

**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**

JOINT REPORT

311462

ENTERED
Office of Chief Counsel
May 22, 2026
Part of
Public Record

Metra and Union Pacific submit this joint report pursuant to the Board's decision served March 13, 2026.

I. Status of Negotiations

The parties continued their negotiations during the 60-day negotiating period set by the Board. That period expired on May 12, 2026, without the parties' reaching agreement. The parties agree that they are unable to reach resolution absent Board intervention.

II. Issues On Which the Parties Have and Have Not Reached Agreement

The Board directed the parties to submit a joint report within 10 days of the negotiation expiration period that identifies the issues on which the parties have and have not reached agreement.

Attached as Exhibit A, which is designated confidential,¹ is a draft Trackage Rights Agreement ("TRA") reflecting the progress made during the course of

¹ At this time, the parties agree to designate the draft TRA in Exhibit A as a confidential document, subject to the understanding that the final TRA will be

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settlement negotiations. The parties are in substantial agreement as to its provisions except for those designated “RESERVED.” Because the parties are in agreement relating to the terms in Exhibit A not designated “RESERVED,” the parties do not seek the resolution of these terms and conditions by the Board.

Exhibit B is a table that briefly describes the nature of the parties’ disagreements and respective positions on the reserved issues. The parties disagree regarding the following central issues: (1) facilities encompassed by the September 3 Decision; (2) the user fee; and (3) indemnification, liability, and claims handling.

III. The Parties’ Positions Regarding Mediation

The March 13, 2026 order directs each party to address whether, and if so why, mediation would be useful for resolving any remaining disputes.

Metra position

Metra does not believe mediation would be useful for resolving any of the remaining issues. The parties have devoted substantial efforts over the nearly nine months since the September 3, 2025 order (and previously) to resolve the issues around conditions and compensation for Metra’s use of the UP Lines, each party understands the other side’s positions and the basis for them, and Metra does not believe that these matters, (*e.g.*, the trackage rights fee and the liability, indemnification, and claims handling terms) will be resolved through mediation

public in its entirety as necessary to meet Metra’s obligations as a taxpayer-funded public interest agency.

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now. The parties' prior mediation in FD 36800, *Application of Union Pacific R.R. for Mediation Under 49 U.S.C. § 28502*, also was unsuccessful. A newly appointed mediator's involvement would introduce an additional scheduling constraint and delays, as they would need to be brought up to speed, particularly as to matters that have a long history. Metra further notes that in addition to the prohibition under 49 C.F.R. § 1109.3(b), § 1109.3(e) specifies, "[w]here one or both parties to mediation do not voluntarily consent to mediation, the Board will not hold the underlying proceeding in abeyance and statutory deadlines will not be tolled."

Union Pacific position

Union Pacific believes that Board-sponsored mediation could help resolve the remaining disputes between the parties described above. Since the conclusion of Board-ordered mediation in Docket No. FD 36800 on January 31, 2025, the Board has entered an order granting terminal trackage rights and the parties have been engaged in ongoing negotiations. During those negotiations, the parties have aligned on numerous issues, as reflected in Exhibit A. With the parties in substantial agreement on those issues, Union Pacific believes another round of Board-ordered mediation could help resolve some or all of the areas of dispute listed in Exhibit B. As Union Pacific previously explained, Board-ordered mediation remains available because the parties have not yet participated in Board-sponsored mediation in this proceeding. *See* 49 C.F.R. § 1109.3(b); Union Pacific's Reply to Metra's Request To Establish Conditions and Compensation at 9–10. And even if the mediation that occurred in Docket No. FD 36800 counts as a mediation for

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purposes of 49 C.F.R. § 1109.3(b), the Board could waive § 1109.3(b)'s restriction.

