

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36844

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

**UNION PACIFIC RAILROAD COMPANY'S
REPLY STATEMENT AND EVIDENCE**

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Union Pacific Railroad Company (herein “Union Pacific”) submits its reply statement and evidence relating to the application for terminal access by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (herein “Metra”).

INTRODUCTION

In this proceeding, Metra asks the Board for something it already has: Access to the UP-North, UP-Northwest, and UP-West (the “UP Lines”). Metra currently operates over the UP Lines under the parties’ existing contract. And while that agreement will soon expire, the parties have worked diligently for the past several years to transfer responsibility for commuter-rail operations from Union Pacific to Metra and to negotiate a successor agreement governing Metra’s continued access. The handoff of commuter rail services was substantially completed on May 16. The only real sticking point has been the access fee Metra will pay to use Union Pacific’s property, which the parties still need to hammer out. But in the meantime, Union

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Pacific has made clear—as recently as May 21—that it does not intend to exclude Metra from its lines when the existing contract ends.

So why is Metra asking the Board for access that it already has and which Union Pacific has not threatened to disrupt? Because it currently pays a dramatically below-market rate to use Union Pacific’s lines, and it wants to keep doing so. Metra’s compensation to Union Pacific has been pursuant to a legacy agreement that even Metra concedes is outdated. Metra has rebuffed all attempts to resolve the issue of the access price, whether through negotiation, Board-sponsored mediation, or neutral arbitration. It has done so even though, just last year, the parties agreed to use a binding third-party dispute process to fix the rental amount for certain yard properties associated with the UP Lines. Metra has simply dug in its heels, insisting that it should never pay more than it does now—and really should pay even less.

Union Pacific, though, simply seeks to bring Metra’s compensation in line with the market. Union Pacific’s proposed rate for Metra—{ [REDACTED] } per train mile—was informed by prior successful negotiations for passenger rail access on other Union Pacific rail lines, as discussed by John W. Turner and Mark Bristol.¹ Union Pacific has entered into agreements with other passenger rail providers for fees in this range (or higher), including the Illinois Department of Transportation. Indeed, Union Pacific’s internal analyses, public investigation of the fees charged by other freight railroads, and an appraisal of the UP Lines all confirm that—as Professor Julie Carey

¹ Joint Verified Statement of John W. Turner and Mark Bristol (“Turner-Bristol V.S.”) at 4–10.

explains—the rate offered by Union Pacific is “not only demonstrably economically reasonable,” but “conservative (i.e., low).”²

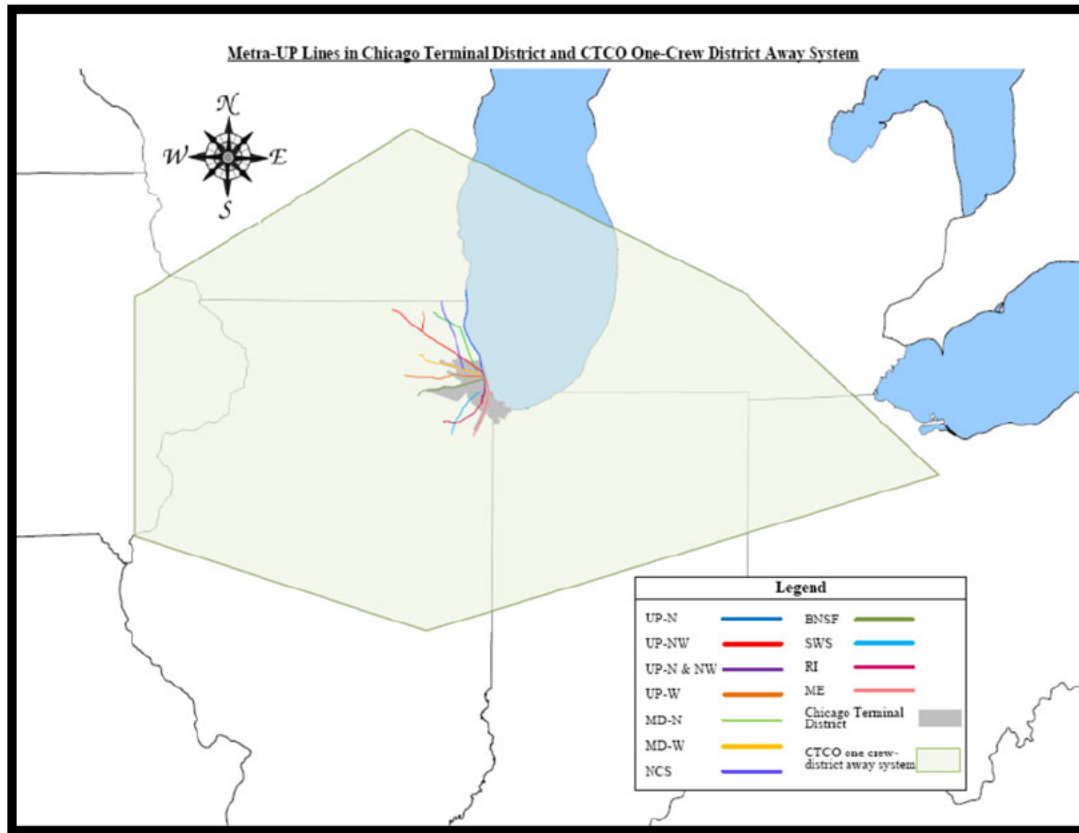
More to the point, this dispute about money is not the Board’s problem. While Metra hopes to secure a better deal through a government order, the Board has made clear that it will not be conscripted into refereeing such commercial negotiations. The agency’s “policy has long been to encourage private sector dispute resolution whenever possible, particularly in disputes involving compensation.” *Dakota, Minn. & E. R.R.—Control—Iowa, Chi. & E. R.R. (“DME/ICE”)*, 6 S.T.B. 511, 530 (2003). When “the real reason for [a] terminal trackage rights application appears to be that the price [the applicant] will pay would be established by [the Board] rather than through negotiations,” the Board’s “involvement . . . is simply inappropriate.” *Id.*

In any event, Metra’s request faces insurmountable legal obstacles. *First*, the Board lacks jurisdiction here. Metra does not meet the requirements for pre-ICC Termination Act (“ICCTA”) agency jurisdiction, so it is not even eligible to seek this relief. That one of Metra’s services briefly crosses a state border does not transform the transportation provided by this Illinois commuter agency into interstate transportation—let alone as to the two other lines at issue, which are purely intrastate.

Second, very little of the trackage that Metra seeks to access qualifies as “terminal facilities” or “main-line tracks for a reasonable distance outside of a terminal.” 49 U.S.C. § 11102(a). Metra’s contrary argument relies on the startling

² Verified Statement of Julie M. Carey (“Carey V.S.”) at 9.

premise that Metra's "entire system" is a "unified terminal." Nothing in a century of case law supports that view. And Metra's fallback argument is even stranger—it contends that the Chicago terminal looks like this:



If the Chicago terminal were truly the size of Texas, spanning six different states, Metra would be able to cite some authority for that proposition. It cannot. All authorities and evidence show that—since before Congress adopted this jurisdictional limitation under § 11102—a terminal has been defined far more narrowly. In the same vein, Metra cannot show that lines dozens of miles from Chicago are a “reasonable distance” from it.

Third, jurisdictional problems aside, Metra cannot meet the demanding standards for the extraordinary relief it seeks. Metra must show anticompetitive

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conduct. It cannot. Union Pacific and Metra are not competitors; Union Pacific is not excluding Metra from its lines; and Union Pacific's proposed access fee is eminently reasonable. Nor can Metra show any actual necessity here; as explained, this dispute boils down to a disagreement about money. That is not a compelling need.

Metra cannot avoid these problems—or remake the statutory test—by pointing to a single, vague sentence of legislative history about commuter agencies. Indeed, Congress re-enacted the provisions of § 11102(a) with no change, preserving the “existing public interest standard.” Conf. Rep. 104-422, at 184, *as reprinted in* 1995 U.S.C.C.A.N. 850, 869; *see also* H.R. Rep. No. 104-311, at 84, *as reprinted in* 1995 U.S.C.C.A.N. 793, 796. And under the statutory standard, Metra's application fails.

Finally, Metra errs badly by claiming the Board can simply grant access now and worry about compensation later—maybe years later. Section 11102(a) forecloses that option: “compensation shall be paid or adequately secured *before* a rail carrier may begin to use the facilities of another rail carrier under this section” (emphasis added). Likewise, a trackage rights order is a condemnation of private property, and it requires payment before a taking occurs, not after. Nor can Metra skip over compensation by invoking other statutes. Section 11123's emergency service power does not apply here by its own terms, and § 1321(b)'s interim-relief provision requires a substantive entitlement to immediate possession (which Metra does not have) and a likelihood of success on the merits (which Metra cannot show).

Thus, if the Board were inclined to grant Metra's application under § 11102, it would have to deal with compensation *before* any Board-ordered access takes effect.

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The parties would also need terms and conditions to govern service, liability, indemnity, and other important issues. Union Pacific has thus proposed interim terms and conditions—including reasonable compensation—in Exhibit B.

Ultimately, though, the Board need not grapple with these downstream questions. The Board lacks jurisdiction here, and Metra could not satisfy § 11102's requirements in any event. Union Pacific urges the Board to deny the application and send Metra back to the bargaining table so the parties can finally resolve this dispute.

ARGUMENT

The proponent of an order for terminal trackage rights bears the burden of proof. *See, e.g., Midtec Paper Corp. v. Chi. & N. W. Transp. Co. (Use of Terminal Facilities and Reciprocal Switching Agreement)*, 3 I.C.C.2d 171, 182 (1986); *Mo. Pac. R.R. v. La. & Ark. Ry. & Ill. Central R.R.*, 332 I.C.C. 569, 583 (1968). Metra cannot carry that burden here. Indeed, it is not even eligible to try.

I. THE REQUIREMENTS AND SCOPE OF THE EXTRAORDINARY RELIEF AUTHORIZED BY STATUTE MUST BE STRICTLY CONSTRUED.

Metra's application seeks relief under 49 U.S.C. § 11102(a), which confers an extraordinary power—the authority to conscript one railroad's terminal facilities for the use and benefit of another, a taking of property requiring just compensation. *See Mo.-Kan.-Tex. R.R. v. Kan. City Terminal Ry.*, 104 I.C.C. 203, 229 (1925).

An order under § 11102(a) allowing another entity to use Union Pacific's property is a taking of private property and that authority must be exercised within the strict confines of agency authority. Executive branch guidance emphasizes the

importance of obligations relating to takings and just compensation. *See, e.g.*, Exec. Order No. 12630, 53 Fed. Reg. 8859, 8860 (1988) (“Government officials should be sensitive to, anticipate, and account for the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions . . .”). The present administration has reaffirmed this commitment to abiding by the Takings Clause.³ The Board’s authority under § 11102(a) must therefore be construed strictly.

Under the plain language of the statute, and as required by the Constitution, “compensation shall be paid or adequately secured *before* a rail carrier may begin to use the facilities of another rail carrier under this section.” 49 U.S.C. § 11102(a) (emphasis added).

Metra wants to avoid this statutory requirement. It argues that the statutory requirement “addresses a different situation” because “Metra already is using UP’s facilities with UP’s consent.”⁴ Similarly, Metra contends that its requested trackage rights “would not result in any ‘taking’ or ‘condemnation’ of anything of value to UP” because the status quo involves Metra’s use of the UP Lines.⁵ Underlying these

³ *See* White House, *Fact Sheet: President Donald J. Trump Directs Repeal of Regulations That Are Unlawful Under 10 Recent Supreme Court Decisions* (Apr. 9, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-directs-repeal-of-regulations-that-are-unlawful-under-10-recent-supreme-court-decisions/> (noting that agencies are directed under Executive Order 14219 to “repeal any regulation inconsistent with a proper understanding of the Takings Clause, which protects far more than just real estate from being taken by the government without compensation”).

⁴ Metra Opening at 43.

⁵ *Id.* at 45.

arguments is Metra refusal to acknowledge the difference between a privately negotiated, term-limited agreement and permanent government-ordered access to private property.⁶ It does not matter that Union Pacific has to this point continued to voluntarily agree to provide Metra access to its property. A government order forcing such access necessarily changes the nature of the rights, as explained by the Seventh Circuit in a case where the Chicago Transit Agency argued that a condemnation would not change the status quo since it was already using Union Pacific property. There, the court explained that “a condemnation is *not* coextensive” with prior use governed by a private lease because “the parties’ relationship and property rights do change after the condemnation.”⁷ The Court explained that, “with the condemnation, Union Pacific loses certain property rights,” including the “valuable” right to reclaim the property.⁸ “In short, Union Pacific would lose valuable property rights in the condemnation, and the CTA would gain perpetual control of the property without it being subject to termination—a manner of control that the CTA currently does not enjoy.”⁹ So too here.

This extraordinary power to grant Metra perpetual access to the UP Lines should never be exercised simply because one party is dissatisfied with private sector

⁶ For this same reason, the fact that Union Pacific and other carriers have not previously required Metra to post bonds or other security (*id.* at 44) is irrelevant because those were privately negotiated agreements where the parties were bargaining in arms-length transactions. Here, Metra is seeking a government-issued order mandating access.

⁷ *Union Pac. R.R. v. Chi. Transit Auth.*, 647 F.3d 675, 683 (7th Cir. 2011).

⁸ *Id.*

⁹ *Id.*

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negotiations. Private commercial agreements between Union Pacific and Metra have governed Metra's access to the UP Lines for decades, giving Metra all the rights it needed to serve the citizens of Chicago. Private commercial agreements should remain the only source of Metra's access to the UP Lines. For a century, this agency has properly refused to exercise its extraordinary power under § 11102(a) without a compelling justification. Metra's desire to avoid paying market rates is not a compelling justification. The Board should not involve itself where Union Pacific has made clear that it is not refusing access and where Metra has made clear that it seeks to use this proceeding to obtain its desired access rate. The Board has emphatically and repeatedly stated that its policy is to encourage private sector dispute resolution, but here Metra will not even agree to arbitrate commercial terms. Moreover, granting Metra's request in this scenario would create dangerous precedent in Chicago and elsewhere where state and local governments provide commuter service over the freight rail network. Good faith negotiations will quickly be cast aside in favor of Board orders for perpetual control.

As discussed below, however, the Board has ample authority and good reason to deny Metra's novel and unsupported request for perpetual control of the UP Lines.

II. THE BOARD LACKS JURISDICTION TO GRANT METRA'S REQUEST FOR TERMINAL ACCESS TO THE UP LINES.

Jurisdiction here requires that Metra meet the requirements set forth in both § 10501(c)(3)(B) and § 11102. It cannot meet either.

A. Metra does not satisfy the jurisdictional requirements for seeking terminal trackage rights under pre-ICCTA standards.

Post-ICCTA, the Board’s jurisdiction over “public transportation provided by a local government authority” is limited to only two types of proceedings: those under “sections 11102 and 11103,” and even then such transportation must “meet[] all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission [“ICC”] that were in effect immediately before January 1, 1996.” 49 U.S.C. § 10501(c)(2)(A), (c)(3)(B).

Metra claims to meet the pre-ICCTA jurisdictional requirements. This is incorrect. As Union Pacific explains in its motion to dismiss filed on May 23, 2025, jurisdiction requires that the essential character of Metra’s commuter transportation be interstate in nature. But the essential nature of Metra’s operations is intrastate. The *de minimis* amount of activity to Kenosha, Wis., does not transform the character of the commuter transportation on the UP-North line. And even if it did, the Board’s jurisdiction over transportation on the UP-North line would not extend to the wholly separate movements over the UP-Northwest and UP-West lines—which are plainly intrastate.

Metra cannot avoid this result by pointing to a lack of state certification, as ICC precedent confirms that a lack of certification does not bring activity unrelated to ratemaking under the agency’s jurisdiction. Because the ability to award terminal trackage rights to a local government authority is a special and limited

grant of jurisdiction over a subject matter otherwise entirely withheld, the Board's authority should be strictly construed.

B. Only a small portion of the UP Lines are terminal facilities under 49 U.S.C. § 11102(a).

Even when the Board “has jurisdiction under section[] 11102 . . . over transportation provided by a local governmental authority,” *id.* § 10501(c)(3)(B), an applicant must still satisfy § 11102(a)'s separate jurisdictional limitations. Metra cannot do so.

Section 11102(a) was adopted by Congress in the Transportation Act of 1920.¹⁰ “The intent of Congress in enacting [§ 11102(a)] was to provide a method of avoiding the necessity for incurring unnecessary expense in duplicating existing terminal facilities by a railroad entitled to serve a particular territory.”¹¹ It is an “intrusive” and “extraordinary remedy” that raises Constitutional takings issues. *See W. Fuels Serv. Corp. v. BNSF Ry.*, Docket No. NOR 41987, 1997 WL 416961, at *6 (STB served July 28, 1997). For that reason, Congress imposed a number of limitations on the agency's authority, one of which is that the agency may order access only to “terminal facilities, including main-line tracks for a reasonable distance outside of a terminal.” 49 U.S.C. § 11102(a). This is a “jurisdictional”

¹⁰ Section 11102 was previously codified at § 11103, and before that section 3(5), and before that section 3(4).

¹¹ *Spokane, Portland & Seattle Ry.—Control—Peninsula Terminal Co.*, 334 I.C.C. 419, 435 (1969); *see also Spokane, Portland & Seattle Ry.—Control—Peninsula Terminal Co.*, 348 I.C.C. 109, 142 (1975); *BNSF Ry.—Terminal Trackage Rights—Kan. City S. Ry. & Union Pac. R.R. (“BNSF/KCS”)*, Docket No. FD 32760 (Sub-No. 46), at 18 (STB served July 5, 2016).

limit. *See, e.g., Rio Grande Indus., Inc.—Purchase & Related Trackage Rights—Soo Line R.R. Co. Line Between Kan. City, Mo. & Chi., Ill. (“RGI/Soo”),* Docket No. FD 31505, 1989 WL 246814, at *9 (ICC Nov. 13, 1989).

Metra’s attempt to clear this jurisdictional hurdle relies on disjointed and often conflicting theories on why it is entitled to access for the entirety of the UP Lines. These theories are not supported by the statute or agency precedent. None of its arguments can overcome the fact that, under settled standards, most of the UP Lines are not eligible for terminal trackage rights because they are not “terminal facilities.”

1. Metra’s unified terminal theory clashes with text and precedent.

Metra’s primary theory appears to be that its entire system is a “unified terminal,” so any part of its system is eligible for a terminal access order. The novel theory that its system is “its own terminal area,”¹² with no basis in agency precedent, would vastly expand the agency’s authority far beyond the limits Congress enacted.

Metra’s theory rests on two faulty premises. First, Metra suggests that the public interest standard—that is, the *substantive* discretionary standard for imposing trackage rights—should be used to broadly interpret the separate *jurisdictional* issue of what constitutes terminal facilities.¹³ But again, Congress

¹² Metra Opening at 22.

