both main tracks for operation in both directions during peak periods, and freight trains were held stationary while waiting for route availability. Conversely, when freight trains proceeded but were unable to clear the location in the time allowed, Metra trains often experienced delays. Now, Metra trains can operate unimpeded on two main tracks, while freight trains utilize the third main line, and can operate around slow-moving freight trains entering or leaving Proviso Yard. Additionally, freight trains can traverse the area more freely. The new pedestrian underpasses at the Bellwood and Berkeley Metra stations facilitate safe and efficient movement of commuters from the parking lot to the center platform without crossing the tracks at grade.

Location

From near 25th Avenue west along the Union Pacific (UP) right of way to the west end of Proviso Yard near I-294
Melrose Park, IL

Daily Trains Affected

60 Freight Trains
(CN, CP, IHB, CSX, UP, NS)
59 UP-West Metra Trains

Communities Benefited

Elmhurst, Melrose Park,
Bellwood and Berkeley, IL

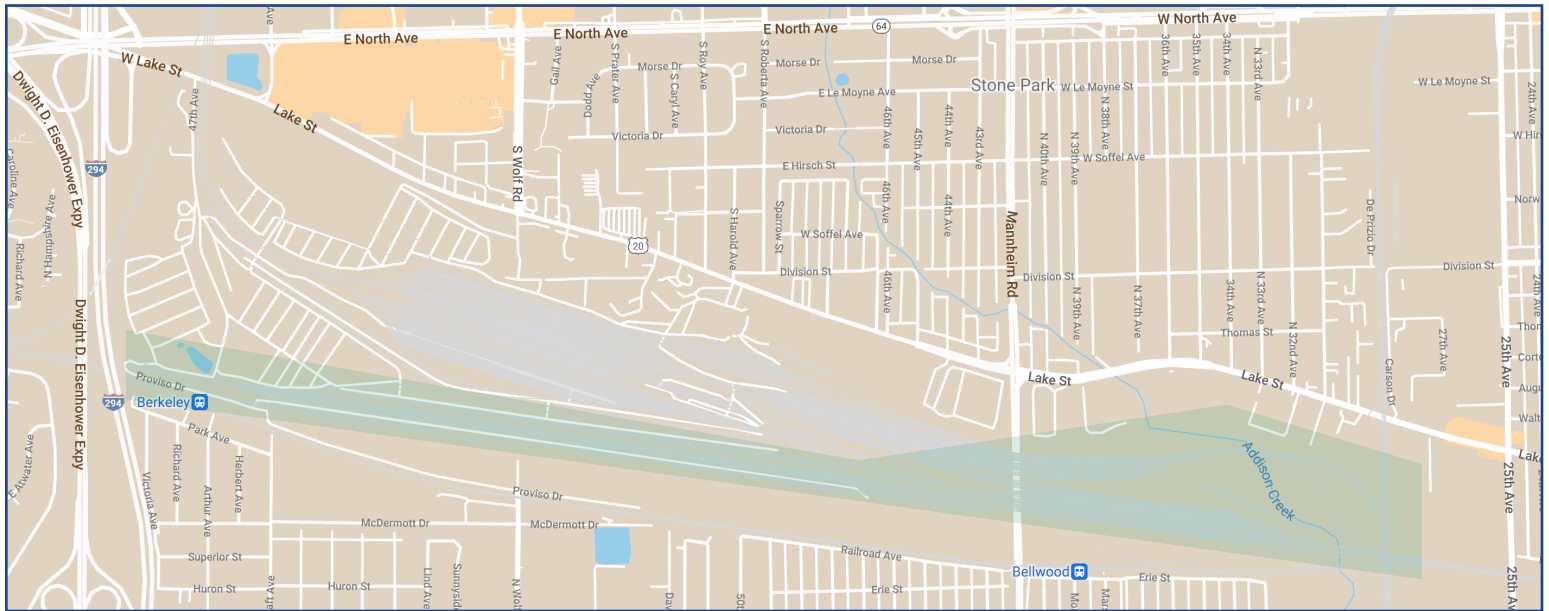
PROJECT PHOTO



PROJECT STATUS

Phase I NEPA – Preliminary Design	Phase II Final Plans, Specifications and Estimates	Phase III Construction
Completed	Completed	Completed September 2013

PROJECT LOCATION MAP



Verified Statement of
Joseph P. Schwieterman, PhD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36844

**COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY D/B/A METRA
– TERMINAL TRACKAGE RIGHTS –
UNION PACIFIC RAILROAD COMPANY**

**Verified Statement of
Joseph P. Schwieterman, PhD**

I am Joseph P. Schwieterman, PhD. I am a Professor in the School for Public Service, and chair of the Master of Public Administration degree at DePaul University, my employer for the past 34 years. At DePaul, I am also Director of the Chaddick Institute for Metropolitan Development, promoting effective urban planning, and co-director of the Sustainable Urban Development Master's Program.

