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SERVICE DATE – SEPTEMBER 30, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36844

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

Digest:¹ This decision imposes, on a temporary basis, interim liability and indemnification terms applicable to three Union Pacific Railroad lines used by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra to provide commuter rail service in the Chicago area.

Decided: September 30, 2025

On March 7, 2025, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) filed an application for terminal trackage rights under 49 U.S.C. § 11102(a) to continue commuter rail service over three lines owned by Union Pacific Railroad Company (UP) in the Chicago area (the UP Lines). For decades, UP had been operating Metra’s passenger trains over the UP Lines under an agreement known as a “Purchase of Services Agreement” (PSA). Metra’s application stated that the parties have been working since 2023 to transition UP’s operation of Metra’s passenger trains over the UP Lines to Metra following a court ruling permitting UP to discontinue providing the service, but that they had been unable to negotiate successor arrangements. (Appl. 2-3, 9-10, Mar. 7, 2025.)

By decision served September 3, 2025, the Board granted the application for terminal trackage rights and directed the parties to undertake negotiations on conditions and compensation. Commuter Rail Div. of the Reg’l. Transp. Authority—Terminal Trackage Rights—Union Pac. R.R. (Sept. 3 Decision), FD 36844 (STB served Sept. 3, 2025). On September 29, 2025, UP petitioned the Board to impose an interim condition or, in the alternative, stay the effectiveness of the September 3 Decision and requested expedited consideration. Metra has not yet responded to that petition. This decision addresses UP’s petition on a preliminary basis.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

Before July 1, 2025, the operation of Metra trains over the UP Lines had been governed by the PSA. Metra and UP had agreed on a series of short-term extensions of the PSA while attempting to negotiate a new agreement. (Metra Opening, V.S. Kane, para. 10, May 5, 2025.) The most recent PSA extension ended on June 30, 2025. In lieu of agreeing to a further extension, however, UP presented Metra with a document termed “Condition of Entry” (COE) to govern Metra’s use of the lines, beginning July 1, 2025, pending the conclusion of this proceeding. Metra objected and continues to object to the COE on multiple grounds.

On June 30, 2025, on the eve of the expiration of the last extension of the PSA, Metra petitioned the Board to either issue an emergency order or temporary injunction that would maintain the “status quo” as of June 30, 2025, i.e., impose the terms and conditions established by the PSA, until such time as the parties reached agreement or the Board set the terms and conditions governing Metra’s operations on the UP Lines. UP opposed the petition, and the Board denied the request because Metra failed to meet the standard for an emergency service order or temporary injunction. Commuter Rail Div. of the Reg’l. Transp. Authority—Terminal Trackage Rights—Union Pac. R.R., FD 36844 (STB served July 1, 2025.)

In its opposition to Metra’s application for terminal trackage rights, UP asked the Board to set interim terms and conditions governing Metra’s operation on the UP Lines that would apply in the event the Board granted Metra’s application. In its rebuttal in support of its application, Metra objected to the terms and conditions proffered by UP but agreed that interim terms and conditions would be useful. (Metra Rebuttal 30, 41-42, June 23, 2025.) Metra again asked the Board to impose the terms and conditions established by the PSA, including those governing liability and indemnity. (See id. at 42 (“Metra’s Interim Conditions and Compensation preserve the status quo in all material respects, including . . . liability terms already in effect addressing the risks associated with Metra’s operations (*i.e.*, indemnification and insurance for UP.”)), id. at 44 (“The parties would retain existing procedures for adding trains and the same standard for indemnification and insurance.”).)

In its September 3 Decision, the Board declined at that time to set interim terms and conditions, explaining that, under § 11102(a), “[t]he rail carriers are responsible for establishing compensation and conditions for the use of terminal facilities” in the first instance, and that it therefore would be inappropriate to prejudge the parties’ interim proposals, which had not been subject to the statutorily-required negotiating process. Sept. 3 Decision, FD 36844, slip op. at 32-33. However, the decision stated that the Board expected Metra to continue to compensate UP for its use of the UP Lines to avoid any interim impairment to UP’s financial interests. Id. at 32. The Board also indicated that, if the parties could not reach agreement on interim terms and conditions governing Metra’s access, the Board would set such interim terms and conditions, subject to an accounting and reconciliation when final terms are set. Id. The Board further noted that UP did not anticipate “serious disagreement” from Metra on indemnity for accident liability, id. at 32 n.65 (citing UP Reply to Opening 35, June 3, 2023), but explained that “[i]n the event the parties have a material disagreement about appropriate liability and indemnity terms to apply on an interim basis that cannot be resolved through concerted good faith negotiation, they may seek guidance from the Board,” id.

On September 29, 2025, UP petitioned the Board to enter as an interim condition the indemnity, liability allocation, and claims administration provisions of the PSA. (UP Pet. 6, Sept. 29, 2025.) In the alternative, UP requests that the Board stay the effectiveness of the September 3 Decision pending judicial review or until the parties agree on interim indemnity and liability allocation terms. (*Id.*) UP's petition states that, consistent with the Board's order, UP has attempted to seek agreement with Metra on an interim condition pertaining to liability and indemnity, but that Metra has rejected UP's proposal to re-adopt terms from the PSA on a temporary basis while the parties continue efforts to negotiate final terms and conditions. (*Id.* at 4-5; see also id. at Ex. A, Letter from John Milano to John Turner (Sept. 11, 2025).)

In its petition to the Board, UP represents that it is now willing to re-adopt the terms and conditions that were set forth in the PSA regarding indemnification, liability, and claims administration on an interim basis. (*Id.* at 2.) UP asserts that these are the same indemnification, liability, and claims administration terms that Metra previously asked the Board to impose. (*Id.* at 1 (citing Metra Rebuttal 30, 41-42, June 23, 2025).)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11102(a) the Board has the ability to set the conditions and compensation for use of the facilities if the rail carriers cannot agree. Despite years of negotiations prior to Metra filing its application for terminal trackage rights and attempts at negotiating since the Board's September 3 Decision, UP and Metra have yet to establish the conditions and compensation for use of the UP Lines, including those governing indemnification and liability.

The Board will temporarily impose, as an interim condition, the indemnification, liability, and claims administration provisions from the PSA as it existed on June 30, 2025.² The uncertainty facing the parties, the acknowledgment by both parties that establishing such terms and conditions is important, and Metra's previous consent to be governed by these provisions on an interim basis while it continues to operate over the UP Lines, all support the interim condition. This condition will be imposed on a temporary basis and will remain in effect until the Board has had an opportunity to consider any response filed by Metra and make a further determination on the appropriate interim terms going forward based on a more fully developed record.

The Board recognizes that Metra has not yet had an opportunity to file a response to UP's request. But the Board finds it necessary to grant this immediate, temporary relief before hearing from Metra in order to give certainty to the parties as to the relevant terms and conditions while the Board considers UP's request, and to ensure that defined terms and conditions are in place in the event that the Board's congressionally appropriated funds lapse later today and the Board becomes unable to act on UP's request until appropriations are restored.

² In view of this decision, UP's alternative request for a stay is moot.

Metra may file a response, as warranted, to UP's Petition for Interim Conditions or Stay, on or before October 6, 2025.

It is ordered:

1. The indemnity, liability allocation, and claims administration provisions of the PSA are imposed as an interim condition on a temporary basis pending further order of the Board.

2. Metra may respond to UP's Petition for Interim Conditions or Stay on or before October 6, 2025.

3. UP's request to stay the September 3 Decision is denied as moot.

4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.