¹³ *See, e.g., id.* at 19 (pointing to unrelated language in the legislative history relating to “the public interest standard”); *id.* at 25 (same).

made no changes to the language of § 11102(a) relating to terminal facilities and instead confirmed that it was re-enacting those provisions under existing standards. Conf. Rep. 104-422, at 184, *as reprinted in* 1995 U.S.C.C.A.N. 850, 869; H.R. Rep. No. 104-311, at 84, *as reprinted in* 1995 U.S.C.C.A.N. 793, 796. And while the legislative history mentions public interest as it pertains to commuter agencies, that does not mean that different jurisdictional standards apply to Metra. Section 11102(a) uses the phrase “terminal facilities” just once, to describe all the facilities it applies to. The Board cannot “giv[e] the same [term], in the same statutory provision, different meanings in different factual contexts.” *United States v. Santos*, 553 U.S. 507, 522 (2008) (plurality). What is a terminal facility (or not) for one applicant is a terminal facility (or not) for every applicant, in every case. Likewise, a court or an agency “may not in any case, even in the interest of justice, extend its jurisdiction where none exists.” *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 (1988); *accord Badgerow v. Walters*, 596 U.S. 1, 16 (2022).

Which leads to Metra’s second faulty premise: that prior agency case law addressing “terminal facilities” is inapt because it was tailored for freight and not passenger transportation.¹⁴ That is wrong. When Congress adopted the terminal access provision in 1920, the ICC was responsible for both freight and passenger

¹⁴ See, e.g., Metra Opening at 17–18 (prior cases “cannot be directly applicable to the UP/Metra relationship, or that between any commuter/passenger railroad and a host freight railroad”); *id.* at 35 (“A freight terminal is not a suitable proxy to delimit a terminal area for passenger purposes.”); *id.* at 36 (“In the context of commuter operations, ‘reasonable distance outside of a terminal’ should be longer than it would be for freight trains.”).

traffic and rail carriers routinely provided both. Metra points to no case in the century's worth of case law suggesting that the ICC had differing definitions of "terminal facilities" or "reasonable distance" for freight and passenger cases. *Cf. Mo.-Kan.-Tex. R.R. v. Kan. City Terminal Ry.*, 104 I.C.C. 203 (1925) (addressing terminal facilities of both passenger and freight traffic). And as noted, the Board cannot "giv[e] the same [term], in the same statutory provision, different meanings in different factual contexts." *Santos*, 553 U.S. at 522.

It is no surprise that Metra tries to duck all existing precedent on this question, instead conveniently claiming that its entire system is "its own terminal area."¹⁵ So every part of Metra's system is a terminal facility, wherever located. In other words, Metra takes the position that it, and presumably every other commuter railroad, *always* satisfies § 11102(a)'s jurisdictional limitations because every part of a commuter system is a terminal facility. And that theory is not limited to Metra's current footprint. Presumably, Metra's "terminal area" grows coextensively with its operations. Nothing in the statute's century-long history supports that view.

Metra's also misconstrues agency precedent by conflating what constitutes a "facility" and what constitutes a "terminal." The "use test" that Metra references (Metra Opening at 30–31) has been used to assess what constitutes a *facility*, but the agency must separately determine whether that facility is part of a *terminal*. *See, e.g., City of Milwaukee v. Chi. & Nw. Ry.*, 283 I.C.C. 311, 313–15 (1951)

¹⁵ Metra Opening at 22.

(looking to corporate and switching limits to determine that Milwaukee was a terminal, and then finding that a particular facility was a terminal facility because of its use serving industries in that terminal).

Metra relies heavily on the Board’s recently adopted final rule governing reciprocal switching under a separate statutory provision, though Metra concedes that those rules are “inapposite.”¹⁶ That rule—currently on appeal in the Seventh Circuit—defines “terminal area” only for imposing reciprocal switching between freight railroads in specific circumstances. It is not relevant, and in any event, was only intended to provide guidance reflective of existing precedent, which, as explained below, does not support Metra’s position.

2. The relevant terminal is the Chicago terminal.

The agency has historically looked at various factors to determine whether a terminal exists and, if so, what falls within the terminal. *See, e.g., City of Milwaukee*, 283 I.C.C. at 313–15 (looking to corporate and switching limits to determine that Milwaukee was a terminal, and finding that a particular facility was a terminal facility). Here, the relevant terminal is the Chicago terminal. All that needs to be determined is what portions of the UP Lines constitute terminal facilities within that terminal or a reasonable distance beyond.

Metra provides two maps attempting to define the Chicago terminal. Neither is an appropriate way to define the Chicago terminal for purposes of § 11102(a).

¹⁶ Metra Opening at 16 & n.10 (quoting *Reciprocal Switching for Inadequate Serv.*, Docket No. EP 711 (Sub-No. 2), at 69–71 (STB served Apr. 30, 2024)).

First, Metra points to the Chicago–Naperville–Elgin, IL–IN–WI Metropolitan Statistical Area (“MSA”) as defined by the Office of Management and Budget (“OMB”) and used by the U.S. Census Bureau.¹⁷ The combined statistical area extends almost to Iowa, some 140 miles from downtown Chicago. While OMB has delineated MSAs since 1949,¹⁸ neither the ICC nor the Board have ever used them to define rail terminals—and for good reason. MSAs have nothing to do with rail lines or rail service.

Metra also points to a map of the region based on the Chicago Transportation Coordination Office (“CTCO”). As Metra states, CTCO’s purpose is to avoid operational problems and to promote efficiency and safety.¹⁹ The CTCO’s goals led it to define a territory extending beyond the Chicago terminal—far beyond. Under the CTCO map provided by Metra, the agency would apparently have jurisdiction to order “Chicago terminal” trackage rights for hundreds of miles outside of Chicago—into Michigan, Ohio, Indiana, Iowa, and Wisconsin. CTCO is free to define a

¹⁷ Metra Opening at 25–26; 2020 Standards for Delineating Core Based Statistical Areas, Office of Management and Budget, 86 Fed. Reg. 37770, 37778 (July 16, 2021) (defining “Metropolitan Statistical Area” as a ‘Core Based Statistical Area associated with at least one Urban Area that has a population of at least 50,000’ and which “comprises the central county or counties containing the core, plus adjacent outlying counties”); *see also* Standards for Defining Metropolitan and Micropolitan Statistical Areas, Office of Management and Budget, 65 Fed. Reg. 82228, 82228 (Dec. 27, 2000) (OMB “cautions that Metropolitan Statistical Area ... definition[] should not be used to develop and implement Federal, state, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes”).

¹⁸ U.S. Census Bureau, <https://www.census.gov/programs-surveys/metro-micro/about.html>.

¹⁹ Metra Opening at 31.

geographic area for purposes of its own business objectives using its “one-crew district away” system,²⁰ but the CTCO does not define a terminal for jurisdictional purposes under § 11102(a). In fact, the CTCO map supports a much narrower understanding of terminal—it shows the “Chicago Terminal District” as being a small area in downtown Chicago.²¹

That narrower understanding tracks long-established norms and precedent. The boundaries of terminals—including the Chicago terminal—have long been defined using switching districts (among other things). *See, e.g., Chi. & Alton R.R. v. Toledo, Peoria & W. Ry.*, 146 I.C.C. 171 (1928); *Chi., Milwaukee v. Iowa N. Ry.*, Docket No. FD 30509, 1984 ICC LEXIS 135, at *8 (ICC Nov. 14, 1984) (finding that facilities were not “terminal facilities” where, among other things, they were not located within a switching district); *CSX Corp.—Control—Chessie System, Inc. & Seaboard Coast Line Indus.*, 363 I.C.C. 518, 585 (1980) (track was both within the switching limits of Cincinnati and within its terminal district); *City of Milwaukee*, 283 I.C.C. at 315 (finding that a portion of the right-of-way was a terminal facility because it was “within the corporate and switching limits of Milwaukee”).

The Chicago terminal switching limits are generally considered to include major yards such as Proviso, Bensenville, Markham, and Clearing, as reflected in numerous maps that are publicly available and included in Exhibit A.²² These

²⁰ *Id.* at 34.

²¹ *Id.* at 33.

²² Exhibit A (maps of Chicago terminal dated 1913, 1942, 1950, 1961, and 1978)).

maps are remarkably consistent over multiple decades. For example, between 1913 and 1978, these maps consistently identified Rogers Park (a station on the UP-North line) as within the Chicago switching district—but any station beyond that was not.

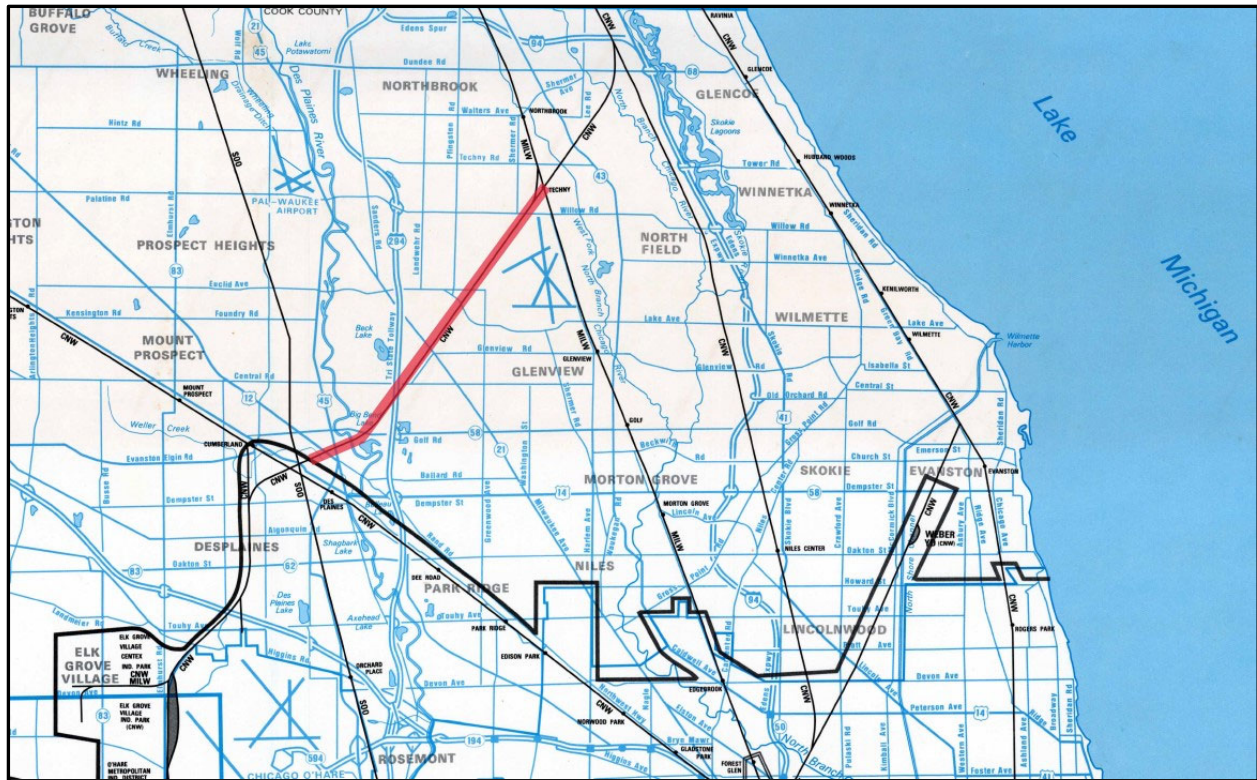
This understanding is also consistent with prior agency findings regarding Metra’s nearby Milwaukee District North line. That line runs parallel to the UP-North line as it heads north out of Chicago. In *RGI/Soo*, there were a number of requests for terminal trackage rights under former § 11103, including a request for trackage rights over a line called the Techny Cutoff between Bensenville and the A-20 interlocker in Techny/Northbrook, which is on the Metra Milwaukee District North line. The agency stated that “one-half of the Techny segment is within the Chicago terminal district”²³—that half would include Bensenville yard and the southern portion of the line (*see* Exhibit A, 1978 map & Figure 1). But the northern half leading to Techny/Northbrook was intended to allow “through trains originating or terminating in Milwaukee to avoid the Chicago Terminal area.”²⁴ Not only was that half of the line not within the terminal, the agency stated “nor does it appear to be main line track for a reasonable distance outside a terminal area.”²⁵ That segment is highlighted in red below.

²³ *RGI/Soo*, 1989 WL 246814, at *11.

²⁴ *Id.*

²⁵ *Id.*

Figure 1



Using the correct test, some portions of the UP Lines are located within the Chicago terminal and therefore could be eligible for a terminal access order. Specifically, Union Pacific does not contest that the following portions of the UP Lines are within the Chicago terminal:

- UP-North: OTC to Rogers Park (approximately Geneva Sub MP 0.0 to Kenosha Sub MP 9.3)
- UP-Northwest: OTC to Cumberland (approximately Geneva Sub MP 0.0 to Harvard Sub MP 18.2)
- UP-West: OTC to Berkeley (approximately Geneva Sub MP 0.0 to Geneva Sub MP 14.4)

But agency precedent is clear: anything outside of these specific areas is beyond the Chicago terminal.

3. Metra cannot meet the test for accessing any trackage beyond the terminal, much less all of the UP Lines.

Metra is not entitled to trackage rights over any track outside of the Chicago terminal because it does not need those rights to access the terminal. As explained above, § 11102(a) was enacted “to provide a method of avoiding the necessity for incurring unnecessary expense in duplicating existing terminal facilities by a railroad entitled to serve a particular territory.” *Spokane, Portland & Seattle Ry.*, 334 I.C.C. at 435.²⁶ The purpose of allowing “main-line tracks for a reasonable distance outside of a terminal” is to bridge small gaps from a rail carrier’s own system seeking access to facilities within the terminal. *See, e.g., Chi. & Alton R.R. v. Toledo, Peoria & W. Ry.*, 146 I.C.C. 171, 179 (1928) (a reasonable distance will “depend primarily upon the extent of the terminal area to be served and the complexity of access to it”). No such gap exists here—Metra has multiple lines that it uses to reach the Chicago terminal. Thus, none of the trackage outside the terminal is “necessary for access to the terminal” by Metra. *See CSX*, 363 I.C.C. at 585 (“applies to track within a reasonable distance ‘outside of’ a terminal which is necessary for access to the terminal” (emphasis added)); *RGI/Soo*, 1989 WL 246814, at *11 (“It is not, in applicants’ proposal, to be used for terminal access or terminal services, nor does it appear to be main line track for a reasonable distance outside a

²⁶ *See also Spokane*, 348 I.C.C. at 142; *BNSF/KCS*, Docket No. FD 32760 (Sub-No. 46), at 18.

terminal area, that would be used to gain access to a terminal area” (emphasis added)). Metra’s request thus exceeds the statute’s “reasonable distance” limitation, which restricts the Board’s jurisdiction.

Even if the Board concludes, however, that Metra were entitled to access some portion of the UP Lines beyond the terminal, it plainly has no right to trackage rights over the entirety of the UP Lines. Ordering access to track that reaches over 50 miles beyond a terminal into another state is not reasonable.

Just as with the meaning of “terminal facilities,” there is no basis to interpret the phrase “reasonable distance” differently in the context of passenger operations than for freight operations.²⁷ The agency has never suggested differing standards. It does not matter—and Metra does not explain why it should matter—that its trains are shorter and operate more quickly than freight trains.²⁸ The primary focus for the agency has always been the physical distance beyond the terminal, only approving access for short distances of approximately 15 miles or less. *See, e.g., Union Pac.—Control—Mo. Pac. Corp.*, 366 I.C.C. 459, 574 (1982) (12-mile line segment); *Chi. & Alton R.R.*, 146 I.C.C. at 179 (12-mile line segment). By contrast, the ICC found that the request for use of 42-mile main line segment was unreasonable and stated that it “exceeds anything we have previously ordered under Section 11103.” *RGI/Soo*, 1989 WL 246814, at *9. And as noted above, the agency has already stated that a line extending approximately 10 miles outside the

²⁷ *Contra* Metra Opening at 36.

²⁸ *Id.* at 37.

Chicago terminal to the A-20 interlocker in Techny/Northbrook did not appear to be a reasonable distance outside a terminal area.²⁹

Metra is incorrect when it claims that the agency has found 60 miles of mainline track to be a reasonable distance outside of a terminal.³⁰ The 60-mile figure in *Rio Grande Industries, Inc.—Purchase and Trackage Rights—Chicago, Missouri and Western Railway Line Between St. Louis, MO and Chicago, IL* (“RGI/CMW”), 5 I.C.C.2d 952 (1989) encompassed more than just the “main line between Joliet and Kensington/Markham, IL.”³¹ The trackage rights included the main line “between Joliet, IL and Kensington/Markham, IL (including the St. Charles Airline segment and access to the Hawthorn Yard (approximately 60 miles).”³² In fact, the main line segment was much shorter than 60 miles—around 22 miles. *See Chi., Mo. & W. Ry.—Exemption Acquisition & Operation—Ill. Cent. Gulf R.R.*, Docket No. FD 30911, 1987 WL 98383, at *1 n.1 (STB served April 30, 1987) (supplemental notice of exemption describing “Joliet MP (A0) 36.7 to Kensington MP 14.0”). Further, the portion of that segment that was outside of the Chicago terminal was even shorter. Much of the track at issue (including the St. Charles Airline, Hawthorn Yard, Kensington and Markham) are *within the Chicago terminal*. RGI/CMW thus lends no support to Metra’s claims.

²⁹ RGI/Soo, 1989 WL 246814, at *10.

³⁰ Metra Opening at 28.

³¹ RGI/CMW, 5 I.C.C.2d at 983.

³² *Id.* at 953 (emphasis added).

III. METRA FAILS TO MEET THE SUBSTANTIVE REQUIREMENTS FOR DISCRETIONARY RELIEF.

The “prescription of terminal trackage rights is an extraordinary remedy.” *W. Fuels Serv. Corp.*, 1997 WL 416961, at *6. Indeed, trackage rights are so intrusive that the agency has long recognized that it is “a remedy of last resort for use when less intrusive remedies . . . are insufficient.” *Shenango Inc. v. Pittsburgh, Chartiers & Youghiogheny Ry.*, 5 I.C.C.2d 995, 1002 (1989). The Board’s authority to order trackage rights is also permissive and thus discretionary. *See* 49 U.S.C. § 11102(a) (“The Board *may* require terminal facilities . . . be used by another rail carrier.” (emphasis added)). Under long-established agency precedent, an applicant must make a showing of anticompetitive conduct by the incumbent carrier before the Board will exercise this extraordinary and discretionary authority. Further, under a legislatively mandated standard, public interest requires some actual necessity or compelling reason. Metra has not and cannot make such a showing here.

A. Metra must establish anticompetitive conduct.

For nearly 40 years, the agency has consistently held that, in addition to meeting the other criteria set forth in § 11102(c), an applicant seeking terminal trackage rights must make a showing of anticompetitive conduct. In *Midtec*, the agency held—and the D.C. Circuit affirmed—that, outside the context of a merger proceeding, “a focus on anticompetitive conduct (or the imminent threat of it) by the carrier possessing the essential rail line is appropriate” *Midtec*, 3 I.C.C.2d at 178; *Midtec Paper Corp. v. United States*, 857 F.2d 1487, 1502 (D.C. Cir. 1988). Ever since, the Board and its predecessor “have consistently determined” that the

competitive access rules “must be satisfied to obtain th[e] extraordinary remedy” of trackage rights. *W. Fuels Serv. Corp.*, 1997 WL 416961, at *7; *see Review of Rail Access and Competition Issues*, 3 S.T.B. 92, 98 (1998) (stating that “the current regulations require a demonstration that the incumbent rail carrier has engaged in anticompetitive conduct” before terminal trackage rights will be awarded).