My academic, research, and professional career in public policy has focused on public policy, transportation, and urban planning. I am president of the Chicago Chapter of the Transportation Research Forum, an active participant in Transportation Research Board programs, and past Board President of the Midwest High Speed Rail Association. I have published more than 40 technical articles and authored five books, including *Terminal Town*, an illustrated history of Chicago's train stations, airports, bus depots, and transportation systems since 1939, and *When the Railroad Leaves Town*, addressing the impacts on towns and cities in the years following rail line abandonment.

My studies, work, and interests have focused on Chicago regional planning and development, and the City's historically significant transportation system. I have been published in a number of journals and have contributed to various publications, including many addressing the legacy/history and future of planning in the Chicago region. A copy of my curriculum vitae is attached to this statement.

The purpose of my Verified Statement is to address the planning, development, functioning, and unity of the regional Chicago rail system with respect to freight, passenger, and commuter rail operations as they may relate to the Surface Transportation Board's (STB) consideration of whether the three lines of Union Pacific Railroad Company used by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) to provide commuter rail service constitute "terminal facilities" under 49 U.S.C. § 11102(a). I am not a lawyer, and my testimony does not specifically

address any legal questions or conclusions, although it may have a bearing on the STB's consideration of the issue and other issues arising in FD 36844.

Chicago as the Nation's Railroad Hub

In 1993, the National Railway Historical Society recognized and awarded Chicago's Union Station and the City of Chicago as the "Railroad Hub of the Nation." The plaque still stands [PROBABLY NEED TO CHECK], and includes the iconic poem, "Chicago," of celebrated Chicago poet, author, journalist, and Pulitzer Prize winner Carl Sandburg. The plaque reads:

Ever since the westward expansion of the frontier, Chicago has been the heart of the nation's rail network. Trains from the North, South, East and West arrive and depart from here.

Twenty-one railroads once served passengers from seven major terminals in Chicago:

UNION LA SALLE DEARBORN RANDOLPH

NORTH WESTERN CENTRAL GRAND CENTRAL

The tradition of serving the nation's travelling public is maintained by the National Railroad Passenger Corporation (Amtrak). Chicago Union Station is Amtrak's hub of inter-city operations and also serves as a major Metra commuter rail terminal.

"CHICAGO"

*Hog Butcher for the World,
Tool maker, Stacker of Wheat,
Player with Railroads and the Nation's Freight
Handler;
Stormy, husky, brawling,
City of Big Shoulders.*

*Carl Sandburg (1916)*¹

¹ <https://nrhs.com/programs/historic-plaque-program/awarded-historic-plaques/>.

As explained below, The North Western terminal has been replaced by the Ogilvie Transportation Center.

Planners and historians have long celebrated Chicago's transformative infrastructure system, regional in nature, including its well-known hub-and-spoke rail system. The rail system was purposely built to connect the region's and nation's passenger and freight traffic to the center of Chicago. It was also built big, always with a regional and national focus on intra- and inter-system connectivity.

Over a century ago, renowned planner Daniel Burnham, working with the Commercial Club of Chicago, founded in 1877 with a mission to promote the social and economic vitality of the Chicago metropolitan area, prepared the *Plan of Chicago*.² The so-called "Burnham Plan" is a landmark document in urban planning history that helped shape Chicago's infrastructure and landscape.

As urban historian Carl Abbott correctly notes, The *Plan of Chicago* is the defining document of an era that extends from the 1880s to the 1920s, when "public and private interests coalesced around efforts to integrate the sprawling metropolis."³ Daniel Burnham's iconic expression, "make no little plans," applied a bold new vision to the future of the Chicago region, defined by a regional approach to planning, growth, and development.

The "Burnham Plan" envisioned a regional infrastructure of rationalized railroads, new highways, and regional parks that anticipated population growth and required elements to support that growth. As Carl Abbott notes: "The plan knit downtown and neighborhoods, city and suburbs and surroundings, to a distance of 60 miles. It was to be implemented with public investments that would order and constrain the private market. The plan took the regional booster vision of the nineteenth century and transformed it into a concrete form and format for shaping a vast but functional cityscape."⁴

As Burnham had the foresight to pronounce: "From Kenosha on the north, around to Dekalb [sic] on the west, and thence to Michigan City on the south, all roads lead to Chicago, and this entire region might well be included in a metropolitan area."⁵ In fact, the Chicago Metropolitan Statistical Area as it exists today encompasses that very area, as reflected in *Figure 1*:

² Daniel D. Burnham, *Plan of Chicago* (1909).