See BNSF Ry.—Terminal Trackage Rights—Kansas City S. Ry. & Union Pac. R.R.,

Docket No. FD 32760 (Sub-No. 46) (STB served July 3, 2019). Union Pacific

understands that the Board would not hold this proceeding in abeyance consistent

with § 1109.3(e) given Metra's lack of consent, but mediation could occur

concurrently while the parties engage in discovery and/or briefing on the narrow

issue of other facilities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May 2026, a copy of the foregoing Joint Report was served by email or first-class mail on the service list for Docket No. FD 36844.

/s/ Stephen S. Laudone
Stephen S. Laudone

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Exhibit A

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Exhibit B

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Issue	Sec.	Parties' Positions
Rail Lines	1.46	The parties disagree on the definition of Rail Lines. Metra believes that the trackage rights extend to all properties necessary to conduct its commuter rail operations, <i>e.g.</i> , passenger stations. UP believes that the Board's September 3 decision covers the rail lines themselves and that if Metra seeks access to other facilities, it must identify them with specificity. UP renews its request for a brief procedural schedule to address any additional facilities to which Metra may seek Board-ordered access. <i>See</i> December 15 Reply at 5–7. Metra renews its opposition to UP's request seeking to bifurcate. <i>See</i> Metra December 18 response at 3-5.
User Fee	Ex. F	The parties disagree over the interest rental to compensate UP for Metra's use of its facilities. The parties' negotiations of the user fee have focused on the level of compensation, which is not agreed, as opposed to the underlying methodology to be used for calculating compensation. Each party reserves all rights to submit evidence identifying the appropriate methodology to be used. The parties generally agree on the Maintenance Fee and other compensation elements, <i>e.g.</i> , payments for dispatching.
Management Fee	4.8, Ex. F	The parties disagree over the inclusion of a separate Management Fee. Metra disputes the appropriateness of such a fee.
Claims, indemnification, and liability.	13, 14	The parties disagree over indemnification, liability, and claims administration terms. Metra believes that indemnification and liability should be allocated based on fault and liability consistent with trackage rights agreements. UP believes that Metra's specific proposed terms are insufficient and inconsistent with other passenger access agreements. The parties similarly disagree on which carrier should assume associated costs for claims handling.
Grant Funding	6.3	The parties disagree over contract language pertaining to capital projects for the Rail Lines. Metra seeks language in the TRA that UP will agree to commit to assist Metra in fulfilling its reporting obligations related to government grants received by Metra. Metra also seeks language to protect its stake in government-funded assets, whose useful life may exceed the TRA term (<i>e.g.</i> , bridges, interlockings). UP is willing to accommodate Metra's request, but does not agree to the specific language that Metra has proposed.

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Issue	Sec.	Parties' Positions
Performance Notification and Monitoring	7.4, 7.5	The parties disagree over certain contract language pertaining to performance standards. The parties are in substantial agreement on an on-time performance (OTP) standard, determination of on-time trains, and train trips excluded from OTP calculation. The parties also generally agree on terms governing consultations and coordination that may extend beyond OTP compliance. However, the parties are not in agreement on specific language to address which party bears the costs of and the demarcation and treatment between ordinary day-to-day monitoring and studies, employee costs, software/equipment, or other costs that go beyond ordinary monitoring. Because not all aspects of Sections 7.4 and 7.5 have been agreed to, the parties have marked the entirety of those sections as "Reserved."
Effective Date	18.1	The parties disagree on the Effective Date. Metra believes the Effective Date should be July 1, 2025, the first day that follows expiration of the former PSA. UP believes it is not necessary to set an effective date at this time.
Venue	20.11	The parties disagree on whether a venue provision is appropriate. Metra believes that a venue provision is not a necessary or standard term with trackage rights agreements and that disputes between the parties, if any, may be brought in state or federal court, or to the Board, as appropriate. UP believes that an appropriately tailored venue provision may be beneficial in providing clarity to the parties.
Exhibits	Exs. F, H	The parties continue to negotiate exhibits to the draft TRA, including Exhibit H (Insurance Requirements). The parties anticipate that once the STB establishes conditions and compensation, they will be able to agree on the disputed portions of Exhibit F (Statement of Charges).