Metra seeks to cabin the applicability of *Midtec*’s anticompetitive conduct requirement to trackage rights cases where “a party seeks to introduce or obtain new competition, not where a party seeks to preserve existing service.”³³ Metra’s assertion is baseless. It finds no support in the Board’s competitive access rules, *Midtec*, the decades of subsequent precedent, or the single case that Metra cites—*RGI/CMW*. That case merely stands for the longstanding principle that the agency’s competitive access rules do not apply in “the context of acquisition or merger proceedings.” *RGI/CMW*, 5 I.C.C.2d at 980 n.30; *see DME/ICE*, 6 S.T.B. at 564 n.81. Precedent is clear: “Where the trackage rights are not merger-related, the applicant is required to meet our competitive access standards.” *Canadian Nat’l Ry.—Control—Ill. Cent. Corp.*, 4 S.T.B. 122, 173 (1999).

The agency’s competitive access standard for trackage rights cases was well established when Congress re-enacted the provisions of § 11102(a) in ICCTA. Congress is presumed to adopt an existing “administrative . . . interpretation of a statute” and “when it re-enacts a statute without change.” *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2000). And again, Congress’ intention was to preserve

³³ Metra Opening at 42.

existing standards for terminal access. The Board “is not now free” to change or otherwise stray from that interpretation in this case. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974); *AAR v. ICC*, 564 F.2d 486, 493–94 (D.C. Cir. 1977) (similar).

Midtec thus controls Metra’s application for permanent trackage rights.

B. Union Pacific’s conservative access fee proposal is not anticompetitive.

Metra cannot make the showing required under *Midtec* and the Board’s competitive access rules. *See Midtec*, 3 I.C.C.2d at 173–74, 181 (anticompetitive conduct includes foreclosure, refusal to deal, price squeeze, or other forms of monopolization or predation). Metra makes two conclusory statements regarding anticompetitive conduct. But Metra, which bears the burden here, never tries to prove its claims. Alone, that is reason to deny Metra’s application. *See, e.g., General Procs. For Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441, 445–46 (2001) (it is incumbent that party who bears burden of proof “present its entire case-in-chief in its opening evidence”).

Metra first suggests that Union Pacific’s refusal to allow Metra to use the UP Lines would be anticompetitive.³⁴ Legally, this theory makes no sense: Metra and Union Pacific do not compete in any relevant market. Union Pacific competes (not with Metra) for freight traffic, and Metra competes (not with Union Pacific) for passengers. Union Pacific in the past provided commuter rail services *for* Metra, but

³⁴ *See* Metra Opening at 42 (citing *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 452–53 (7th Cir. 2020)).

has exited the commuter rail space in Chicago by transferring responsibility for that service to Metra.

The only other way to interpret Metra’s position is that the market for which the parties are competing are *the UP Lines themselves*. On that view, a rail carrier always competes with any other rail carrier whose track it wants to access, since “competition” would mean both rail carriers want to use “the same facilities” and “the same track space.”³⁵ In turn, every refusal to voluntarily allow another carrier onto one’s property would be monopolistic and anticompetitive. But that reading is antithetical to the entire notion of private property. If accepted, this view of the relevant market would gut the Board’s standards—in essence forcing the Board to throw open access to all facilities to anyone who wants to use them.

Moreover, factually, there has been no refusal. Metra’s application and opening evidence are devoid of any allegation or evidence that Union Pacific has threatened to exclude Metra from the UP Lines. To the contrary, Union Pacific has made repeated offers for Metra’s continued access to the UP Lines and has offered mediation and arbitration to resolve the terms for access. Union Pacific has also reiterated, as recently as May 21, 2025, that Union Pacific “will not be stopping service to the millions of people who use Metra daily.”³⁶

³⁵ *See id.* at 42.

³⁶ Union Pacific’s Motion to Dismiss, Exhibit C (Letter from Union Pacific CEO Jim Vena to Metra CEO Jim Derwinski (May 21, 2025)).

Metra also asserts in its introduction that Union Pacific's offer for access is "economically unreasonable and monopolistic."³⁷ Metra never returns to this argument and provides zero support for it. Nor does it state what would be an economically reasonable rate. While Union Pacific's current proposal for access to the UP Lines may be higher than Metra wishes to pay, that does not make it economically unreasonable. Again, Metra bears the burden here and it has failed to prove this required element of its case.

In any event, Union Pacific's proposed access fee is not just reasonable, but conservative. Union Pacific's offer to Metra was informed by a marketplace approach and prior successful negotiations for passenger rail access.³⁸ Further, Union Pacific engaged Professor Julie M. Carey, economist and Senior Managing Director at National Economic Research Associates, Inc., and Adjunct Professor at Georgetown University, to independently evaluate the reasonableness of Union Pacific's offer to Metra. To do so, Professor Carey evaluated prior commercial negotiations involving fair market value rates for passenger rail access to rail lines. These included negotiated passenger access agreements involving both Union Pacific and Metra. As explained by Professor Carey, "[b]ased on the rates mutually agreed to in these other recent commercial negotiations, Union Pacific's offer is not only demonstrably economically reasonable, it is conservative (i.e., low)."³⁹ Professor Carey also notes

³⁷ See Metra Opening at 2.

³⁸ See Turner-Bristol V.S. at 4–10, 11.

³⁹ Carey V.S. at 9.

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that, in the Chicago region itself, there are several examples of agreements for passenger access showing rates that are higher than Union Pacific's offer to Metra—including { [REDACTED] } a rate that Metra is paid by NICTD for access to Metra's line, and the CN-Metra agreements.

Professor Carey also evaluated the rate of return based on a valuation of the land owned by Union Pacific. As she explains, the appraised value of the land underlying the UP Lines is “substantial and strong quantitative evidence” that “supports the reasonable compensation rate for use of the UP Lines by Metra as offered by Union Pacific.”⁴⁰ In fact, Union Pacific’s proposed rate would provide compensation equal to {{

Union Pacific is aware that some employees within the company support the use of land valuation to determine the access fee while others prefer the use of comparable agreements.⁴¹ Professor Carey explains that both methods are valid ways to evaluate the reasonableness of Union Pacific's offers.⁴² Given the value of the land, compensation based on a rate of return method would likely yield a substantial access fee. For purposes of its private commercial negotiations, Union Pacific has based its offers on comparable access agreements, and has even recently

⁴⁰ *Id.* at 22.

⁴¹ See, e.g., Turner-Bristol V.S. at 11.

⁴² Carey V.S. at 9–15, 20–24.

re-designated various agreements so that Metra itself can independently review them. Further, as explained herein, Union Pacific is willing to accept interim compensation at the level sought by Union Pacific in private negotiations—even though compensation under condemnation principles may be significantly higher. In sum, the franchise access fee offer by Union Pacific is reasonable and generous.

Metra may respond (as it has argued in the parallel district court litigation) that Union Pacific’s offer is unreasonable because it is a 100% increase over what Metra has paid under the legacy PSA which expires next month.⁴³ PSA compensation has been slightly modified from time to time over the past 15 years, largely to set nominal annual escalations of 2.9%. Recent compensation under the PSA has been approximately { ██████████ } per year—or { ██████████ } per train mile.

The PSA is a relic of another time. Its outdated compensation scheme cannot govern the parties’ current relationship. Metra concedes as much, yet simultaneously seeks even lower compensation than what the PSA calls for—which is already demonstrably below market.⁴⁴ That much is clear from recent and comparable rates agreed to in arms’ length transactions—including agreements that Metra itself is a party to. It is also clear from valuations of the UP Lines. While the “100% increase” may be a nice sound bite for Metra, it simply reflects the reality that—as Professor Carey explains—“for a long-term transportation agreement that faces termination, it is common for any such newly negotiated agreement to set a new price based on

⁴³ Am. Compl. ¶ 5, *Commuter Rail Div. of the Reg’l Transp. Auth., d/b/a Metra v. Union Pac. R.R.*, No. 1:25-cv-2439 (N.D. Ill. filed May 27, 2025).

⁴⁴ Carey V.S. at 2 & nn.8–9, 26, Fig. 4.

current market conditions, which can be markedly different from prior market conditions.”⁴⁵ And market conditions are in fact different.

PSA compensation is, in fact, so far below market that, should the Board order compensation at that level (interim or otherwise), Union Pacific would be forced to exercise its right to recover appropriate compensation, including its right under 49 U.S.C. § 11102(b) to institute a civil action against Metra.⁴⁶

C. Metra has not established that trackage rights are in the public interest.

Even setting aside Metra’s failure to meet the *Midtec* standard, Metra has not shown that its novel request is in the public interest. Metra’s public interest argument hinges on a single sentence in the ICCTA Conference Report suggesting that a local transportation authority’s request would “virtually always” satisfy the public interest standard.⁴⁷ But “Congress’s authoritative statement is the statutory text, not the legislative history.” *Chamber of Com. Of The U.S. v. Whitting*, 563 U.S. 582, 599 (2011) (cleaned up).

Whatever the Conference Report language implies, it is clear that Congress did not change the substantive standard applicable to requests for trackage rights

⁴⁵ *Id.* at 18.

⁴⁶ Section 11102(b) provides that “[a] rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.”

⁴⁷ Metra Opening at 41.

under 49 U.S.C. § 11102(a). The text of § 11102(a) is the same after ICCTA as before and, again, Congress said that it was re-adopting § 11102 under the “existing public interest standard.” Conf. Rep. 104-422, at 184, *as reprinted in* 1995 U.S.C.C.A.N. 850, 869; *see also* H.R. REP. NO. 104-311, at 84, *as reprinted in* 1995 U.S.C.C.A.N. 793, 796.

Congress thus left in place the existing public interest standard for imposing terminal access that requires “some actual necessity or some compelling reason.” *Jamestown, N.Y., Chamber of Com. v. Jamestown, Westfield & Nw. R.R.*, 195 I.C.C. 289, 292 (1933); *Midtec Paper Corp., et al. v. Chi. & Nw. Transp. Co. (Use of Terminal Facilities & Reciprocal Switching Agreement)*, 1 I.C.C.2d 362, 364 (1985), *modified on other grounds by Midtec*, 3 I.C.C.2d 171; *Cent. States Enters., Inc. v. ICC*, 780 F.2d 664, 680 (7th Cir. 1985). The standard is not satisfied by a “mere desire on the part of shippers or other interested parties for something that would be convenient or desirable to them.” *Jamestown*, 195 I.C.C. at 292.

But here, Metra has not even alleged that Union Pacific has threatened to exclude Metra from the UP Lines. Though Union Pacific has no obligation to continue providing or allowing commuter rail transportation on its lines,⁴⁸ it is willing to provide Metra access to the UP Lines through private commercial agreement, as is evidenced by the six-year effort to transfer responsibility for commuter operations to Metra. Union Pacific continues to present Metra with offers for continued access to

⁴⁸ *Union Pac. R.R. v. Reg’l Transp. Auth.*, 74 F.4th 884, 887 (7th Cir. 2023).

the UP Lines, including as recently as May 21, 2025. And in the meantime, Union Pacific has represented that it will not be stopping service.

This dispute is not about necessity, then, but about money. Metra currently enjoys a below-market compensation arrangement, and it wants to keep it. But the Board’s “policy has long been to encourage private sector dispute resolution whenever possible, particularly in disputes involving compensation.” *DME/ICE*, 6 S.T.B. at 530. Agency involvement where “the real reason for the terminal trackage rights application” is to have the agency establish the price instead of party negotiations is “simply inappropriate.” *Id.*; see also *Commuter Rail Div. of the Reg’l Transp. Agency—Pet. for Decl. Ord.—Status of Chi. Union Station*, Docket No. FD 36171, at 4 (STB served Aug. 22, 2018) (dismissing Metra’s request for a declaratory order where there were no allegations “that Amtrak currently intends to deny Metra access” and the parties were negotiating a new agreement).

IV. IF THE BOARD ORDERS ACCESS UNDER § 11102, ACCESS SHOULD BE CONDITIONED ON UNION PACIFIC’S PROPOSED INTERIM TERMS AND CONDITIONS.

For all the reasons described herein, the Board lacks authority and should deny Metra’s application, sending Metra back to the bargaining table. However, if the Board grants Metra’s application under § 11102, it would have to deal with compensation *before* any Board-ordered access takes effect.

By statute (and consistent with the Constitution), compensation must be paid or adequately secured *before* access can occur pursuant to the government order. As Union Pacific explained in its reply to Metra’s application, long-standing ICC precedent confirms payment or security of compensation must come prior to any

use.⁴⁹ Union Pacific also explained that more recent agency precedent—deriving from some ill-advised language in a 1984 opinion—is entitled to no weight in a *Loper Bright* era.⁵⁰ Union Pacific incorporates those arguments herein.

Thus, Metra must pay or provide adequate security prior to accessing Union Pacific’s property under a Board order. There are a variety of ways that adequate security can be satisfied, such as a deposit or bond with sufficient sureties. *See, e.g., Sabal Trail Transmission, LLC v. Real Estate*, No. 1:16-cv-100, 2016 WL 8919397, at *9 (N.D. Fla. May 23, 2016) (requiring the condemnor “to deposit money in the amount of 3 times the appraised value” for adequate security). While Union Pacific does not believe that the Board can or should issue an order in this case, if the Board were to do so, Union Pacific is willing to accept interim compensation at the level sought by Union Pacific in private negotiations—subject to a retained right to challenge the Board’s authority to issue such an order, and subject to Union Pacific’s right to advocate for compensation under condemnation principles, which may be significantly higher.

⁴⁹ Union Pacific Reply to Application, 5–6.

⁵⁰ *Id.* at 7.

- A. In the unique circumstances of this case, the Board should adopt Union Pacific's proposed interim terms and compensation if it grants access.**

As discussed in the reply to Metra's application (at 5–9), the standard ICC practice was to enter an order after finding that terminal access was appropriate, but actual access “[would] be subject to the right of the [owning carrier] to require that the compensation for such use shall be paid or shall be adequately secured before the use under that order shall be commenced.” *Use by Erie of Niagara Junction Ry. Terminals*, 269 I.C.C. 493, 502–03 (1947). The parties would then have an opportunity to negotiate permanent terms and compensation for the use. *Id.* at 503. If the parties failed to come to an agreement, the agency retained jurisdiction “to reopen the proceeding [on motion of a party] for further hearing looking to a determination and prescription of terms and compensation.” *Id.* In other words, absent an agreement between the parties, Metra would have no right to operate over the UP Lines until final terms and conditions were set by the Board.

Union Pacific recognizes, however, that proceedings to establish compensation have historically lasted years and that, if the Board were inclined to grant access, it would likely want its order to take effect sooner than that. As such—while the Board should deny Metra's application for all the reasons above—if the Board were to issue an order under § 11102(a), that order should be conditioned on Metra's acceptance of certain interim terms and compensation, to be reconciled once the Board establishes final terms and compensation. Appropriate interim terms proposed by Union Pacific are attached as Exhibit B. Union Pacific offers these interim terms to avoid any possible disruption to commuter service, while also protecting itself. Union Pacific

simply cannot allow Metra to operate passenger service on the UP Lines without compensation or without any terms governing issues like liability and indemnification.

Union Pacific would assent to such interim terms as constituting adequate security, subject to a retained right to challenge the Board's authority to issue such an order, and subject to Union Pacific's right to advocate for higher compensation under condemnation principles in any subsequent court or agency proceeding.

B. Union Pacific's proposed interim terms and conditions.

The interim terms and conditions set forth in Exhibit B reflect standard terms Union Pacific requires for commuter passenger rail entry to its network. And they are plainly required if the Board were to order immediate access to the UP Lines. For example, the interim terms and conditions address commuter schedules, dispatching, maintenance obligations, and insurance requirements. But the two most important provisions relate to indemnification and compensation.

A critical interim term relates to indemnity for accident liability. Union Pacific does not anticipate serious disagreement from Metra on this point. Metra stated in discovery that it "expects that any conditions and compensation for use of the facilities established with UP, or established by the STB if Metra and UP cannot agree, would include provisions addressing liability allocation and indemnification."⁵¹ This is standard in access agreements, particularly for passenger operations, as no

⁵¹ Exhibit C, Excerpt of Metra's Responses and Objections to Union Pacific's First Set of Discovery Requests, Response to Request for Admission No. 1.

access fee could sufficiently compensate Union Pacific for the risk in assuming liability for passenger claims arising from an accident.⁵²

Congress recognized as much in its 2004 revisions to § 11123, providing the Board with contingency authority in case Amtrak had to cease operations due to budget cuts. When the Board directs service to remedy that contingency, the statute requires the Board to “order *complete indemnification against any and all claims* associated with the provision of service to which the directed rail carrier may be exposed.” 49 U.S.C. § 11123(b)(3)(B) (emphasis added). That is precisely what Union Pacific is asking for here. The Board should take cues from Congress’s instructions on how to deal with similar circumstances if adopting interim terms for the present situation.

The other critical term—required by statute—is the paying or posting of adequate security for just compensation.⁵³ As explained above, the compensation requested by Union Pacific in its private commercial negotiations and proposed herein as an interim term is economically reasonable, even conservative. And it is

⁵² For this reason, Union Pacific believes that any order requiring access without provisions relating to indemnity and liability would not be practicable and would unduly impair Union Pacific’s ability to serve its freight customers.

⁵³ Courts interpreting similar language in other condemnation statutes enacted in the same era reached similar conclusions. *See, e.g., Ford Motor Co. v. Voorheis*, 295 F. 582, 584 (6th Cir. 1924) (“The statute . . . requires as a condition precedent to the taking possession of such property that ‘certain and adequate provision shall have been made for the payment of just compensation to the party or parties entitled thereto, either by previous appropriation by the United States or by the deposit of moneys or other form of security in such amount and form as shall be approved by the court in which such proceedings shall be instituted.’” (quoting Act of July 18, 1918, Pub. L. No. 65-200, § 5, 40 Stat. 904, 911)).

substantially lower than the amount that Union Pacific would be due if it were calculated under principles applicable in condemnation proceedings.

Metra has not put forward any evidence regarding compensation, its ability to pay compensation under condemnation principles, or the reasonableness of Union Pacific's proposed access fee. Metra claims that its "potential financial challenges" that Union Pacific addressed in its reply to the application are outside the statutory criteria.⁵⁴ But Metra entirely fails to address the agency's holding in *Hastings Commercial Club v. Chicago, Milwaukee & St. Paul Railway Company*, 107 I.C.C. 208, 215–16 (1926), which Union Pacific raised, that issues of compensation and finances were factors to be considered in the public interest inquiry.⁵⁵ Just this past week, Illinois lawmakers passed a budget that does not address the \$770 million budget shortfall for the Regional Transportation Authority that oversees Metra.⁵⁶

That being said, Metra's Assistant Deputy Executive Director of Administration, who is responsible for, among other things, contract management, and who also at one point led negotiation efforts for Metra, testified that Metra could afford to pay Union Pacific's requested access fee.⁵⁷ Metra also suggests that, given

⁵⁴ Metra Opening at 48.