³ The Chicago Historical Society, Encyclopedia of Chicago, Heritage, <http://www.encyclopedia.chicagohistory.org/pages/300009.html>.

⁴ The Chicago Historical Society, Encyclopedia of Chicago, Carl Abbott, *Heritage*, <http://www.encyclopedia.chicagohistory.org/pages/972.html>.

⁵ *Ibid.*

Figure 1⁶



The Chicago-Naperville-Elgin, IL-WI-IN MSA includes Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will counties in Illinois; Lake, Porter, Jasper, and Newton counties in Indiana; and the Wisconsin county of Kenosha. The MSA has a total population of nearly 10 million, making it third among 67 MSAs.⁷

The Burnham Plan focused on the Chicago hub-and-spoke railroad transportation system, along with a radial system of encircling highways and improved railroad terminals and lines. It envisioned rail lines sharing their tracks through Chicago and for merging passenger rail into a smaller number of larger stations, to address congestion at the City core. While not all of Burnham's vision was realized, much of it was accomplished, with the consolidation of passenger stations, the coordination of passenger and freight rail operations, and the movement of freight rail yards away from the city center.

⁶ Figure 7 is taken from *Priority Climate Action Plan for the Chicago Metropolitan Statistical Area* (2024), p. 16.

⁷ *Ibid.*

As explained by Professor Conzen:

Chicago in 1950 was at the height of its power as the railroad center of the United States. Fully 37 long-distance railroad lines, operated by 21 independent railroad companies, fanned out from Chicago in all landward directions, connecting with all corners of the nation and the settled portions of Canada. This was the “pay-off” for the efforts of the city's business leaders a century before to ensure that practically all trunk railroads passing through northeastern Illinois terminated in the city of Chicago. One local corporation, the Elgin, Joliet & Eastern Railway, was later formed to create a huge belt line that circumnavigated the metropolitan area, handling traffic between locations on the periphery and diverting some through traffic around the congestion of the urban center. Shown but not individually identified are numerous short lines within the urban area built to exchange freight between the trunk railroads and to service metropolitan industry.

Ibid.

The Downtown Stations Constituting Chicago’s Railroad Hub

A significant amount of the history of the Chicago rail stations is reflected in my book *Terminal Town*.⁹ From the beginning of the twentieth century through the tumultuous era of passenger-train elimination in the late 1960s, the City of Chicago had six large stations, sometimes referred to today as “the Big Six,” often individually referred to as “terminal stations,” “terminal buildings” or, shorthand, “terminals,” that were the end or terminus points of almost all passengers arriving into the metropolitan region for more than 40 years.¹⁰ This was twice as many as any other large American city. Union Station has long offered one of the largest amounts of connecting opportunities for rail passenger service of any station in America. Four railroads served the facility in 1942, providing service to 43 of the country’s 100 largest cities, and it also has long had a commuter-train network.¹¹

Chicago real estate leader Charles Nichols described these hub stations as “the mouths that fed” the region in a speech to commercial leaders in the 1920s. In 1928,

⁹ Joseph P. Schwieterman, *Terminal Town* (2014).