⁵⁵ See Union Pacific Reply to Application, at 3–4.

⁵⁶ Jasmine Minor, *Transit leaders warn of job, service cuts as Illinois budget fails to address RTA funding shortfall*, ABC7Chicago.com (June 2, 2025, at 6:15 AM CT), <https://abc7chicago.com/post/illinois-budget-transit-leaders-warn-job-service-cuts-fails-address-rta-funding-shortfall/16630504/>.

⁵⁷ Exhibit D, Excerpt of T. Stuebner Deposition (May 1, 2025), Tr. 73:1–3 ("Q: But you believe that Metra could afford a { [REDACTED] } access fee? A: Again, yes, I believe so.").

constrained public funding, it might be required to reduce its commuter services on the UP Lines, in which case the access fee would be even less (given that the access fee is based on train miles).⁵⁸ In these circumstances, where compensation amounts would be interim with the ability to reconcile upon a final compensation order, Union Pacific's requested amount would be adequate interim compensation and security sufficient to satisfy the statute.⁵⁹

On one point, Metra and Union Pacific do agree: the PSA is *not* a viable template. As Metra's witness has testified, "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" and it "no longer serves as an effective or efficient business template to manage the economic relationship between Metra and UP."⁶⁰ As Metra bluntly puts it, it "is not a viable model for the parties' post-PSA relationship."⁶¹

⁵⁸ Metra Opening at 48.

⁵⁹ This is not a novel concept: in rate disputes, the Board requires shippers to pay the challenged tariff rate until such time as the agency rules on its reasonableness, with the defendant carrier having to reimburse with interest any charges found in violation of the statute. Given the statutory requirement for payment in advance of entry, requiring Metra to pay Union Pacific's requested franchise access fee on an interim basis in order to access the property, pending a final resolution of the rate under condemnation principles, is eminently reasonable and comports with the unbending demands of the statute.

⁶⁰ Metra Opening, Verified Statement of Jennifer Kane ¶ 11.

⁶¹ *Id.* ¶ 12.

V. THE BOARD LACKS AUTHORITY TO ISSUE AN EMERGENCY ORDER OR AN INJUNCTION.

Metra tries to bypass the requirement that compensation “shall be paid or adequately secured *before* a rail carrier may begin to use the facilities of another rail carrier,” 49 U.S.C. § 11102(a) (emphasis added), by suggesting that the Board could issue an order under other authorities.⁶² Metra is incorrect.

A. Section 11102’s adequate-security requirement cannot be circumvented by an emergency order under 49 U.S.C. § 11123.

Metra says the Board “could order relief” now “and address compensation later under” 49 U.S.C. § 11123.⁶³ To be sure, that section allows the Board to issue an emergency order “before conducting a proceeding” to set compensation. § 11123(b)(2). But § 11123 does not authorize an end-run around § 11102’s limitations and in any event does not extend to commuter railroads in this situation.

The statute contains “no general grant of emergency power” to address “interruptions in traffic.” *Peoria & P.U. Ry. Co. v. United States*, 263 U.S. 528, 534–35 (1924). Rather, § 11123(a) allows the Board to address only certain kinds of causes, with effects of a certain magnitude. An order under § 11123(a) requires: (1) shortage of equipment, (2) congestion of traffic, (3) unauthorized cessation of operations, (4) failure of existing commuter rail passenger transportation operations caused by a cessation of service by Amtrak, or (5) other failure of traffic movement,

⁶² Metra Opening at 44.

⁶³ *Id.*

which must create “an emergency situation” with “substantial adverse effects on shippers, or on rail service.”

Even setting aside that there is no emergency here, the plain text of the statute makes clear that the Board can only act if a “failure of existing commuter rail passenger transportation operations” is “caused by a cessation of service by [Amtrak].” 49 U.S.C. § 11123(a). That is, Congress specifically considered when commuter-rail interruptions can be addressed, and it did not include situations like the one presented here. As the Supreme Court has held, “the detail in which the subjects of such power have been specified precludes its extension to other subjects by implication.” *See Peoria*, 263 U.S. at 534–35; *see also Nat’l R.R. Passenger Corp. v. Nat’l Ass’n of R.R. Passengers*, 414 U.S. 453, 458 (1974) (“[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.”).

Nor does any other language in the statute allow an emergency order in this case. As part of ICCTA, Congress expressly withdrew agency jurisdiction over commuter rail service, subject to two qualified carveouts for “jurisdiction under sections 11102 and 11103.” 49 U.S.C. § 10501(c)(2)(A), (3)(B). Again, the enumeration of two express carveouts gives rise to a “strong negative inference” against finding a third by circuitous means. *See Jones v. Hendrix*, 599 U.S. 465, 477–78 (2023). Thus, following adoption of ICCTA, the Board lacked authority to issue any type of order over commuter railroads.

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But in 2004, Congress gave the Board a limited emergency power related to commuter railroads. All language in § 11123 relating to commuter railroads, including § 11123(e), was added as part of the Consolidated Appropriations Act of 2004. *See* Pub. L. No. 108-199, div. F., tit. I, § 150(1), 118 Stat. 3, 202–03 (2004). At that time, Amtrak was facing significant potential budget cuts, which prompted Amtrak’s president to warn Congress that such severe cuts would give Amtrak “no other choice but an orderly shutdown of all service.”⁶⁴ As a response to this possibility, Congress gave the Board a limited power to remedy any commuter rail emergency created by Amtrak shutting down and appropriated \$60 million for that purpose. *See* H.R. Rep. No. 108-401, at 978 (2003) (Conf. Rep.).

The limited scope of this grant is clear from the face of the enactment. The act added as a trigger for emergency powers the “failure of existing commuter rail passenger transportation operations caused by a cessation of service by [Amtrak]” and, as a power specific to the “failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by [Amtrak],” authority to “direct the continuation of [such] operations and dispatching, maintenance, and other necessary infrastructure functions related to [such] operations.” 118 Stat. at 202. In contrast to the non-reimbursement provision for other types of directed service, service under such orders is made “fully reimburs[able]” by the Board, “including the payment of increased insurance premiums,” and the Board was required to “order

⁶⁴ Reuters, *Amtrak Threatens Another Shutdown Over Funding*, CNN.com (Jan. 20, 2003, at 11:41 AM EST), <https://bit.ly/4iO2EEg>.

complete indemnification against any and all claims associated with the provision of service to which the directed rail carrier may be exposed.” *Id.* at 202–03. And because the Board had no general jurisdiction over “entit[ies] providing commuter rail passenger transportation,” the act gave the Board a limited grant of jurisdiction in what is now subsection (e) to effectuate all of the foregoing provisions. *Id.* at 204.

Congress did not—as part of a statute primarily aimed at giving the Board power to issue specific emergency orders to respond to a particular kind of commuter rail emergency, a statute which also gave detailed instructions for the content and conditions of those orders—simultaneously grant the Board a sweeping emergency power over all commuter rail transportation with no restrictions or conditions in an ancillary provision of that very same enactment. Congress does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). The specific enumeration of power to remedy one particular type of commuter rail emergency must, therefore, be read to exclude any others.

B. Section 1321(b)(4) allows only interim relief based on otherwise-actionable claims.

Metra also suggests that 49 U.S.C. § 1321(b)—which allows the agency to enter an “appropriate order” when “necessary to prevent irreparable harm”—would let the Board order access now and “address compensation later.” Again, Metra is wrong. Section 1321(b)(4) does not confer an independent basis for Board action in the absence of a separate substantive authority in the Interstate Commerce Act. Thus, relief under § 1321(b) is “unavailing” if there is “no actionable claim before the

agency.” *See, e.g., Benton v. CSX Transp., Inc.*, Docket No. NOR 42166, 2020 WL 264645, at *2 & n.6 (STB served at Jan. 17, 2020).

Metra’s claim, of course, is under § 11102. But even if that claim were otherwise viable, it could not support an interim-access order under § 1321(b)(4). As already explained, relief under § 11102 is not available until after compensation has been paid or secured. Applying § 1321(b)(4) to grant interim relief *on a § 11102 claim* without payment or security would thus violate the very provision creating the claim on which the relief depends. Likewise, because proceedings under § 11102 are exercises of eminent domain, the petitioning carrier cannot “obtain a preliminary injunction without first showing a ‘substantive claim to immediate possession.’” *Transwestern Pipeline Co. v. 17.19 Acres of Prop. Located in Maricopa Cnty.*, 550 F.3d 770, 777 (9th Cir. 2008) (quoting *N. Border Pipeline Co. v. 86.72 Acres of Land*, 144 F.3d 469, 472 (7th Cir. 1998)). Under both the statute and the Constitution, the substantive right to access does not accrue until compensation is addressed—which has not happened.

In any event, interim relief requires the movant to show that “there is a likelihood that it will prevail on the merits of any challenge to the action sought to be [preliminarily] enjoined,” among other things. *Am. Chem. Council v. Ala. Gulf Coast Ry.*, Docket No. NOR 42129, 2012 WL 1570153, at *3 (STB served May 4, 2012); *see Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843–44 (D.C. Cir. 1977) (same). That burden is “doubly demanding” when the moving party “seeks a mandatory injunction” (i.e., an order compelling action rather than preventing

action)—“she must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc); *accord Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 501 F. Supp. 2d 83, 91 (D.D.C. 2007). Metra has not attempted that showing. For all the reasons explained above, Metra cannot prevail on the merits under any substantive provision.

Hasa, Inc. v. Union Pacific Railroad does not support a different result. There, the Board issued an order to “maintain the status quo” without citing any authority or analysis whatsoever. Docket No. NOR 42165, at 2 (STB served Aug. 21, 2019). Being completely “devoid of meaningful analysis,” *Hasa* is entitled to neither binding nor persuasive weight. *In re Sandoval*, 541 F.3d 997, 1001 (10th Cir. 2008); *In re Magnacom Wireless, LLC*, 503 F.3d 984, 993–94 (9th Cir. 2007).

Moreover, it is plainly inapposite. For injunctive-relief purposes, “[t]he status quo means the last, uncontested status which preceded the pending controversy.” *Garcia*, 786 F.3d at 740 n.4 (quoting *N.D. ex. rel. Parents Acting As Guardians Ad Litem v. Haw. Dep’t of Educ.*, 600 F.3d 1104, 1112 (9th Cir. 2010)). Here, the status quo is that Union Pacific is under no obligation to provide or allow use of its lines for commuter rail service after expiration of the PSA. *See Union Pac. R.R. v. Reg’l Transp. Auth.*, No. 1:19-cv-7957, 2021 WL 4318106, at *11 (N.D. Ill. Sept. 23, 2021) (“Union Pacific does not have a common carrier obligation to provide the commuter services at issue in this case on the lines at issue in this case.”); *Union Pac. R.R.*, 74 F.4th at 889 (“Union Pacific is not bound by any contractual promise to keep

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providing rail services to Metra for the indefinite future. The parties' contracts have start and end dates, which both sides can enforce."). Interim relief ordering the parties to continue in a relationship that would otherwise terminate under a negotiated agreement does more than merely preserve the status quo. *See Salt Lake Tribune Pub.'g Co., LLC v. AT&T Corp.*, 320 F.3d 1081, 1099 (10th Cir. 2003); *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 15 n.1 (4th Cir. 1997); *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994). *Hasa* is thus inapt.

Finally, a preliminary injunction under § 1321(b)(4) would not relieve Metra of the requirement to post security prior to commencing use of Union Pacific's facilities pursuant to a Board order. "Since a preliminary injunction may be granted on a mere probability of success on the merits, generally the moving party must demonstrate confidence in his legal position by posting bond in an amount sufficient to protect his adversary from loss in the event that future proceedings prove that the injunction issued wrongfully." *Edgar v. MITE Corp.*, 457 U.S. 624, 649 (1982) (Stevens, J., concurring in part and concurring in the judgment). Ultimately, § 1321(b)(4) does nothing to advance Metra's position.

CONCLUSION

For the foregoing reasons, the Board should deny Metra's application for terminal trackage rights, either in whole or in part.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of June 2025, the foregoing Reply Statement and Evidence was served by first-class mail or more expeditious means on all parties of record in this proceeding.

/s/ Stephen S. Laudone

Stephen S. Laudone

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Verified Statement of Professor Julie M. Carey

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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 JULIE M. CAREY
NATIONAL ECONOMIC RESEARCH ASSOCIATES D/B/A NERA

June 3, 2025

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I. INTRODUCTION

Background to Expert

My name is Julie M. Carey. I am an economist and Senior Managing Director with National Economic Research Associates, Inc. (“NERA”). I routinely provide expert evidence before regulatory agencies, including the Surface Transportation Board (“STB” or the “Board”), as well as in commercial disputes before arbitrators and courts. I have over 25 years of experience addressing economic issues in the energy and transportation sectors. I have worked on numerous rate reasonableness disputes before the STB by providing economic evidence regarding stand-alone costs and future expectations of volume, revenue, and rates. I have worked on numerous control proceedings before the STB involving analyses of competitive effects. I also have experience conducting economic analyses in commercial arbitration and STB matters regarding haulage, trackage and switching agreements. My analytical work often focuses on the intersection of competition and regulation across energy and transportation industries. I have substantial experience providing consulting and testifying expert services involving competition, negotiated and market-based rates, economic damages, valuation analyses, and other economic analyses within regulatory and commercial disputes associated with transportation, as well as other regulated and unregulated industries.

In addition to my economic consultancy practice, I have served as an Adjunct Professor at Georgetown University since 2016, teaching energy economics and policy in the graduate economics and political economics programs, including the economics and regulation of railroad transportation. My Curriculum Vitae is attached as Exhibit 1.

Background to Metra’s Use of the Union Pacific Lines

Metra is a large and sophisticated provider of passenger rail service in the Chicago metropolitan area which provides approximately 35 million passenger trips per year.¹ Metra uses many Chicago area freight railroads’ lines to provide commuter rail service, including BNSF Railway,

¹ Appl. of Commuter Rail Division of the Regional Transportation Authority D/B/A Metra, FD 36844, March 7, 2025 (hereafter Metra Application), page 2.

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Canadian National Railway, Norfolk Southern Railway, and Union Pacific Railroad Company (“Union Pacific”).² Metra has a 2025 operating budget of \$1.14 billion.³

Regarding operations over Union Pacific rail lines, Metra provides approximately 13.6 million passenger trips annually on three Union Pacific mainlines and one branch line.⁴ Moreover, I understand that Union Pacific operates freight rail movements over the same rail lines that accommodate Metra’s commuter rail service. Metra’s Union Pacific West (UP-W) service operates over Union Pacific’s Geneva Subdivision between Metra’s Ogilvie Transportation Center in downtown Chicago and Elburn, Illinois. This line has the heaviest freight traffic and includes traffic movements between eastern and western rail carriers for intermodal service. The Union Pacific North (UP-N) service operates over Union Pacific’s Kenosha Subdivision between Ogilvie Transportation Center and Kenosha, Wisconsin. Finally, Metra’s Union Pacific Northwest (UP-NW) service operates over Union Pacific’s Harvard Subdivision from the Ogilvie Transportation Center to Harvard, Illinois, with a branch line running from Crystal Lake, Illinois, to McHenry, Illinois. The lines used for UP-N and UP-NW service carry lighter freight traffic than the line the UP-W service operates on. Collectively, I refer to the UP-W, UP-N, and UP-NW as the UP Lines.

Historically, commuter rail service on the UP Lines has been performed by Union Pacific on behalf of Metra through a Purchase of Service Agreement (“PSA”).⁵ Union Pacific and Metra have been in the process of transferring responsibility for conducting the commuter operations to Metra pursuant to negotiated amendments to the PSA. The parties, however, have been unable to agree on an access fee for Metra’s use of the UP Lines. On March 7, 2025, Metra filed an application for terminal trackage rights at the STB.⁶ My understanding is that Union Pacific’s most recent offer to Metra is for { } per train mile, which implies an annual { } payment.⁷ I understand that Metra most recently indicated that it should pay Union Pacific in annual compensation for franchise access

² Metra website “About Metra: Our History”, *see* entries for Southwest Service, Heritage Corridor, Union Pacific North, Union Pacific Northwest, Union Pacific West, BNSF, and North Central Service, available at <https://metra.com/about-metra>.

³ *Metra 2025 Operating Budget & Capital Program*, p. 7, available at <https://assets.metra.com/s3fs-public/2024-12/2025-Budget-Final.pdf?VersionId=iHEXbA5BXTHZkhwRdFHCWTgNIU0WH82h>.

⁴ Metra Application, page 5 (stating 39% of Metra’s 35 million passenger trip occur on the UP Lines).

⁵ Metra Application, page 2; Metra Opening Workpapers (Amended & Restated PSA).

⁶ Metra Application.

⁷ (Proposed) Passenger Rail Operating Agreement, Metra and UP, submitted by UP to Metra on May 21, 2025, proposed effective date July 1, 2025, at Exhibit F, p. 2, stating “The base FAF [Franchise Access Fee] rate is { } per Train Mile” and “The base FAF rate shall increase { } annually each January 1st.” It also presents estimated annual train miles of { } million for the period July 1, 2025 through June 30, 2030. The Franchise Access Fee of { } per train mile and { } million estimated annual train miles results in an estimated annual payment of { }.

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between \$6.7 million and \$16.9 million.^{8,9} This level of compensation requested by Metra is much lower than the equivalent access compensation paid under the PSA since 2018 ({ [REDACTED] [REDACTED] }).¹⁰

Assignment

Metra claims that Union Pacific's offer for compensation is economically unreasonable.¹¹ I was retained by Union Pacific to provide an opinion on the reasonableness of the franchise access fee that Union Pacific proposed for Metra to have the right to access the UP Lines.

I understand that, at this stage, Metra is seeking access to the UP Lines through a terminal trackage order by the Board. I also understand that, should the Board order Metra's requested relief and if the parties are unable to agree to terms and conditions, then the Board by statute "may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings."¹² I have not been asked to provide an opinion on the appropriate compensation under condemnation principles at this time.

Summary of Opinions

As I discuss further below, Union Pacific and Metra are two sophisticated market participants that entered into a commercial negotiation for a potential business agreement regarding a commercial rate that Metra should pay to obtain franchise access to the UP Lines for passenger rail services.

In recent years, Union Pacific has completed a series of competitive negotiations that led to numerous fair market value rates—as measured by dollars per train mile—for franchise access on its system for passenger rail between a willing buyer and willing seller. These prior successful negotiations informed Union Pacific's approach to the negotiations with Metra and the rate that it

⁸ Metra First Amended Complaint, Commuter Rail Division of the Regional Transportation Authority, d/b/a/ Metra v. Union Pacific Railroad Company, C.A. No. 25-cv-2439, p. 2 ("Metra First Amended Complaint"), stating "... Metra estimates the appropriate compensation as between \$6.7 and \$16.9 million a year." Metra also refers to a \$21 million as a "status quo" compensation arrangement. Metra First Amended Complaint, Commuter Rail Division of the Regional Transportation Authority, d/b/a/ Metra v. Union Pacific Railroad Company, C.A. No. 25-cv-2439, p. 2.