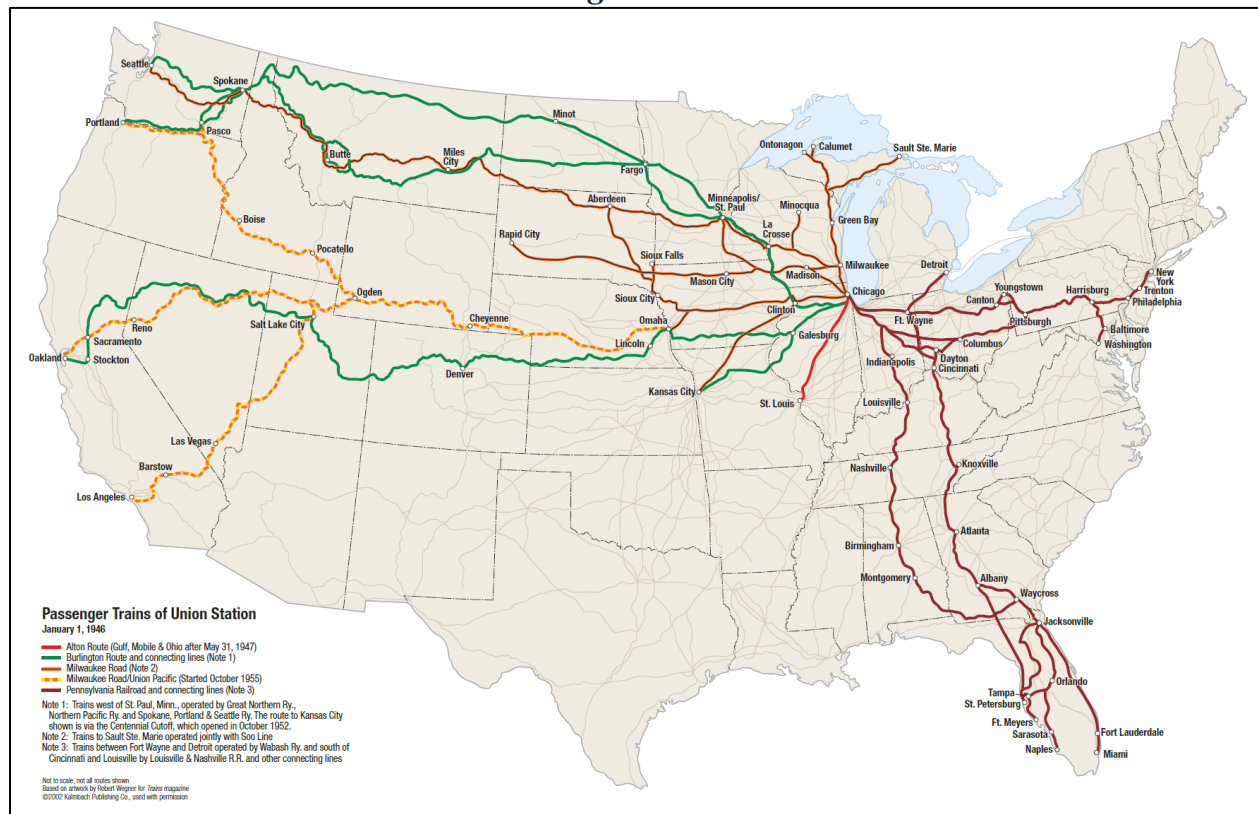
¹⁰ *Ibid.*, p. 7. Note that the referenced Randolph Street Station, known as Millennium Station since 2006, might be considered the seventh “big” terminal station of the early-to-mid twentieth century. This station has long served South Bend, Indiana, a distance of around 90 miles, and offered convenient connections to Central Station’s long-distance trains.

¹¹ *Ibid.*, pp. 48-49.

these stations originated and received more than 440 intercity trains and hundreds of commuter trains, operated by 17 railroads.¹²

In *Terminal Town*, I depict the labyrinth of routes from Chicago Union Station in 1946, which took passengers directly to more U.S. cities than from any other railroad station in the country, shown below in *Figure 1*:

*Figure 3*¹³



C&NW/UP's Passenger Rail Legacy

One of the premier intercity Big Six stations was the North Western Terminal, operated by Chicago & North Western Railway (C&NW), a system acquired by Union Pacific Railroad Company (UP) in 1995. The C&NW demolished and replaced the North Western Terminal's head house in 1983-84 with today's Ogilvie Transportation Center (OTC) on the lower level of a modern, 32-story office building.¹⁴ Through World War II and into the early postwar era, C&NW originated and terminated more intercity trains in

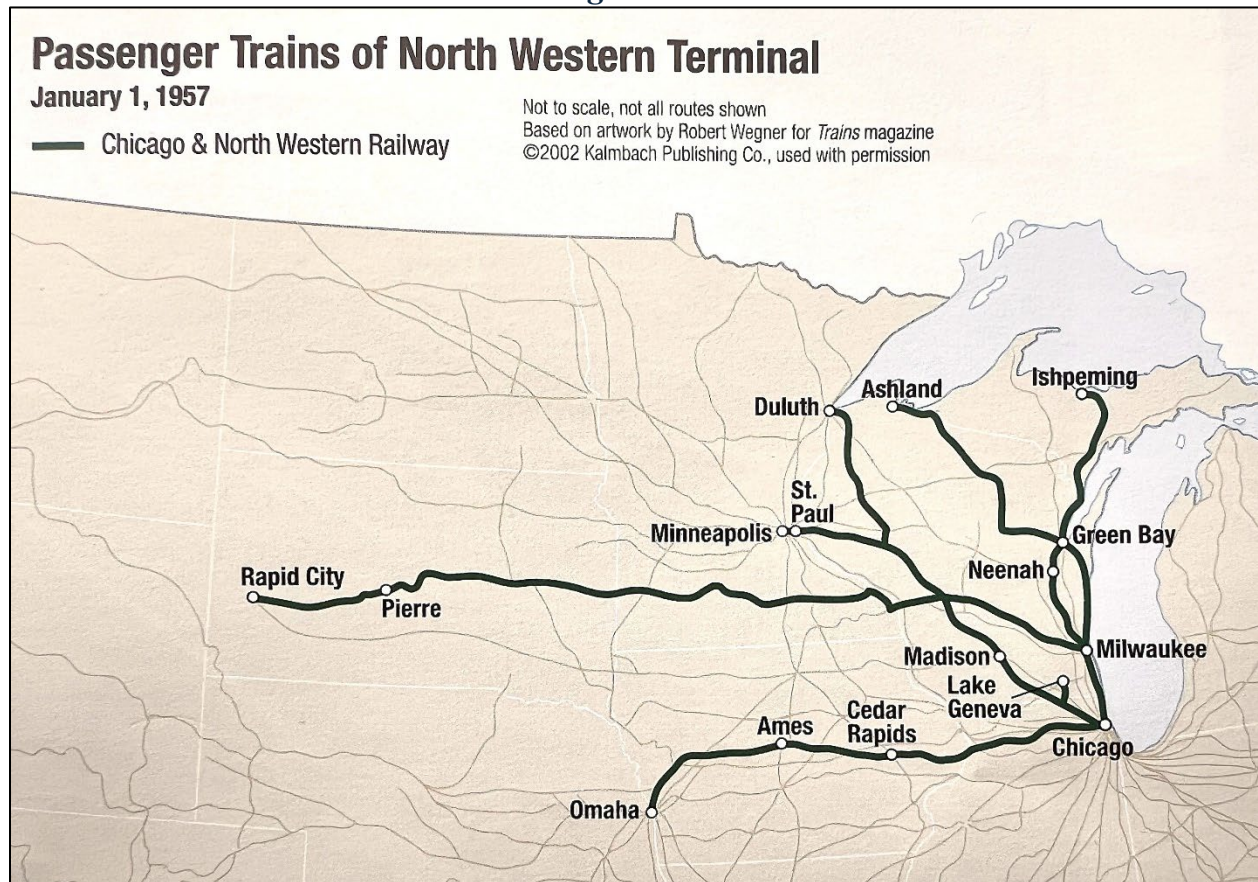
¹² *Ibid.*, p. 7.

¹³ *Ibid.*, pp. 50-51.

¹⁴ *Ibid.*, pp. 40-45, <https://metra.com/about-metra> (Union Pacific North).

Chicago than any other railroad and focused on service to a diverse spectrum of small and medium-sized towns,¹⁵ as reflected in *Figure 4*:

*Figure 4*¹⁶



As reflected in *Figure 3* and *Figure 4*, all of the nation's railroad lines fan into, and start and end in Chicago.

The three UP commuter lines connecting to OTC are UP-North (UP-N), UP-Northwest (UP-NW), and UP-West (UP-W). Those lines have stood the test of time, and grown in importance.

¹⁵ Joseph P. Schwieterman, *Calculations of Direct Air, Bus and Rail Service from Chicago to other Major U.S. Cities* (1942-present) (2013). Prior to termination of its agreement to handle UP trains east of Omaha in 1955, C&NW also had direct service to the three largest West Coast markets – Los Angeles, the San Francisco Bay Area, and Seattle-Tacoma, as well as Boise, ID, Cheyenne, WY, Las Vegas, NV, and Salt Lake City, NV.

¹⁶ *Terminal Town*, p. 41.

- The UP-N Line, which started as the Chicago & Milwaukee in 1854, was leased by C&NW starting in 1866 and bought outright in 1883.
- The UP-NW Line, which started as the Illinois & Wisconsin in 1854, became part of C&NW when that system was formed in 1859.
- The UP-W Line, which began as the Galena & Chicago Union in 1848, became part of C&NW system in 1864.¹⁷

As explained above, the Burnham Plan emphasized the regional importance of the connected areas, from Chicago to Kenosha to the North, to DeKalb to the West, and to Michigan City to the South. Each of the UP-N, UP-NW, and UP-W Lines was designed and built within this region, indeed, the MSA boundaries, in part, are likely heavily influenced by the end points of the three lines, and each of the three end points is within the Chicago MSA. For example, service to Kenosha, the end of the UP-N line, commenced in the 1850s, and grew to seven daily trains in each direction by 1869.¹⁸ The UP-NW Line initiated passenger train service in 1854 on the same routes that exist today, and by 1874, eight trains ran daily in each direction.¹⁹ The UP-W Line started service in 1848, and included passenger service almost from the inception of its service.²⁰

In his authoritative book on the history of the Chicago & North Western Railway System, Professor H. Roger Grant described the operations of the three lines as follows:

For generations, the North Western operated a large-scale commuter service; three suburban lines converged on downtown Chicago, linking the Loop district with more than 70 commuter stations. The northern route, known as the Milwaukee Division, served such lakeside suburbs as Evanston, Highland Park, and Lake Forest. Some commuters traveled as far as Kenosha, Wisconsin, 52 miles from the Windy City. The northwest line, called the Wisconsin Division, reached Arlington Heights, Mount Prospect, and Barrington. This was the longest artery, with riders coming from Harvard, 63 miles from Chicago, and Williams Bay, Wisconsin, 77 miles distant. The western route, the Galena Division, connected Chicago with such stations as Elmhurst, Glen Ellyn, and Wheaton. Geneva, 36 miles distant, was the western terminal.²¹

¹⁷ <https://metra.com/about-metra> (Chicago & North Western).