⁹ Annual compensation of \$6.7 million and annual train miles of { [REDACTED] } million equals { [REDACTED] } per train mile ($\$6.7 / \{ [REDACTED] \} = \{ [REDACTED] \}$). Annual compensation of \$16.9 million and annual train miles of { [REDACTED] } million equals { [REDACTED] } per train mile ($\$16.9 / \{ [REDACTED] \} = \{ [REDACTED] \}$). Recognizing that actual train miles may vary, I use { [REDACTED] } million annual train miles for Metra's service on UP Lines based on a 2025 train mile estimate provided by Union Pacific. See (Proposed) Passenger Rail Operating Agreement, Metra and UP, proposed effective date July 1, 2025, Exhibit D; UP Internal Analysis, Historical Franchise Access Fee, May 16, 2025, (Copy of Franchise Access Fee Engr Other Costs 20250516.pdf.).

¹⁰ UP Internal Analysis, Historical Franchise Access Fee, May 16, 2025, (Copy of Franchise Access Fee Engr Other Costs 20250516.pdf.). The 2018 and 2024 rates were { [REDACTED] } and { [REDACTED] } per train mile, respectively.

¹¹ Metra Application, page 1.

¹² 49 U.S.C. § 11102(a).

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proposed.¹³ Several examples of these Union Pacific negotiated rates show commercial rates markedly higher than Metra's price offers to Union Pacific and often even higher than Union Pacific's price offers to Metra, the most recent of which I understand was submitted to Metra on May 21, 2025, demonstrating that Union Pacific provided an effective price discount.¹⁴

Upon investigation, numerous other rail carriers also have arm's-length access agreements with current price levels substantially higher than the Union Pacific price offers.

The numerous exemplars of Union Pacific's recently negotiated franchise access rates with passenger rail systems, as well as current rates for other rail carriers involving passenger rail access, provide substantial support for the Union Pacific proposal as an economically reasonable rate.

In addition to the comparisons to recently negotiated Union Pacific rates and other rail carriers' current rates for access, other factors demonstrate the reasonableness of Union Pacific's offer including (1) changes in economic conditions since the current rate under the PSA was set—beyond the modest escalation and other stop gap amendment changes and (2) an appraisal of the value of the corridors in which the UP Lines run.

In summary, there is a substantial amount of market evidence that underpins the Union Pacific proposed rate as a reasonable economic rate for use in the commercial negotiations with Metra. In contrast, the soon-to-expire PSA uses a markedly lower implied rate, which has not been updated for the passage of time¹⁵ or based on market information.

II. UNION PACIFIC/METRA'S NEGOTIATIONS FOR A NEW COMMERCIAL FRANCHISE ACCESS AGREEMENT

I understand that Union Pacific and Metra have been engaged in a multi-year commercial negotiation to transition passenger rail service from Union Pacific to Metra and to establish terms of access for Metra to continue to use the UP Lines. I have reviewed the Joint Verified Statement of Union Pacific employee John W. Turner and former Union Pacific employee Mark Bristol, and I have spoken to other Union Pacific personnel. I have also reviewed the existing PSA, which expires on June 30, 2025. My understanding is that the current PSA was entered into in 2010 and addresses a

¹³ See UP Reply Statement, Joint Verified Statement of Turner & Bristol, pp. 4-10.

¹⁴ (Proposed) Passenger Rail Operating Agreement, Metra and UP, proposed effective date July 1, 2025.

¹⁵ There are some annual increases of certain components discussed *infra*.

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broad set of issues regarding the Union Pacific/Metra relationship as it existed at that time, with Union Pacific providing the commuter rail service for Metra. The PSA has been amended a number of times since 2010. I understand that, setting aside other types of payments relating to reimbursable costs, the components of compensation for access under the PSA essentially include the management fee, overhead fee, security fee, and depreciation.¹⁶ Rates for these compensation components were agreed to in the PSA, with some of the components including nominal escalations (2.9% annually) through 2016. The Fourth Amendment to the PSA set annual amounts for 2017-2019, again with nominal 2.9% increases for some categories.¹⁷ The Sixth Amendment set annual amounts for 2020 and set a 2.9% annual increase for some categories going forward.¹⁸ In 2024, Union Pacific and Metra entered a Memorandum of Understanding (MOU) clarifying that Metra would continue to pay these categories at the rates set by the PSA and its amendments during the pendency of the PSA.¹⁹

Based on my review of the existing PSA, I found no economic-related requirements for each of the parties associated with the termination of the agreement.²⁰ For example, there were no pre-specified economic terms that would be necessary to use in any potential new agreement that the parties may enter in the future. The termination clause of the Union Pacific/Metra PSA does not indicate that a specific rate level, rate structure, compensation approach or any compensation whatsoever, be required to be used if the parties decided to engage in a new negotiation for any possible future services.²¹ In other words, Metra or Union Pacific could have decided not to pursue a new agreement.

For these reasons, one can economically consider the current negotiations as a potential new commercial agreement for franchise access on the UP Lines between the two parties, including the

¹⁶ This is made clear in an agreement between Union Pacific and Metra. Memorandum of Understanding Financials and Other topics, UP and Metra, dated April 2, 2024.

¹⁷ Fourth Amendment to Purchase Service Agreement, UP and Metra, dated Dec. 21, 2015, One of the components (the security fee) was set back to a flat annual rate in the Fifth Amendment. Fifth Amendment to Purchase Agreement, UP and Metra, dated Nov. 21, 2017.

¹⁸ Sixth Amendment to Purchase Service Agreement, UP and Metra, dated Jan. 22, 2021.

¹⁹ Memorandum of Understanding Financials and Other topics, UP and Metra, dated April 2, 2024.

²⁰ Certain long-term commercial agreements for energy products and transportation services as well as infrastructure agreements may include such economic terms that are necessary to consider.

²¹ PSA at 42-43, item 11.02, stating “Effect of Termination. Upon the termination of the Agreement Term, all rights and privileges of Railroad and the CRD under this Agreement shall cease, and neither Railroad nor the CRD shall have any further obligations to the other under this Agreement...” Economic terms for any future use post termination could have been agreed to by the parties during negotiations of the prior amendments. They were not.

compensation and economically appropriate rate that Union Pacific should receive from Metra for such franchise access and use of its trackage.

III. DETERMINING THE ECONOMIC REASONABLENESS OF A TRANSACTION

As noted above, I have not been asked as part of my assignment to provide an opinion on the appropriate compensation under condemnation principles at this time. Rather, I have been asked my opinion regarding the economic reasonableness of Union Pacific's last offer for compensation, which as discussed below in Section IV, was informed by substantial experience with commercial negotiations for access agreements with passenger rail operators/providers that occurred in recent years.

Competitive negotiations that yield an agreement are an important feature for determining the economic value of a transaction. Courts have consistently upheld the principle that the value of property can be established by the terms arising from negotiations and the prices paid, provided that the terms of the agreement are the result of arm's-length bargaining between parties. What matters is that a fair and reasonable price can be ensured under the circumstances.²² In *Hunter v. Comm'r*, the court held that the best indication of value was what parties paid in an arm's-length transaction for limited edition prints that were subsequently donated.²³ In other words, willing buyer and willing seller negotiations result in competitive market outcomes.

Economists study the behavior of market participants that engage in competitive negotiations and consider the actions of willing buyers and willing sellers²⁴ that can result in privately reached fair market value outcomes. The concepts of fair market value, fair market price, market price, and

²² *Bank One Corp. v. Comm'r*, 120 T.C. 174 (2003), *aff'd in part, vacated in part, and remanded*, 458 F.3d 564 (7th Cir. 2006). ("Petitioner has not directed our attention to any case where fair market value was predicated on or limited to the amount that a hypothetical investor would pay for the property, rather than the broader group referred to in the accepted definition as a "willing buyer." Fair market value does not mean, of course, that the whole world must be a potential buyer of the property offered, but only that there are sufficient available persons able to buy to assure a fair and reasonable price in the light of the circumstances affecting value. In considering the term "fair market value" as used in section 301, *supra*, we cannot restrict the market to dealers, investors, or any other limited groups").

²³ *Hunter v. Comm'r*, 51 T.C.M. 1533 (1986). ("It is clear to us that the transaction between Rocquencourt and petitioners was at arm's length, involving as it did a 100 percent markup by Rocquencourt. The record is devoid of any explanation of why Rocquencourt would sell the prints to petitioners for less than fair market value...As we found in *Chiu v. Commissioner*, *supra*, we also find here no credible explanation as to why petitioners would be able to acquire the prints at substantial discounts from value. Thus, we believe that the fair market value price of the prints in October 1978 (as well as in December 1979) was the price paid for them by petitioners.").

²⁴ To be clear, the economics apply to the buying and selling of almost any good or service. Here, Metra is proposing to buy access to the UP Lines and Union Pacific is proposing to sell such access.

competitive price are rooted in fundamental economic concepts of supply, demand, and competitive negotiation. Economic theories of bargaining recognize that competitive negotiations can result in outcomes that split the benefits in a workable manner between the parties; if they did not, parties would not agree to the deal. Specifically, bargaining theory predicts that each party will consider its best alternative to a mutual agreement when negotiating and will not reach an agreement if it does not yield gains in excess of the best alternative to that agreement.²⁵

The price that results from competitive negotiations is necessarily higher than the seller's "reservation price,"²⁶ and lower than the buyer's reservation price, such that the transaction is mutually beneficial. The difference between parties' reservation prices is the total economic surplus that results from successfully arriving at a mutually beneficial agreement.²⁷ The competitive negotiations require certain conditions to hold in order to be consistent with a competitive market outcome (such as negotiations that are free of duress and information asymmetries).²⁸ Economic theory predicts that the split of the surplus depends on the bargaining abilities and relative patience (i.e., its cost associated with delay, in reaching an agreement for each party, with a greater share of the surplus going to the more skilled or patient party).²⁹ Furthermore, economic theory predicts that the price arrived at through competitive bargaining will lie between the buyer's maximum acceptable price and the seller's minimum acceptable price, such that the transaction is mutually beneficial and therefore economically efficient, making both parties better off.³⁰

When competitive negotiations that are arm's-length occur with only a few parties, robust negotiations can occur and often provide for a range of possible competitive prices, as opposed to a

²⁵ Referred to as BATNA. See generally Avinash Dixit and Susan Skeath, *Games of Strategy* 524-47 (1999). BATNAs are also referred to as threat points, disagreement points, backstop payoffs, and fallback payoffs.

²⁶ "The simplest example of a reservation price is that price below which an owner will refuse to sell a particular object in an auction." Ian Steedman, *The New Palgrave Dictionary of Economics*, (2018), "Reservation price and reservation demand," pp. 11586-11587., available at https://doi.org/10.1057/978-1-349-95189-5_1635.

²⁷ Economic surplus is represented by the gain by consumers (producers) who would be willing to buy the good at a higher price (sell the good at a lower price) but transact at a lower price (higher price). This is referred to as consumer (producer) surplus. Practically speaking, if a consumer valued a good at \$5 and the market price of the good is \$2, that consumer's surplus for that good is \$3. Conversely, if a producer is willing to sell a good for \$1 and the market price of the good is \$2, then the producer's surplus on that good is \$1. The sum of the market participants' surplus on goods in the market represents economic surplus. See, e.g. Boulding, Kenneth E. (1945). "The Concept of Economic Surplus". *The American Economic Review*. 35 (5): 851-869. JSTOR 1812599.

²⁸ See Robert Cooter and Thomas Ulen, *Law & Economics*, (Addison-Wesley 2000), 3rd edition, at pp. 43 and 206-7. In addition, if transaction costs associated with certain negotiations are too high, some mutually beneficial transactions may fail to occur. See Ronald Coase, "The Problem of Social Cost," 3 *Journal of Law and Economics* (1960), at 7.

²⁹ For a discussion of factors affecting bargaining weights, see Kenneth Binmore, Ariel Rubinstein & Asher Wolinsky, "The Nash Bargaining Solution in Economic Modeling," 17 *Rand Journal of Economics*, 176-188 (1986).

³⁰ Jehle, Geoffrey L. Reny, Philip J. "Advanced Microeconomic Theory", third edition, 2011, pp. 195-198.

single, unique value.³¹ The range of possible competitive prices will be affected by the economic strengths of each party, including information asymmetries, stature and leverage. Differentiation in economic circumstances could also lead to a broader range of negotiated prices with a potential advantage to the more sophisticated or otherwise advantaged negotiator including the larger entity with greater stature or other leverage characteristics.

Using recent sales transactions from commercial negotiations as comparisons is a reasonable way to determine the economic value of assets including land, property or other types of assets. Union Pacific's recent commercial negotiations for franchise access fees with other passenger rail providers is one such way to determine the economic value of the UP Lines. Also as discussed below, in Section VI, Union Pacific had an appraisal completed to quantify the value of the land associated with the UP Lines. This appraisal used comparisons of valuations of recent land sales transactions for tracts of lands that were considered to have reasonably similar characteristics. This is a commonly used approach to valuations involving tracts or parcels of land or real estate. In fact, meaningful comparisons are often used for valuation analyses of many types of assets (power plants, pipelines, real estate, etc.) that reflect economic circumstances comparable to that of a guideline company.³² Such comparisons of relevant similar transactions can be compared on an economic basis using different financial statistics.³³ For example, one can make comparisons based on the total dollar value, dollar per unit, the yield or income generated from the investment or a return on the investment (ROI) measuring the profitability. When reported on a percentage basis, it is referred to as a rate of return or profit margin. Any of these metrics can be used to make comparisons across similar economic circumstances and it would be a reasonable approach to determine economic value.

As I discuss further below, franchise access compensation may be expressed on a unitized basis as dollars per train-mile, which aids comparison across transactions with different compensation

³¹ See *Comm'r v. Patino*, 186 F.2d 962, 967 (4th Cir. 1950), *aff'g* 13 T.C. 816 (1949); ("It is entirely proper for parties to a contract to make their own estimates of values; and if they are dealing at arm's length and there is no reason to question the bona fides of the transaction, their valuations may be accepted as correct.")

³² Use of a comparable or guideline company in a valuation analysis involves comparison of one company or asset to the subject company based on the underlying economics of each, taking into account their particular characteristics and other factors. See Shannon P. Pratt & Alina V. Niculita, *Valuing A Business: The Analysis and Appraisal of Closely Held Companies* (5th ed. 2008) at pp. 269-71.

³³ "It is also useful to analyze the financial statements for both the subject company and the guideline companies to uncover similarities and differences to consider in the valuation. Bearing in mind the company being valued and the nature of the industry, we generally compare the performance of the subject company to the guideline companies by analyzing financial ratios that measures liquidity, leverage, activity, and profitability, as well as historical trends in revenues, expenses, and profitability." See Shannon P. Pratt & Alina V. Niculita, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* (5th ed. 2008) at p. 272.

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structures. Moreover, stating annual franchise access fees as a percentage of property value provides a “rental yield” amount that allows comparison across all investment types that considers the array of alternative uses available for the economic asset beyond rail service.

IV. UNION PACIFIC’S RECENT COMMERCIAL NEGOTIATIONS FOR FRANCHISE ACCESS FEES DEMONSTRATE THE REASONABLENESS OF UNION PACIFIC’S OFFER

I have reviewed Union Pacific agreements, read the verified statement of John W. Turner and Mark Bristol, and met with current and former Union Pacific employees. Based on all of that information, it is my understanding that, particularly in the last few years, Union Pacific has developed substantial experience with commercial negotiations for franchise access agreements with passenger rail operators upon which it can draw in its negotiations with Metra, including in how Union Pacific has crafted its offers.³⁴ Previous commercial negotiations resulted in many outcomes that reflect willing buyers and willing sellers agreeing to fair market value rates for passenger rail to obtain franchise access to Union Pacific rail lines. And those experiences allowed Union Pacific to obtain substantial price discovery (i.e., an understanding as to what rates are acceptable to the market). Based on the rates mutually agreed to in these other recent commercial negotiations, Union Pacific’s offer is not only demonstrably economically reasonable, but also conservative (i.e., low).

As John W. Turner and Mark Bristol further explain in their Joint Verified Statement, Union Pacific undertook an analytical exercise to determine the appropriate access rate for passenger rail franchise access rights. Union Pacific determined that approximately { }³⁵ per train-mile (which combines the total track miles and the frequency of trains that traverse the line) was the price that would equate to the economic value that Union Pacific would realize on freight trains. Dollars per train mile is an appropriate way to compare rates across a diverse array of locations, total mileage, and service frequency because it offers standardized points of comparison.

Following this analysis, Union Pacific engaged in at least six negotiations over the past five years that involved the development of commercial agreements for passenger rail access to Union Pacific rail lines. Of course, these are not unilateral negotiations, and each of them was also impacted

³⁴ I have reviewed offers made by Union Pacific to Metra in July 2024 and May 2025.

³⁵ UP Reply Statement, Joint Verified Statement of Turner & Bristol, p. 5.

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by the counter party's considerations. Some of these recent negotiations in the 2021 to 2023 period include the following:

- **Chicago to Rockford Intercity (IDOT).** Union Pacific and the Illinois Department of Transportation ("IDOT") entered a memorandum of agreement on December 18, 2023, for IDOT to secure franchise access rights to Union Pacific's lines for intercity passenger rail service over approximately 47.5 miles³⁶ between Chicago and Rockford, Illinois,³⁷ with service to multiple intermediate points.³⁸
- **Altamont Corridor Express (ACE).** Union Pacific and San Joaquin Regional Rail Commission amended their trackage rights agreement on November 27, 2023, for Altamont Corridor Express ("ACE") to continue to utilize franchise access rights (trackage) to Union Pacific lines, updating the annual access charge and extending the term of the agreement to 2028 for service over 88.8 miles between Stockton and San Jose, California.³⁹
- **Metrolink Ventura County (VCTC).** Union Pacific and Ventura County Transportation Commission ("VCTC") entered an agreement on June 19, 2023, for VCTC to continue to utilize franchise access rights to Union Pacific's lines adding three round trip trains to Metrolink service over 18.6 miles between Moorpark and Los Angeles, California.⁴⁰
- **Pacific Surfliner (LOSSAN).** Union Pacific and Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency ("LOSSAN") entered an agreement on December 15,

³⁶ "Feasibility Report on Proposed Amtrak Service Chicago-Rockford-Galena-Dubuque", Amtrak June 22, 2007, available at <https://iowadot.gov/media/1931/download?inline=#:~:text=Between%20Elgin%20and%20Belvidere%2C%20a%20distance%20of%20nearly%2040%20miles%2C%20there%20is%20115%23%20continuous&text=track%20continuing%20westward%20from%20the%20end%20of%20Metra's%20ownership%20at%20Big%20Timber>.

³⁷ The Union Pacific portion of the service is between Rockford and Elgin, Illinois.

³⁸ Memorandum of Agreement Between Union Pacific Railroad Company and Illinois Department of Transportation, Dec. 18, 2023.