¹⁸ <https://metra.com/about-metra> (Union Pacific North).

¹⁹ <https://metra.com/about-metra> (Union Pacific Northwest).

²⁰ <https://metra.com/about-metra> (Union Pacific West).

²¹ H. Roger Grant, *The North Western* (1996), p. 201 (citing *Chicago Daily News*, Dec. 20, 1957).

It is important to emphasize that core freight traffic continues to operate over the integrated Chicago rail system, even if some of the intercity freight traffic has been disbursed to short lines and away from the City core, where heavy industry no longer exists. Almost 25 percent of the Nation’s freight rail traffic originates or terminates in Chicago.²² Northeast Illinois has 10 operating common carrier freight railroads, along with 13 switching and terminal railroads, as shown in *Figure 5*:

*Figure 5*²³

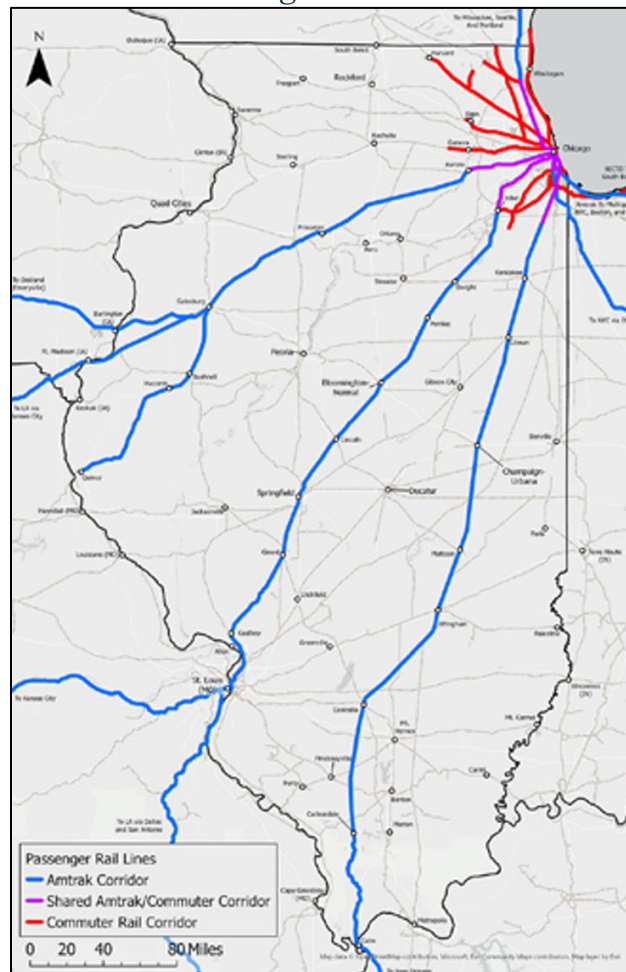
Northeastern Illinois freight railroads, 2023					
Class I railroads	Reporting Mark	Railroad Name	Switching and terminal railroads (Class III)	Reporting Mark	Railroad Name
	BNSF	BNSF Railway		AVRR	Ag Valley Railroad
	CN	Canadian National Railway		BJRY	Burlington Junction Railway
	CPKC	CPKC		BRC	Belt Railway of Chicago
	CSXT	CSX Transportation		CCUO	Chicago Chemung Railroad
	NS	Norfolk Southern		CERR	Cicero Central RR
	UP	Union Pacific Railroad		CJR	Chicago Junction Railway
				CLCY	Chessie Logistics Co.
				CPRR	Chicago Port Railroad
				CRL	Chicago Rail Link
				CSPX	Chicago, St Paul & Pacific Railroad
				IHB	Indiana Harbor Belt Railroad
				MWRD	Metropolitan Water Reclamation
				SCIH	South Chicago & Indiana Harbor
Class II railroads	IAIS	Iowa Interstate Railroad			
	WSOR	Wisconsin and Southern Railroad			
Class III railroads	CSS	Chicago, South Shore, and South Bend Railroad			
	IR	Illinois Railway			

Chicago’s passenger (both Amtrak intercity service and Metra’s and Northern Indiana Commuter Transportation District’s South Shore Line commuter rail services), are integrated into this system. Figure 6 shows the active passenger rail lines in Illinois, including the Chicago region:

²² Railinc, An Introduction to Class 1 Railroads (Mar. 2023), <https://public.railinc.com/about-railinc/blog/introduction-class-i-freight-railroads>.