³⁹ Seventh Amendment to Altamont Pass Trackage Rights Agreement Between Union Pacific Railroad Company and San Joaquin Regional Rail Commission (SJRRRC), November 27, 2023. Union Pacific's initial trackage agreement with ACE, led by SJRRRC, dated Aug. 27, 1997, provided for a [REDACTED] } Altamont Pass Trackage Rights Agreement, UP and San Joaquin Regional Rail Commission (SJRRRC), dated Aug. 27, 1997, p. 41. [REDACTED] } (*ibid.* at pp. 20-23) [REDACTED] } (*ibid.* at pp. 6-13, 37-39). The franchise access or trackage fee for ACE and later SJRRRC's continued use of Union Pacific's lines to provide the ACE service was renegotiated in later amendments to the 1997 agreement, most recently in 2023. As amended, the current agreement between Union Pacific and SJRRRC provides for a fixed annual Capital Access Usage Charge. Seventh Amendment to Altamont Pass Trackage Rights Agreement, UP and SJRRRC, dated Nov. 27, 2023.

⁴⁰ Third Amendment to Commuter Train Access Agreement Between Ventura County Transportation Commission and Union Pacific Railroad Company, June 19, 2023.

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2022, for LOSSAN to continue to utilize franchise access rights to operate the Pacific Surfliner service over 175 miles of Union Pacific’s lines between San Luis Obispo and Moorpark (northwest Los Angeles), to increase the frequency of service, and to establish an incentive-based performance payment.⁴¹

- **Rocky Mountaineer (ARM).** Union Pacific and American Rocky Mountaineer Service (“ARM”) entered an agreement on June 30, 2021, for ARM to secure franchise access rights to Union Pacific’s lines for service over 420 miles between Denver, Colorado, and Moab, Utah.⁴²

Union Pacific has entered additional agreements to allow passenger rail access in the past few years, including with Amtrak, as well as with other passenger rail operators in years prior to 2019. Union Pacific’s franchise access rate negotiation with Amtrak is not a relevant comparison for the commercial negotiations between Union Pacific and Metra because federal law grants Amtrak a special right to pay only incremental cost and no franchise access fee to use the lines of freight railroads, such as Union Pacific.⁴³ For the remaining three commercially negotiated agreements that I reviewed—Peninsula Corridor Joint Powers Board (PCJPB), dated December 27, 2000; the Las Vegas Railway Express (LVRE), dated November 8, 2012; and the Capitol Corridor Joint Powers Authority (CCJPA), dated December 20, 1991, and December 15, 2004 (amended)—these agreements were negotiated more than a decade ago and are, therefore, not reflective of the most current market conditions.⁴⁴

I understand from discussions with Union Pacific personnel that the parties in these arrangements successfully worked together to negotiate mutually beneficial agreements. Robust negotiations with the passenger rail operators resulted in the access rate to be charged, as well as any other necessary terms and conditions. These represent commercial solutions whereby a willing buyer

⁴¹ Passenger Rail Cooperative Agreement Between Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency and Union Pacific Railroad Company, December 15, 2022.

⁴² Passenger Rail Operating Agreement Between American Rocky Mountaineer Service and Union Pacific Railroad, June 30, 2021.

⁴³ The Passenger Rail Act of 1970, P.L. 91-518.

⁴⁴ Trackage Rights Agreement – Lick/Gilroy Line, UP and PCJPB, dated Dec. 20, 1991; Agreement Related to Las Vegas Railway Express Operations on Union Pacific Railroad's Property, UP and LVRE, dated Nov. 8, 2012; Track Access, Engineering and Design Agreement, UP and CCJPA, dated Dec. 27, 2000.

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and a willing seller reached fair market value rates for passenger rail franchise access on Union Pacific rail lines through bilateral negotiations.

In such negotiations, neither party can be expected to have received exactly what they initially sought. Indeed, I understand that through the negotiations process, various concessions were made that facilitated the ultimate execution of each of these agreements. For example, in three of the examples identified above, I understand that Union Pacific initially sought a higher per train mile fee but ultimately agreed to a lower starting rate. I understand { [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

As noted above, Union Pacific's most recent offer for Metra's franchise access, equal to { [REDACTED] },⁴⁶ was informed by the recently negotiated commercial agreements for compensation for use of its lines by other passenger rail operations, which themselves were informed by an internal analysis performed by Union Pacific. Figure 1 presents a summary of Union Pacific's recently negotiated franchise access rates during the 2021 and 2023 period. The range in recently negotiated rates varies from { [REDACTED] },⁴⁷ all of which are higher than the Union Pacific rate offers to Metra. Similarly, the average of all of the recently negotiated rates is approximately { [REDACTED] }, which is much higher than the Union Pacific rate offers to Metra. Thus, Union Pacific's most recent rate offer is conservative and reflects an effective discount to the recently negotiated franchise access rates by Union Pacific.

⁴⁵ See UP Reply Statement, Joint Verified Statement of Turner & Bristol, p. 7.

⁴⁶ (Proposed) Passenger Rail Operating Agreement, Metra and UP, proposed effective date July 1, 2025, Exhibit F, p. 2.

⁴⁷ [REDACTED]

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Figure 1: Recently Negotiated Franchise Access Rate Agreements by Union Pacific

Agreement	Date	Mile Access Fee 2025	Miles	per Week	Notes
UP – IDOT Rockford	12/18/2023	{ [REDACTED] }	47.5	14	1
UP – Altamont Corridor Express (ACE)	11/27/2023	{ [REDACTED] }	88.8	40	2
UP – Metrolink Ventura (VCTC)	6/19/2023	{ [REDACTED] }	18.6	3	3
UP – Pacific Surfliner (LOSSAN)	12/15/2022	{ [REDACTED] }	175.0	182	4
UP – Rocky Mountaineer (ARM)	6/30/2021	{ [REDACTED] }	420.0	2	5
Average		{ [REDACTED] }	150.0	48.2	

Notes and Sources

- ¹ Memorandum of Agreement Between Union Pacific Railroad Company and Illinois Department of Transportation, dated Dec. 18, 2023, Exhibits B and C. Per-train-mile rate calculation in HC Carey_WP_UP Agreements.xlsx; mileage obtained from "Feasibility Report on Proposed Amtrak Service Chicago-Rockford-Galena-Dubuque", Amtrak June 22, 2007, available at <https://iowadot.gov/media/1931/download?inline=#:~:text=Between%20Elgin%20and%20Belvidere%2C%20a%20distance%20of%20nearly%2040%20miles%2C%20there%20is%20115%23%20continuous&text=track%20continuing%20westward%20from%20the%20end%20of%20Metra's%20ownership%20at%20Big%20Timber.>
- ² Seventh Amendment to Altamont Pass Trackage Rights Agreement Between Union Pacific Railroad Company and San Joaquin Regional Rail Commission (SJRRRC), November 27, 2023. Per-train-mile rate calculation in HC
- ³ Third Amendment to Commuter Train Access Agreement Between Ventura County Transportation Commission and Union Pacific Railroad Company, dated June 19, 2023, page 2.
- ⁴ Passenger Rail Cooperative Agreement Between Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency and Union Pacific Railroad Company, dated December 15, 2022, Exhibit A.
- ⁵ Passenger Rail Operating Agreement Between American Rocky Mountaineer Service and Union Pacific Railroad, dated June 30, 2021, Exhibit 4.

These recently negotiated agreements by Union Pacific for franchise access with other passenger rail service providers are also substantially higher than Metra's suggested rates of approximately \$8.00 per train mile (or less).⁴⁸

From an economic perspective, the more recently negotiated agreements (such as those Union Pacific entered into in the past few years) are particularly useful measures to determine the economic reasonableness for a franchise access price. Use of a similar time frame is helpful as such agreements reflect the economic value of that point in time. Newer agreements would more closely reflect the

⁴⁸ See n.9 *supra*.

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current economic value. This is particularly relevant for long-term agreements that have prices negotiated once in a 10 to 20 year period, which may have some expectations of future conditions incorporated. Newly negotiated agreements will use the actual current economic value, which includes any difference from expected and actual changes.

In considering reasonable comparisons, it is helpful to include examples with similar economic circumstances. Looking to other similar examples or similar companies as a comparison is one such approach. Upon investigation, I note the following. First, these agreements all provide the same basic service—access to Union Pacific’s rail lines for passenger operations. Second, as just discussed, the recently negotiated Union Pacific rates are within a reasonable time horizon of Union Pacific’s offer to Metra. Indeed, if the market value has continued to rise since the time these other agreements were entered into (above the expected future value), the negotiated rate may be a conservative estimate of the current economic value. Furthermore, focusing on the Chicago area region, there are several examples showing rates that are higher than Union Pacific’s offer, including the { [REDACTED] } and the rate Northern Indiana Commuter Transportation District (“NICTD”) pays to Metra for certain new service (the latter is discussed below).

Lastly, I note that the franchise access agreements related to California for LOSSAN and VCTC are in geographic areas that have reasonably comparable economic characteristics in terms of per capita income as the UP Lines for Metra, which further supports comparability. Looking at the macroeconomic statistics of per capita personal income, the Los Angeles-Long Beach-Anaheim, CA area averages \$80,898 per year, and the Chicago-Naperville-Elgin, IL-IN-WI area averages \$77,429 per year. These metropolitan areas are both in the top 10 percent of the country—the Los Angeles area ranks 24th out of 384 while the Chicago area ranks 37th out of 384 in the country.⁴⁹

In sum, the recently negotiated agreements between Union Pacific and other passenger rail providers is strong evidence of the economic reasonableness of Union Pacific’s most recent { [REDACTED] }⁵⁰ per train mile offer to Metra. The access rates for those agreements—which are on average { [REDACTED] }

⁴⁹ Bureau of Economic Analysis, “Personal Income by County, Metro, and Other Areas”, available at <https://www.bea.gov/data/income-saving/personal-income-county-metro-and-other-areas>.

⁵⁰ (Proposed) Passenger Rail Operating Agreement, Metra and UP, proposed effective date July 1, 2025, Exhibit F, p. 2.

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per train mile—are notably higher than Union Pacific’s offer to Metra, thus showing that Union Pacific’s offer is not only economically reasonable but conservative.

V. OTHER FACTORS DEMONSTRATE THE REASONABLENESS OF UNION PACIFIC’S OFFER

I identified several other economic indicia of market value which validate the reasonableness of Union Pacific’s proposed rate of {REDACTED}⁵¹ per train-mile.

First, Metra itself is compensated by another commuter rail system, NICTD, at a substantially higher rate (in dollars per train-mile) than Union Pacific has offered Metra. In late 2023, the NICTD agreement was extended through 2029 with a compensation payment to Metra of \$8.8 million annually or \$44.87 per train mile for commuter rail service between Millennium Station and Kensington, Illinois.⁵² NICTD has further agreed to pay Metra a \$8.0 million one-time access fee and a \$25.8 million capital contribution for two new commuter passenger services with planned in-service dates in 2024 and 2025.⁵³ On a future value basis, these payments equate to an annual per-train-mile access fee of \$34.12 and \$66.41⁵⁴ for the two new services. Metra is a sophisticated market participant who agreed to an access rate with another Chicago-area railroad that was substantially higher than the Union Pacific proposed rate.

Second, Metra also negotiated an access rate to use Canadian National (“CN”) rail lines for passenger rail service between Franklin Park in Chicago and Antioch, Illinois, near the Wisconsin border, that has an estimated current franchise access rate that is approximately equal to \$19.76 per train-mile based on current usage levels.⁵⁵ This older access agreement had a rate escalation provision to adjust the rate to the current estimated \$19.76 per train-mile franchise access rate. This is well in

⁵¹ (Proposed) Passenger Rail Operating Agreement, Metra and UP, proposed effective date July 1, 2025, Exhibit F, p. 2.

⁵² Base rate for 2025-2029 for NICTD service is \$44.90 per train-mile: \$8,826,645 “Base Compensation” divided by 196,600 annual train-miles. METRA-043416, Trackage Rights Agreement, Metra and NICTD, pp. 25-27.

⁵³ New service for Northwest Indiana Doubletrack appears have been placed in service on or about May 2024. Website of Double Track NWI, General Information, available at <https://www.doubletrack-nwi.com/about/general-info>; new service for West Lake Corridor appears to remain under construction. Website of West Lake Corridor, Construction Updates, last visited May 21, 2025, available at <https://www.nictdwestlake.com/construction/>.

⁵⁴ See HC Carey WP_UP Agreements.xlsx and Figure 2 below.

⁵⁵ Base rate for 2025 actual usage of Metra service on CN is \$19.76 per train-mile: \$2,901,861 “Base Rental” (escalated by CPI annually beginning Jan. 1, 1999, from \$1,500,000 in 1995-1998) divided by 148,512 annual train-miles. Trackage Right Agreement, Metra and CN, dated Aug. 25, 1995.

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excess of the approximately \$8.00—or less—per train-mile franchise access rate that Metra currently indicates is appropriate to pay Union Pacific.⁵⁶

Third, Metra is compensated by Wisconsin Central, Ltd., a CN subsidiary, approximately \$25.88 per-train-mile for use of Metra-owned rail lines between Franklin Park and Cragin, Illinois.⁵⁷ While this is an older agreement, it is regionally proximate to Union Pacific’s Metra passenger service.

Fourth, numerous other railroads have entered into commuter rail system franchise access agreements that I identified with publicly available information. I was unable to obtain the specific agreements but was able to calculate the basic per train mile access fee based on access fee information that I located in public documents. Without access to the specific commuter rail agreement, it is possible that the terms and conditions of those agreements would render them ill-suited comparable agreements for the Union Pacific offer to Metra or require adjustments to the comparable access price on a per train-mile basis. But it would be entirely reasonable for Union Pacific, Metra, and the Board to look at publicly available information about the price paid by local government authorities to secure similar access as confirmation that the market-based price developed by Union Pacific is economically reasonable. Here, I was able to review the same public information regarding other agreements that would have been available to Union Pacific and Metra in their negotiations. The numerous exemplars of other rail carriers commercially negotiated arm’s-length franchise access agreements at price levels

⁵⁶ See n.9 *supra*.

⁵⁷ Calculation assumes the continued applicability of the relevant trackage agreement. Trackage Rights Agreement, Metra and CN, dated Oct. 1, 1996, p. 2., establishing a fixed monthly “Base Rental” access fee and an escalation pursuant to the Consumer Price Index. The term of the Metra-CN agreement is extended by multiple subsequent amendments through at least June 30, 2014. METRA-046632, Amendment No. 9 to the Trackage Rights Agreement, Metra and CN, dated Jun. 6, 2013.

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well above the Metra offer and even often significantly higher than the Union Pacific offer that provide substantial support for the Union Pacific proposal as an economically reasonable rate.

Figure 2: Current Franchise access Rates for Other Railroads⁵⁸

Agreement	Agreement Date	Per-Train-Mile Access Fee 2025	Miles	Trains per Week	Notes
Metra – NICTD, Millenium to Kensington	10/12/2023	\$44.87	14.5	72	1
Metra – NICTD, Northwest Indiana	10/12/2023	\$34.12	26.6	70	1
Metra – NICTD, West Lake	10/12/2023	\$66.41	8.0	60	1
CN – Metra, North Central Line	8/25/1995	\$25.88	40.8	14	2
Metra – CN, Chicago	10/1/1996	\$19.76	6.0	56	3
CSX – Virginia Railway Express (VRE), Fredericksburg Line	3/26/2021	\$43.94	59.4	88	4
NS – Virginia Railway Express (VRE), Manassas Line	N/A	\$46.82	25.0	88	5
AMTRAK – SEPTA	N/A	\$22.50	28.8	1792	6
Average		\$38.04	26.1	280	

Notes and Sources

- ¹ Second Amendment to the Trackage Rights Agreement Between Metra and Northern Indiana Commuter Transportation District, dated October 12, 2023, pages 1-4.
- ² METRA-046422. Trackage Right Agreement, Metra and CN, dated Aug. 25, 1995.
- ³ METRA-046572, Trackage Rights Agreement, Metra and CN, dated Oct. 1, 1996.
- ⁴ Calculated rate and statistics based upon *Virginia Railway Express, Fiscal Year 2026, Recommended Budget for FY2026, Amended Budget for FY 2025, Capital Improvement Plan*, pages 18, 28. Available at: https://www.vre.org/assets/1/6/Budget_FY_2026.pdf. Miles based on PC Miler (between Cameron and Bristow Station).
- ⁵ Calculated rate and statistics based upon *Virginia Railway Express, Fiscal Year 2026, Recommended Budget for FY2026, Amended Budget for FY 2025, Capital Improvement Plan*, pages 18, 28. Available at: https://www.vre.org/assets/1/6/Budget_FY_2026.pdf. Miles based on PC Miler and Google Maps (between L'Enfant Station and Spotsylvania Station).
- ⁶ Calculated rate and statistics based upon SEPTA Amtrak Trackage information. Available at: https://septa.patternstream.cloud/BudgetBook/index.html#t=SEPTA_Proposed_Operating_Budget%2FCapitalBudget_12-YearProgram%2FAMtrak_Trackage.htm&rhsearch=amtrak&rhhlterm=amtrak&rhsyns=%20 and <https://www.septa.org/schedules>.

At the end of 2021, CSX Transportation entered into a franchise access agreement with the Virginia Railway Express (“VRE”).⁵⁹ Based on its 2025 fiscal budget, a \$10 million annual fee

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associated with approximately 241,877 train miles per year, VRE's estimated access rate is \$43.94 per train mile for 2025.⁶⁰

VRE has another access agreement with Norfolk Southern for access to the Manassas Line. As noted above, I do not have access to the agreement, but I was able to review certain publicly available information. Based on its 2025 fiscal budget, VRE's negotiated access rate with Norfolk Southern is approximately \$46.82 per train mile for 2025.⁶¹ This rate is calculated based on the forecasted budget for access fees to Norfolk Southern of \$4,766,000 in FY2025 and 101,800 train miles per year across the Manassas Line.⁶²

Southeastern Pennsylvania Transportation Authority ("SEPTA") pays Amtrak for SEPTA's use of Amtrak tracks to operate the Trenton, Wilmington/Newark and Paoli/Thorndale Regional Rail service, and portions of the Chestnut Hill West, Airport, and Cynwyd Regional Rail Lines.⁶³ Based on SEPTA's 2025 fiscal budget, the access fee for these lines is approximately \$22.50 per train-mile.

Fifth, it is not surprising to see relatively sizeable increases in rates after an extended period of time. The PSA's start date was in 2010, and the impact of any economic changes affecting the franchise access component would impact the value of the asset and market prices for access over time. Indeed, for a long-term transportation agreement that faces termination, it is common for any such newly negotiated agreement to set a new price based on current market conditions, which can be markedly different from prior market conditions. In particular, the current base rate paid by Metra for service on the UP Lines was agreed to in the anomalous COVID year of 2021 via the Sixth

⁵⁸ See HC Carey WP_UP Agreements.xlsx.