²³ Chicago Metropolitan Agency for Planning, Regional Freight System Assessment, Phase 1 (Mar. 2025 Draft for Stakeholder Review). <https://engage.cmap.illinois.gov/28148/widgets/97089/documents/66290>.

Figure 6²⁴



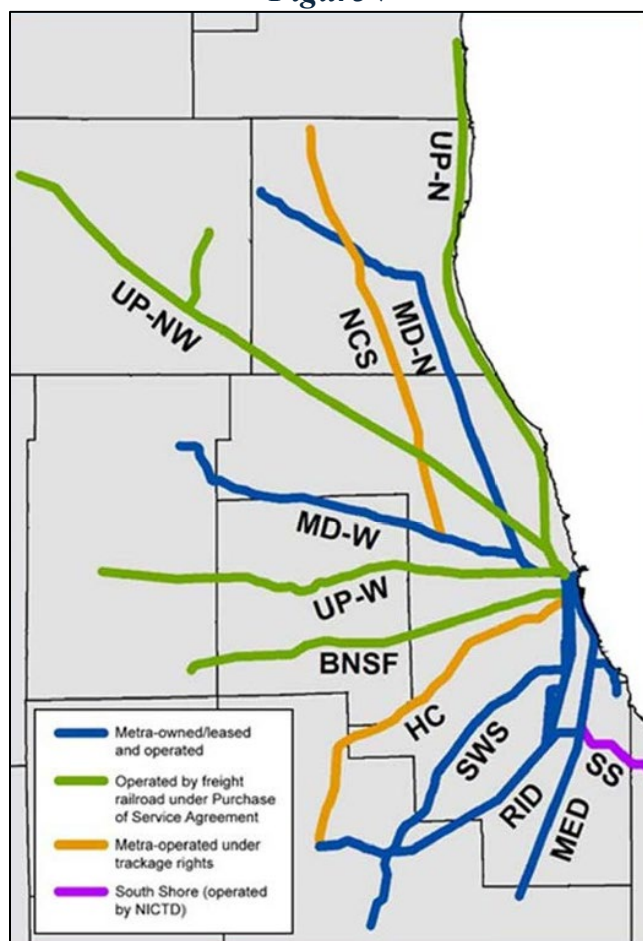
Metra has 11 rail lines serving the Chicago MSA with 243 stations over 11 routes totaling nearly 500 route miles. It is one of the largest and most complex rail systems in North America, with a service area encompassing more than 3,700 square miles. It operates over and across the freight railroads systems, including, as mentioned, UP, whose lines are a core component of Metra's passenger service. Metra also intersects with Amtrak.²⁵

Metra's system and line operations (including references to host railroads) are reflected in *Figure 7*:

²⁴ Illinois Department of Transportation, *Illinois Rail Needs Assessment Final Report* (July 2022), p. 71, https://idot.illinois.gov/content/dam/soi/en/web/idot/documents/transportation-system/fact-sheets/ilrna_final_report_appendices_interactive_final_072522.pdf.

²⁵ <https://metra.com/about-metra>.

Figure 7



It is remarkable that Metra is able to operate a reliable service despite its interface with freight railroads and other passenger rail operators in the most complex rail hub in North America. No other commuter railroad in the United States has as complex and coordinated interface with freight railroads as Metra. As of 2018, more than 1,300 commuter, freight, and Amtrak trains operated over Chicago-area tracks each weekday, and those numbers have grown, requiring significant coordination and cooperation from all operators to successfully run the daily mixture of services.²⁶

The Unified and Combined Chicago Regional Rail System Today and Going Forward

The Chicago region remains one of the busiest rail gateways in the United States. As explained, the combined freight and passenger rail systems of the Chicago MSA

²⁶ Metra Strategic Plan, 2018-2022, https://assets.metra.com/s3fs-public/2024-11/On_Track_to_Excellence.pdf?VersionId=vv1BPE0IU_JqNGv0NNUZvM2Og0RSsbxG.

region are historically intertwined. Their modern operations were planned for and continue to be closely interconnected. The combined system constitutes a regional interdependent and unified rail service complex, with all freight and passenger rail users cross-dependent on one another for efficient, reliable, and safe service.