⁵⁹ Passenger Rail Operations and Access Agreement Between The Virginia Department of Rail and Public Transportation and Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission, Owners and Operators of the Virginia Railway Express Concerning Commuter Passenger Rail Service, dated March 26, 2021, page 3. Available at: https://vapassengerrailauthority.org/wp-content/uploads/2021/06/VRE-DRPT-OPERATING-AND-ACCESS-AGREEMENT_EXECUTION-VERSION_FINAL2.pdf.

⁶⁰ See HC Carey WP_UP Agreements.xlsx.

⁶¹ Virginia Railway Express, Fiscal Year 2026, Recommended Budget for FY2026, Amended Budget for FY 2025, Capital Improvement Plan, pages 18, 28. Available at: https://www.vre.org/assets/1/6/Budget_FY_2026.pdf.

⁶² Virginia Railway Express, Fiscal Year 2026, Recommended Budget for FY2026, Amended Budget for FY 2025, Capital Improvement Plan, pages 18, 28. Available at: https://www.vre.org/assets/1/6/Budget_FY_2026.pdf.

⁶³ SEPTA, FY2025 Budget Book Amendment, page 230. Available at: <https://www.septa.org/wp-content/uploads/page/planning/FY-2025-Budget-Book-Amendment-Full.pdf>.

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Amendment to the PSA,⁶⁴ which was just before a period of substantial economic expansion and rapid inflation.

Market conditions have changed rapidly in the past few years with property value rising steeply. In just over two years, property value in Cook County, Illinois has increased nearly 20% from 2020 to 2022,⁶⁵ and robust growth has continued since then.⁶⁶ Also, although the Sixth Amendment (dated January 2021), which set the compensation rate with a prior effective date of January 1, 2020, had an annual escalation of 2.9%, CPI increases exceeded that ever since: 4.7% (2021), 8% (2022), 4.1% (2023), 3.2% (2024).⁶⁷ Even in a more typical period, it would not be unusual to see an increase when exiting a prior agreement and entering a new one, but it is unsurprising that the economic disruption of the COVID pandemic had additional impact. In short, significant changes in economic conditions occurred that are beyond the modest escalation and other stop gap changes to the current rate under the PSA through amendments.

Sixth, another way to consider the overall reasonableness of Union Pacific's proposed rate for Metra is to consider the incremental difference in compensation between the two parties' proposed rates on the overall Metra system operations costs. The cost difference between the Union Pacific proposed rate and the Metra status quo rate (which is higher than the rate Metra would propose going forward) is approximately {REDACTED} annually.⁶⁸ This {REDACTED} is about {REDACTED} of the \$222.5 million⁶⁹ total estimated costs for Metra's use of the UP Lines for commuter rail service based on Union Pacific's prior cost expenses for 2019. Any increased cost since would further reduce this percentage. Furthermore, the Metra system is far larger than just the business related to the UP Lines.

⁶⁴ Sixth Amendment to Purchase Service Agreement, UP and Metra, dated Jan. 22, 2021, Item B.1, providing for a specified increase in Railroad Additional Compensation as of Jan. 1, 2020, and annual escalation at 2.9% going forward.

⁶⁵ 20% = \$757 billion / \$631 billion. Estimated Full Value of Property in Cook County 2013 -2022, at page 4. Available at <https://civifed.org/sites/default/files/2024-11/Estimated%20Full%20Value%20of%20Real%20Property%20in%20Cook%20County%202013-2022.pdf>

⁶⁶ While full statistics are not available, the assessment cycle for 2024 demonstrates that an increase in value in Chicago occurred in the 2024 reassessment, which represents an increase of 23% over total assessed values in 2023. Cook County Assessor's Office Releases Final Chicago Reassessment Data, Cook County's Assessor Office, January 29, 2025, available at <https://www.cookcountyassessor.com/Chicago2024>.

⁶⁷ Federal Reserve Bank of Minneapolis, Consumer Price Index, 1913-. Available at: <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1913->.

⁶⁸ {REDACTED} Union Pacific proposed franchise access rate of {REDACTED} per train mile is equivalent to an annual payment of {REDACTED} and Metra refers to a \$21 million payment as a "status quo" compensation arrangement. (Proposed) Passenger Rail Operating Agreement, Metra and UP, proposed effective date July 1, 2025, Exhibit F, p. 2; Metra First Amended Complaint, Commuter Rail Division of the Regional Transportation Authority, d/b/a/ Metra v. Union Pacific Railroad Company, C.A. No. 25-cv-2439, p. 2.

⁶⁹ Based on Union Pacific's estimates from Union Pacific finance and the 2019 estimate of total monies paid by Metra to Union Pacific for full services in 2019.

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For its total system operations, annual costs can be substantially higher, resulting in an even smaller overall cost impact of approximately { [REDACTED] }⁷⁰

The franchise access compensation difference between the parties (and Union Pacific's overall proposed rate) reflects a small component of passenger service expenditures and is in stark contrast to the economic realities of the high value resource of the land for the UP Lines. Specifically, the UP Lines were recently appraised with a market value that is { [REDACTED] } higher than Union Pacific's proposed rate, as discussed below in the next section. In such an economic circumstance, the market signals in any typically functioning competitive market would readily lead to redeployment of the asset away from the sector where it had a perceived small economic value towards another sector in the economy where it could achieve its highest value that would be more consistent with the full economic value of the asset.

VI. SUBSTANTIAL VALUE FOR THE UP LINES BASED ON RECENT LAND VALUE APPRAISAL FURTHER SUPPORTS THE UNION PACIFIC OFFER PRICE AS CONSERVATIVE (LOW)

Union Pacific commissioned an appraisal of the UP Lines to determine the current market value. The conclusion from the September 2024 valuation report completed by RMI ("RMI Report") was that the land associated with the relevant corridors is highly valuable.⁷¹ Notably, RMI valued only the land underlying the corridor and excluded the valuation of rail and building improvements.⁷² The

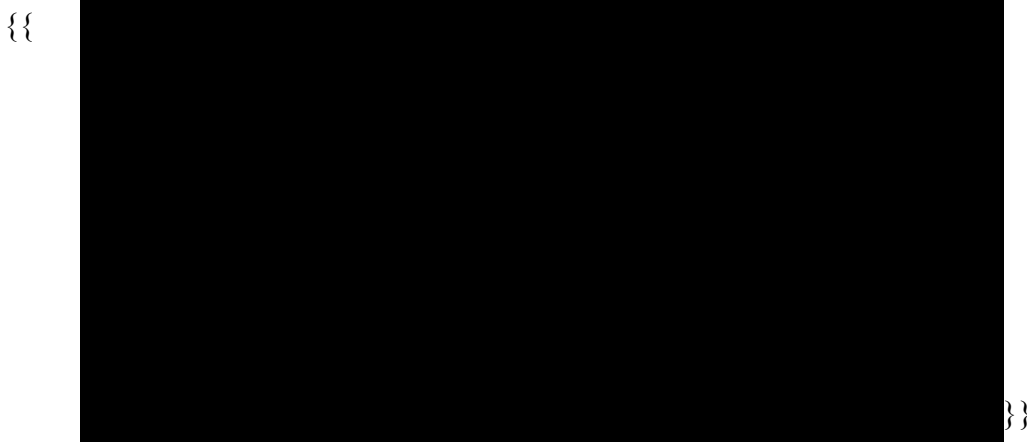
⁷⁰ *Metra 2025 Operating Budget & Capital Program*, p. 7, available at <https://assets.metra.com/s3fs-public/2024-12/2025-Budget-Final.pdf?VersionId=iHEXbA5BXTHZkhwRdFHCWTgNIU0WH82h>.

⁷¹ Valuation of Union Pacific Railroad Company's Metra Lines ... In Illinois and Wisconsin, RMI Valuation, September 5, 2024, p 2. (RMI Report).

⁷² RMI Report, page 2.

RMI Report estimates the market value of the land for the UP Lines (as of September 2023) is approximately equal to {{[REDACTED]}} as shown in Figure 3 below.

Figure 3: Land Value Appraisal for UP Lines⁷³



The RMI Report values the land of the UP Lines using the Corridor Valuation Methodology, whereby the land is valued first based on the value of adjacent land (Across-the-Fence or “ATF” value) through actual sales deemed comparable,⁷⁴ and then adjusted by a corridor factor to reflect its highest and best use recognizing a higher market value is achievable with assembly of adjacent land as a corridor.⁷⁵ The approach is a reasonable way to determine the economic value of the land associated with the UP Lines that Metra seeks to use.

⁷³ RMI associated each sales group with a specified land use and adjusted the observed comparable sales values based on one or more of the following factors based on quantitative and qualitative analysis: size, market conditions, community, income level, commercial type, percentage wetlands. RMI Report, page 48.

⁷⁴ RMI associated each sales group with a specified land use and adjusted the observed comparable sales values based on one or more of the following factors based on quantitative and qualitative analysis: size, market conditions, community, income level, commercial type, percentage wetlands. RMI Report, page 50-52.

⁷⁵ RMI Report, pp. 27-28. This method recognizes that corridor land has higher market value than comparable sales of adjacent land not assembled into a corridor, and it establishes the value differential by a corridor factor based on market data for the sales of similar corridor. RMI Valuation based its corridor factors for the subject land on a database of the sales of {{[REDACTED]}} corridors actively used as rail lines at the time of sale, which exhibited an average corridor factor of {{[REDACTED]}} time their ATF value.

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The UP Lines traverse and serve many high-income suburban neighborhoods.⁷⁶ City of Chicago socioeconomic data confirms that Chicago's North, Northwest, and West areas are its most affluent.⁷⁷ As discussed above, the income profile of Chicago is robust.⁷⁸

The {{[REDACTED]}} market value of the land underlying the UP Lines is substantial and strong quantitative evidence of a high economic value of the corridor, and therefore also supports the reasonable compensation rate for use of the UP Lines by Metra as offered by Union Pacific.

Union Pacific's offer of {{[REDACTED]}} per train mile or an implied {{[REDACTED]}} payment per year is about {{[REDACTED]}} of the {{[REDACTED]}} value of the land of the UP Lines as determined by RMI.⁷⁹ Thus, one can consider Union Pacific's proposed rate of {{[REDACTED]}} per train-mile for franchise access by Metra as a {{[REDACTED]}} rental rate or rate of return or investment yield. This would be a very low rate of return, as discussed below.

For example, I understand that Union Pacific and Metra negotiated for the use of certain yard properties associated with providing commuter service on the UP Lines. The parties negotiated a Memorandum of Understanding agreeing to a process for establishing the valuation of those properties and, using that valuation, the appropriate access fee.⁸⁰ That process involved the opportunity for each party to conduct a valuation utilizing current market evidence of recent transactions that would then determine the appropriate access fee.⁸¹ The parties valued land, tracks, and improvements.⁸² {{[REDACTED]}}

⁷⁶ Desirable neighborhoods served by the UP Lines include Near West Side Chicago Neighborhoods, Western Chicago Suburbs, Northwest Chicago Suburbs, North Side Chicago Neighborhoods, Far North Side Chicago Neighborhoods, and North Shore Chicago Neighborhoods. *Fulton Grace: Chicago Real Estate by Neighborhood*, available at <https://www.seechicagorealestate.com/chicago-neighborhoods/>; see also MG Group, "Best Neighborhoods in Chicago for Commuters." Available at: <https://mggroupchicago.com/best-neighborhoods-in-chicago/>.

⁷⁷ Socioeconomic and City Data Comparison Dashboard, City of Chicago, Inspector General, available at <https://igchicago.org/information-portal/data-dashboards/socioeconomic-and-city-data-comparison-dashboard/>.

⁷⁸ Per capita income in 2023 in the Chicago-Naperville-Elgin, IL-IN-WI (MSA) of \$77,429 compares to Los Angeles County, CA at \$78,302. The Federal Reserve Bank of St. Louis, Per Capita Personal Income, available at: <https://fred.stlouisfed.org/series/CHIC917PCPI> and <https://fred.stlouisfed.org/series/PCPI06037>.

⁷⁹ {{[REDACTED]}}
{{[REDACTED]}} UP-Metra-001560 Union Pacific Railroad, Metra Financial Proposal "Reiterated", July 25, 2024, page 3.

⁸⁰ Memorandum of Understanding Between Commuter Rail Division of the Regional Transportation Authority and Union Pacific Railroad Company, dated January 5, 2024, pages 1-3, Exhibit A. Fourth Amendment to Right of Entry to Improved Property between Union Pacific Railroad Company and Commuter Rail Division of the Regional Transportation Authority, dated December 16, 2024, pages 1-4; Fourth Amendment to Right of Entry to Track between Union Pacific Railroad Company and Commuter Rail Division of the Regional Transportation Authority, dated December 16, 2024, pages 1-4.

⁸¹ Memorandum of Understanding Between Commuter Rail Division of the Regional Transportation Authority and Union Pacific Railroad Company, dated January 5, 2024, pages 1-3.

⁸² Memorandum of Understanding Between Commuter Rail Division of the Regional Transportation Authority and Union Pacific Railroad Company, dated January 5, 2024, pages 1-3, Exhibit A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]}}

The process used by the parties to reach agreement on the fair market value of the mechanical properties is underpinned by other market sales gathered by the parties that are willing buyer and willing seller outcomes. The parties agreed to directly use appraisals of the mechanical properties associated with the Metra service; and such appraisals typically rely on sales transactions in the market as comparisons to ascertain the fair market value. This is the same conceptual approach to valuation and the exact process that Union Pacific underwent to develop its proposed rate for Metra—except rather than using land valuations, Union Pacific used comparable negotiated access fees.

As discussed above in Section III, a rental rate or rental yield metric can be used to evaluate property value. Specifically, the rental rate or rental yield metric represents the percentage return on investment (ROI) from the income generated (and may be referred to as a rate of return or profit margin). Stating annual franchise access fees as a percentage of property value provides a “rental yield” amount allows comparison across all investment types and considers the array of alternative uses available for the economic asset beyond rail service. This is a reasonable approach to determine economic value for a commercial agreement between Union Pacific and Metra.

In this case, Union Pacific’s proposed rate to Metra would provide compensation equal to approximately { [REDACTED] } annually on an investment of { { [REDACTED] } }. That equates to a rental rate or investment yield of { { [REDACTED] } }, which is well below the yield on 10-year U.S. Treasury securities.⁸⁵ It is also well below the 10% used by the parties for access to the yard properties.

Another way to think about the compensation for the use of a { { [REDACTED] } } asset is to consider a monthly rent payment for a property. Paying only { { [REDACTED] } } of the asset value annually to rent property is economically equivalent to a { { [REDACTED] } } monthly rental payment for a { { [REDACTED] } } property (annual rent would equal { { [REDACTED] } }). Therefore,

⁸³ Fourth Amendment to Right of Entry to Improved Property between Union Pacific Railroad Company and Commuter Rail Division of the Regional Transportation Authority, dated December 16, 2024, pages 1-4.

⁸⁴ Stuebner Tr. at 50-54.

⁸⁵ See Federal Reserve Bank of St. Louis, “Market Yield on U.S. Treasury Securities at 10-Year Constant Maturity, Quoted on an Investment Basis”, May 12, 2025 release at 4.37%, available at <https://fred.stlouisfed.org/series/DGS10>.

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the rent in this example is below market value and would not cover a typical mortgage payment for the property.

In short, a rental rate of only {█} as the effective compensation indicates there are other higher investment opportunities forgone. In economic terms, such an investor is not breaking even, because the investment is paying less than the opportunity cost of capital of the potential gains from its next best alternative investment with similar risk. Sometimes the best alternative use for the economic asset is to redeploy it away from the sector generating small economic value to its highest and best economic opportunity yielding its highest return potential.

The high value of the land owned by Union Pacific represents the opportunity cost for which it could rent in the marketplace to other willing users seeking access and receive market value compensation. This rate of return based on valuation is another reasonable way to determine economic value and plainly demonstrates that Union Pacific's latest offer to Metra is commercially reasonable and conservative given the high value of these rail corridors in Chicago.

VII. CONCLUSION

In my opinion, based on the information available to me, the latest Union Pacific offer to Metra is a reasonable economic rate for a commercially negotiated agreement for franchise access. First, the offer comports with the access price Union Pacific has recently negotiated in arm's-length transactions with numerous other passenger rail providers.

Second, the offer is lower than the rate Union Pacific negotiated with the Illinois Department of Transportation for similar access, highlighting that Union Pacific's proposal was acceptable in the Chicago area to another Illinois public agency.

Third, the offer is lower than the access price Metra pays to other carriers in Chicago and lower than what Metra charges others for access to its tracks in Chicago.

Fourth, the offer is consistent with public information about access prices negotiated between other railroad carriers and government entities for similar passenger rail access in the Eastern U.S.

Fifth, I would expect an increase in the offered price from a contract price set years ago during the pandemic with only a modest escalation index, just before a period of substantial economic expansion and rapid inflation.

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Sixth, the proposed increase reflects less than approximately { [REDACTED] } of Metra's 2025 operating budget { [REDACTED] } / \$1.14 billion).

Seventh, the reasonableness of Union Pacific's latest offer is confirmed by the { { [REDACTED] } } appraised value of the rail corridor itself.

A summary of relevant comparable access prices in arm's-length transactions I considered in reaching this conclusion are summarized below.

Figure 4: Comparison of Party Proposed Rates, Union Pacific Negotiated Access Rates, and Other Railroad Negotiated Access Rates⁸⁶

	Date	Per-Train-Mile Access Fee 2025
<i>Party Proposals</i>		
UP Offer to Metra	5/21/2025	{ [REDACTED] }
Metra Suggested Rate Range	N/A	\$3.05 - \$7.68
<i>UP Agreements</i>		
UP – IDOT Rockford	12/18/2023	{ [REDACTED] }
UP – Altamont Corridor Express (ACE)	11/27/2023	{ [REDACTED] }
UP – Metrolink Ventura (VCTC)	6/19/2023	{ [REDACTED] }
UP – Pacific Surfliner (LOSSAN)	12/15/2022	{ [REDACTED] }
UP – Rocky Mountaineer (ARM)	6/30/2021	{ [REDACTED] }
<i>Other Railroad Agreements</i>		
Metra – NICTD, Millenium to Kensington	10/12/2023	\$44.87
Metra – NICTD, Northwest Indiana	10/12/2023	\$34.12
Metra – NICTD, West Lake	10/12/2023	\$66.41
CN – Metra, North Central Line	8/25/1995	\$25.88
Metra – CN, Chicago	10/1/1996	\$19.76
CSX – Virginia Railway Express (VRE), Fredericksburg Line	3/26/2021	\$43.94
NS – Virginia Railway Express (VRE), Manassas Line	N/A	\$46.82
AMTRAK – SEPTA	N/A	\$22.50

⁸⁶ See HC Carey WP_UP Agreements.xlsx.

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VERIFICATION

I, Julie M. Carey, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to an authorized to submit this Verified Statement.

Executed on this 2nd day of June, 2025.

/s/ Julie M. Carey
Julie M. Carey

PUBLIC VERSION

Exhibit 1

Julie M. Carey CV

PUBLIC VERSION

JULIE M. CAREY **SENIOR MANAGING DIRECTOR**

Julie M. Carey is a Senior Managing Director at NERA Economic Consulting. She has substantial experience with energy and transportation sectors, providing expert evidence in commercial and regulatory disputes, as well as international arbitrations. She has more than 20 years of experience addressing economic issues in energy, pipelines and railroad sectors. Ms. Carey is recognized as a leading energy expert (2019-2025) and a leading arbitration expert (2021-2025) by Who's Who Legal.