These systems will remain interdependent as long as combined service exists to, from, and through the region. Any issues arising with the connected service reverberate through the unified system as a whole, which is why the freight, intercity, and commuter rail providers all coordinate and work together, and will continue to need to do so as regional passenger and freight traffic volumes continue to grow. Planning for the regional freight and passenger system continues to be successfully made through initiatives such as the establishment of the Chicago Transportation Coordination Office (CTCO) and subsequent improvements in interline planning (*e.g.*, CREATE), and continuing monitoring and communications. The result: improvements in time required to move traffic across the metropolitan region, even with increased traffic flows.

RTA Saved the C&NW's Freight and Passenger Rail Service Franchise in Chicago and Beyond

An important but often overlooked historical point concerning commuter rail service on UP-N, UP-NW, and UP-W is the critical role the State of Illinois and its taxpayers played to shore up C&NW's finances and its three Chicago area routes when C&NW faced severe financial difficulties beginning in the 1960s. In the late 1960s C&NW had a substantial reduction in net operating income, dropping from approximately \$25 million between 1964 to 1966, to a net operating loss of \$5.7 million in 1969, leading to unsuccessful efforts by its Chairman Ben Heineman to find a buyer.²⁷ C&NW's employees and management ultimately forged a leveraged buyout of the railroad in 1970 for a modest sum of \$19 million, to be paid over 20 years.²⁸ As a result, C&NW's parent, Northwest Industries (NWI), which had expanded into other non-railroad ventures, was able to rid itself of an income losing railroad operation while at the same time gaining \$200 million of tax credits to offset profits from its many other subsidiaries.²⁹

Following Heineman's departure, C&NW's succeeding Chairmen Larry Provo and James Wolf succeeded in rationalizing and shoring up the railroad's finances through low-density line abandonments and federal capital improvement financing.³⁰ Those efforts were not enough to fully stabilize the company, which faced a net income loss of

²⁷ *The North Western*, p. 215.

²⁸ *Ibid.*, p. 216.

²⁹ *Ibid.*

³⁰ *Ibid.*, pp. 219-25.

\$8.3 million in 1975, leading C&NW management to seek to drop its money-losing Chicago-area commuter operations.³¹ Fortunately, in 1974, Chicago area voters approved in a referendum the Regional Transportation Authority (RTA) that the Illinois legislature created to preserve and subsidize commuter freight service on the critical three lines.³²

In 1975-1976, RTA intervened by making generous financial arrangements that helped the ailing railroad, agreeing to a purchase-of-service agreement with C&NW that called for RTA to pay C&NW \$25.7 million for its regional commuter service on the three lines through June 30, 1979.³³ As a substantial added benefit, RTA agreed to purchase C&NW's substantial fleet of 46 locomotives and 264 commuter cars, for which it ultimately paid C&NW \$20.8 million, and then leased back to C&NW at a "nominal cost per year" of \$1.00.³⁴

Also, RTA agreed to spend another \$17 million for capital improvements and rehabilitation projects on the C&NW's three commuter lines, and agreed to provide C&NW with millions in annual base compensation and an annual return of approximately four percent on its operations.³⁵ This enormous investment by RTA in C&NW's business and the three Chicago region lines far more than offset the financial burden of commuter operations and greatly benefitted CNW's business overall at a time of great difficulty for America's railroads. It also substantially dwarfed (by 2-3 times) the \$19 million paid for the entire C&NW rail franchise just four years prior under the employee purchase agreement, which, again, involved a 20-year purchase payment period with little up-front money exchanged.

³¹ *Ibid.*, p. 224-25.

³² *Ibid.*, p. 225.

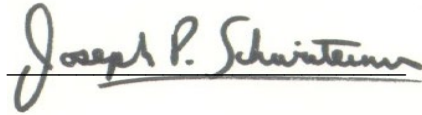
³³ *Ibid.*

³⁴ *Ibid.* RTA 1977 Annual Report, at 6,
https://rtams.org/sites/default/files/digital_documents/RTA_AnnualReport_1977.pdf;
RTA 1978 Annual Report, at 7,
https://rtams.org/sites/default/files/digital_documents/RTA_AnnualReport_1978.pdf.

³⁵ *Ibid.* RTA records show that base compensation was \$6.6 million in the first full year, rising to \$8.3 million in the second year, and over \$10 million in the third year. RTA 1977 Annual Report, at 14; RTA 1978 Annual Report at 5.

VERIFICATION

I, Joseph P. Schwieterman, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief.

A handwritten signature in dark ink, reading "Joseph P. Schwieterman", written over a horizontal line.

Joseph P. Schwieterman

Executed on April 30, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2025, a copy of the foregoing Opening Statement and Evidence has been served by first-class U.S. Mail, or more expeditious means, on counsel for Union Pacific Railroad Company.

/s/ Peter A. Pfohl