In addition to her expert consultancy assignments, Ms. Carey is also an adjunct professor at Georgetown University where she teaches a graduate level course in energy economics and policy, which includes instruction on economics of energy products and transportation and regulatory economics.

Ms. Carey routinely provides expert consulting and testifying services in regulatory matters before the U.S. regulators (FERC, STB, etc.) as well as Canadian federal and state/provincial regulatory agencies. Ms. Carey's work also includes commercial disputes before U.S. courts, and within arbitrations including the American Arbitration Association (AAA), as well as international arbitration venues.

Ms. Carey has substantial expertise in economic analyses of energy and transportation markets. She routinely conducts economic analyses of energy and transportation markets to understand historical and forecasted market conditions (supply, demand and prices), as well as to evaluate competition, claims of market manipulation, and other anticompetitive acts. She has conducted these analyses many dozens of times for the purposes of the regulatory approval of mergers and acquisitions, market-based rate authority, market rules, negotiated rates, as well as within investigations and commercial disputes. Her work includes evaluation of the reasonableness of rates and whether market participant bidding, trading and other behavior is discriminatory or otherwise manipulative, and whether prices reflect competitive market prices. Ms. Carey's work includes a variety of other regulatory economic analysis including affiliate relationships, cost of service and forward-looking costs, among others.

Within her commercial dispute work, Ms. Carey has been involved in many claims of breach of contract including oil and gas, pipelines, coal, power, renewable, and railroad transportation. She has also been involved in cases concerning partnership disputes, delayed plant operations, diminished value claims, replacement power, antitrust and manipulation claims, clean air act, and bankruptcy, among others. Ms. Carey has substantial experience with economic damages (historical and future lost profit analyses) and conducts asset valuation analyses. She has assessed and quantified economic damages and valuations in dozens of cases which include breach of contract, antitrust, class action, and other types of disputes.

Ms. Carey also has experience with environmental analysis (e.g., greenhouse gases and other types of emissions) and macroeconomic modeling (i.e., jobs, GDP, taxes) in which she studies the impact of energy infrastructure construction and operations on the economy for regulatory and business decision-making.

EDUCATION

- **Pennsylvania State University**
Doctoral Studies Program Coursework/M.A., Economics, 1993
- **Allegheny College**
Bachelor of Science, Economics, 1991

PROFESSIONAL EXPERIENCE

2020-Present	NERA Economic Consulting – Senior Managing Director (and Managing Director)
2017-2019	NERA Economic Consulting - Director
2016-Present	Georgetown University (Washington, DC) - Adjunct Professor
2011-2017	Navigant Consulting, Inc. (Washington, DC) - Director
2004-2010	LECG, Inc. (Washington, DC) - Principal
2000-2004	FTI Consulting, Inc. (Washington, DC) - Director, Manager
1996-2000	LECG, Inc. (Washington, DC) - Economist, Senior Associate, Associate
1994-1996	American Public Power Association (Washington, DC) - Research Analyst

CERTIFICATIONS, MEMBERSHIPS, AND AWARDS

- Leading Energy Expert by Who's Who Legal (2019-2025)
- Leading Arbitration Expert by Who's Who Legal (2021 and 2025)
- International Association for Energy Economists
- U.S. Association for Energy Economists

SELECTED PROJECT EXPERIENCE

Railroad

- Expert report and deposition testimony for economic analysis within a commercial arbitration dispute regarding interchange, switching and transportation agreements between Class 1 railroad and a short line railroad.
- Expert reports and analysis of horizontal and vertical competitive effects on a railroad acquisition before the STB. Economic analysis of traffic level competition and market power evaluation.
- Expert reports and hearing testimony regarding vertical competitive effect analysis of a railroad merger and a joint venture agreement, including analysis of economic terms of the long-term contract, price effect analysis and analysis of railroad costs and profitable pricing strategy for an STB merger review. Assets included US, Canada, and Mexico.
- Economic analysis and expert testimony in an arbitration regarding a reasonable railroad linehaul rate and coal transportation in Western Canada including long term forecasts, economic analysis of appropriate railroad rate and costs, as well as valuation related analyses.
- Expert report before the STB in numerous proceedings addressing economic and regulatory aspects of the appropriate rate to use for trackage rights fees, including valuation methodologies.
- Expert consulting analyzing economics of containerized freight transportation, including intermodal rail and competition with alternative transportation modes in a haulage transportation contract dispute and claims of anticompetitive behavior in a commercial arbitration.

- Expert report and expert testimony in an arbitration regarding multiple breach of contract claims for joint-line transportation service, and financial, economic and regulatory considerations regarding the contracts, negotiations and the financial and economic impact and economic damages.
- Expert report in STB proceeding regarding the potential introduction of indirect competition analyses within market dominance determinations for coal transportation rates to utility generation facilities.
- Expert consultation analyzing the economics of competition and anticompetitive behavior in railroad transportation services including evaluating the impact of fuel surcharges in a commercial arbitration.
- Economic analysis of transportation and coal market and damages in claimed breach of coal sales agreement, including analysis of replacement coal by rail and waterborne transportation, environmental attributes, and costs.
- Expert evidence in numerous STB regulatory proceedings involving rail transportation rate disputes for coal, including evaluation of appropriate regulatory economic approach to assess the reasonableness of a rate, evaluation of transportation agreement pricing and service provisions, long term forecasts of coal deliveries, coal-power plant heat rate and performance, transportation rates (all modes), and revenue attribution methodologies for shared facilities.

Other Regulatory and Competition

- Economic consulting and expert testimony in many regulatory proceedings and for business decision making on economic and competition analyses pertaining to refined petroleum products (RPP), crude oil and natural gas liquids (NGL) and transportation markets for market-based rate authority. This work includes analysis of product and geographic market competition in origin and destination market, analysis of product pricing and transportation economics (rail, truck, waterborne, and pipeline) throughout most U.S. and Canadian markets and many international markets. This work includes delivered price tests and netback analyses among others.
- Economic consulting and expert report regarding a claim of discriminatory behavior on a crude oil pipeline in the midwestern US. Analysis of shipper purchases and sales of Western Canadian crude oil and potential economic damages, if any.
- Expert report and testimony in a Canadian arbitration regarding the regulation of electricity, regulatory economic principles used by regulators in decisions and implications for power contracts within the wholesale electricity market that includes a transition to competition.
- Expert evidence and consulting in many dozens of matters related to competition within wholesale electricity markets for regulatory approval of mergers and acquisitions and market-based rate authority in regions across U.S, including the midwestern US, MISO, SPP, PJM etc. This work includes market power screens and delivered price test analyses and analysis of product (energy, capacity, and ancillary service) and geographic markets, including assessments of transmission constraints. The economic analysis includes evaluation of delivered fuel costs (natural gas, coal, renewables (including hydroelectric etc.) and operational characteristics of power plants (seasonal capabilities, short run marginal costs, efficiency rates, etc.).
- Expert testimony regarding the impact of a proposed wholesale power market rule regarding the transmission allocation among market participants, incentives for new entry, and an evaluation of economic efficiency and potential market power within the wholesale electricity market.
- Analysis of wholesale propane markets, supply and demand and potential transportation alternatives for propane in the Midwestern U.S. in a claimed discrimination by a shipper on an NGL pipeline.
- Economic consulting and expert report before the Canadian NEB regarding potential of discriminatory behavior that can arise from an unregulated affiliate of a regulated oil pipeline and other economic issues pertaining to a crude oil pipeline including evaluation of appropriate code of

conduct. The economic analysis includes evaluation of substantial quantities of NGL - butane and other oil products injections into the pipeline system and the impact on the quality and financial harm and economic damages for the product.

- Expert consulting in numerous disputes/investigations involving claims of market manipulation and anticompetitive behavior within natural gas product markets. This work included evaluation of economic purpose of natural gas product purchases and sales as well as economic analysis to evaluate whether the market prices reflect competitive market prices (i.e., consistent with supply, demand, prices and constraints, etc.). This work involved the western U.S markets.
- Expert consulting assisting the Canadian Competition Bureau (CCB) in an investigation of potential energy market manipulation within the wholesale natural gas liquids product markets and price spikes, pertaining to propane. This work includes market analysis and econometric analysis to evaluate whether the actual market prices reflect competitive market prices (i.e., consistent with supply, demand, prices, constraints, etc.) or if manipulative or anticompetitive behavior occurred. This work included economic analysis of product and transportation markets (including pipeline, railroad, and trucking).

Sample Other Matters Involving Damages

- Expert report in a construction dispute related to a hydroelectric power asset and a claimed financial value loss forecast associated with claimed lost capacity and energy value associated with the dispute of between \$500 million and \$1 billion.
- Expert report in claimed breach of contract matter in federal court involving a landfill gas facility and renewable natural gas. Economic analysis of economic damages regarding past and future claimed damages, including valuation analysis of the plant.
- Expert report in arbitration for a dispute of a carbon license and economics of carbon and economic damages.
- Expert reports and hearing testimony related to a claimed breach of numerous transportation agreements in Western Canada and to provide energy market and economic damages analysis pertaining to crude oil and natural gas liquids markets, crude quality, blending practices and pipeline transportation (heavy and light systems).
- Expert reports and hearing testimony and economic analysis of natural gas markets during February 2021 (Winter Storm Uri), market participant behavior economic damages for undelivered volumes below minimum contract requirements. Assessment of economic damages associated with early termination of a natural gas supply contract.
- Expert report and deposition testimony regarding a \$700 million claim of breach of long-term electricity tolling contract. Economic analysis of electricity, natural gas, and renewables economics, in the Southeast and Midwest (including MISO) and analysis of economic damages associated with a claimed breach of a long-term electricity tolling contract for a natural gas fired power plant and termination damages. The work included economic analysis of future energy market dynamics and discounted cash flow analysis and economic analysis of the contract price.
- Expert report and economic analysis of a power project development and membership agreements associated with the development of a large scale solar facility and quantum of damages associated with joint venturers in a claimed breach.
- Expert report to respond to quantum issues associated with a \$1 billion economic damage claim in an energy contract dispute in an international arbitration. In addition, economic analysis was conducted on the market (supply, demand and pricing) and the claimant's commercial activities and behavior.

- Expert testimony regarding a claim of economic damages (past and future) associated with the alleged breach of a power purchase agreement within an international arbitration (SCC). This work included analysis and quantification of economic damages and energy market analyses.
- Expert report regarding past and future economic damages and economics of the silane gas market and supply, demand and pricing in the solar power panel market in a contract dispute before a bankruptcy court.
- Expert consulting regarding antitrust claims regarding the solar panel manufacturing industry. This work included economic analysis of the potential anticompetitive behavior and a valuation analysis of a solar panel company, including the development of a discounted cash flow analysis analyzing the future cash flows and the present value of the enterprise.
- Expert report in an international arbitration (HKIAC) providing an analysis of the Chinese and global solar panel market, reasonableness and competitiveness of the sales negotiations and negotiated prices, market value of solar power products and other valuation related issues. The dispute surrounds the performance of numerous agreements to acquire, construct and operation numerous PV manufacturing production lines.
- Economic analyses in power purchase agreement dispute within numerous arbitrations to evaluate the asset valuations of numerous natural gas-fired power plants, including long term forecasts of market prices, revenues and costs, cost of capital, and the development of a discounted cash flow analysis. This work included a probabilistic analysis to forecast cash flows under different financial and operational conditions.
- Economic analysis of electricity market and damages in power plant ownerships dispute, including analysis of replacement power and costs.

SELECTED EXPERT AFFIDAVITS AND TESTIMONY

In the Matter of an Arbitration under the Rules of the ADR Institute of Canada, Confidential Parties Transportation Agreement Dispute; Expert Report of Julie Carey; February 26, 2025, Response Report, May 28, 2025.

In the Matter of a Commercial Arbitration, Confidential Parties, Railroad Transportation, Switching and Interchange Agreement dispute; Expert Report of Julie Carey; March 10, 2025, Deposition Testimony, May 8, 2025.

FERC Docket, OR25-7-000, Application of Mustang Pipe Line LLC for Market-Based Rate Authority, Direct Testimony of Julie M. Carey and Julia Williams Nunez, March 11, 2025.

Surface Transportation Board (STB), Docket No. FD 36836, Norfolk Southern Railway Acquisition of Control of Norfolk & Portsmouth Belt Railroad Company, Verified Statement of Julie Carey, February 26, 2025.

U.S. District Court for the Eastern District of Michigan, Consumers Energy Company and DTE Electric Company, Plaintiff, v. Toshiba America Energy Systems Corporation and Toshiba Corporation, Expert Report of Julie M. Carey, November 1, 2024, Deposition Testimony January 17, 2025.

Colorado Air Pollution Control Division's Proposed GHG Emissions Reduction Rule for the Midstream Sector by CDPHE Air Pollution Control Division, Hearing Testimony of Julie Carey and Sugandha Tuladhar, December 19, 2024.

Confidential parties; Arbitration Act, RSA 2000, c A-43; Expert Report of Julie Carey and Sugandha Tuladhar; November 30, 2024.

U.S. District Court for the Western District of Washington, No. 2:23-cv-00542 Bio Energy (Washington) LLC, a Delaware limited liability company, v. King County, Washington, Expert Report of Julie M. Carey, July 8, 2024, Rebuttal Expert Report August 7, 2024, Deposition Testimony August 23, 2024, Supplemental Rebuttal Expert Report, October 21, 2024.

FERC Docket No. ER11-47, Triennial Update for Market Based Rate Authority for American Electric

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Julie M. Carey

Power Company, et al. in the Southwestern Power Pool region, Affidavit of Julie M. Carey and Julia Nunez, June 28, 2024.

Surface Transportation Board (STB), Docket No. FD 36744, Canadian National Railway Company And Grand Trunk Corporation Control Iowa Northern Railway Company, Verified Statement of Julie Carey, May 29, 2024.

In the Matter of Application of TransAlta Corporation (TA), for Recovery of Decommissioning Costs for Sundance A Units from the Balancing Pool, Alberta Utility Commission, Expert Report of Julie Carey and Kurt Strunk, March 11, 2022, Reply Report April 26, 2024, Hearing Testimony May 11-12, 2024.

In the Matter of an Arbitration under the Rules of the International Centre for Settlement of Investment Disputes, ICSID Case No. Arb/21/54, Kelag-Kärntner Elektrizitäts-Aktiengesellschaft, Ki-Kelag International GmbH, Windfarm Mv I S.R.L., Kelavent Charlie S.R.L., Kelavent Echo S.R.L. V. Romania, Expert Report of Julie Carey (with Chris Dippon), March 29, 2023, Rebuttal Report of Julie M. Carey, December 6, 2023, Hearing Testimony, March 13, 2024

In the Matter of an Arbitration under the Rules of the ADR Institute of Canada, Confidential Parties Transportation agreement dispute, Expert Report, October 10, 2023, January 15, 2024, February 6-7, 2024.

Cause No. MDL 2022 CI 02879, In re CPS Energy Litigation in The District Court Of Bexar County, Texas, 407th Judicial District, Cause No. 2021-24173, In The District Court Of Harris County, Texas, 334th Judicial District Enterprise Products, Operating LLC, Plaintiff/Counter-Defendant v. City of San Antonio Acting by and Through the City Public Service Board (CPS Energy), Defendant/Counter-Plaintiff, Expert Report of Julie M. Carey, November 8, 2023, Deposition Testimony February 1, 2024.

Cause No. MDL 2022 CI 02879, In re CPS Energy Litigation in The District Court of Bexar County, Texas, 407th Judicial District, Cause No. 2021- CI-05138, In the District Court Of Harris County, Texas, 407th Judicial District CPS Energy, Plaintiff/Counter-Defendant v. Houston Pipeline Company LP and Oasis Pipeline, LP, Defendant/Counter-Plaintiff, Expert Report of Julie M. Carey, November 8, 2023, Deposition Testimony February 8, 2024. .

In The United States Court Of Appeals For The Fifth Circuit Inhance Technologies LLC (Petitioner) V. Environmental Protection Agency, et al., Respondents, On Appeal from Order of the Environmental Protection Agency, Declaration of Julie M. Carey, December 6, 2023.

In the Matter of Arbitration, under the London Court of International Arbitration (“LCIA”) 2020 Arbitration Rules, Confidential Parties, Hearing Testimony of Julie Carey, March 16, 2023, Reply Expert Report, December 15, 2022; Expert Report, April 8, 2022.

Enmax Energy Corporation v. Balancing Pool; Alberta Arbitration Act, RSA 2000, c A-43; Expert Report of Julie Carey and Willis Geffert; June 17, 2022; Hearing testimony October 27, 2022.

Surface Transportation Board (“STB”), FD 36500, Canadian Pacific Railway Limited; Canadian Pacific Railway, Company; Soo Line Railroad Company; Central Maine & Quebec; Railway Us Inc.; Dakota, Minnesota & Eastern Railroad Corporation; And Delaware & Hudson Railway Company, Inc. – Control – Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company, Verified Statement of Julie M. Carey (with A. Bremser), February 28, 2022, July 12, 2022 (Rebuttal) and Hearing Testimony September 30 2022.

Shady Hills Energy Center, LLC, V. Seminole Electric Cooperative, Inc., Shady Hills Energy Center, LLC, Counter-Defendant, EFS Shady Hills Expansion Holdings, LLC, EFS Shady Hills, LLC, General Electric Credit Corporation Of Tennessee, Inc., GE Capital Us Holdings, Inc., Ge Capital Global Holdings, LLC, Case No. 8:20-CV-00081-WFJ-JSS US District Court Middle District of Florida (Tampa Division. Expert Report of Julie M. Carey, April 1, 2022; Deposition Testimony June 21, 2022.

Equinor Marketing & Trading (US) Inc. v. Mustang Pipe Line LLC. FERC Docket No. OR21-5-001 Prepared Answering Testimony of Julie Carey, May 3, 2022.

Highly Confidential Commercial Arbitration regarding solar power project development agreements, Japan Commercial Arbitration Association Rules, Expert Report of Julie M. Carey, January 12, 2022,

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**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**

**UNION PACIFIC RAILROAD COMPANY'S
REPLY STATEMENT AND EVIDENCE**

**JOINT VERIFIED STATEMENT OF
JOHN W. TURNER AND MARK BRISTOL**

Our names are John W. Turner and Mark Bristol. We are, respectively, Senior Vice President of Operations for the Northern Region for Union Pacific Railroad Company, and the former (retired) Assistant Vice President of Network Development for Union Pacific. We are submitting this joint verified statement in support of Union Pacific's Reply Statement and Evidence in opposition to Metra's Application for terminal trackage rights. We have been asked to describe Union Pacific's record of negotiating successful agreements for the provision of passenger service across Union Pacific's rail network, including the methodology for developing the access fee for those agreements. Our marketplace approach to developing the access fee informed Union Pacific's offer to Metra for the continued use of Union Pacific rail lines in the Chicago area ("UP Lines") for commuter rail service. Given our experience, we have also been asked to address our view of the Chicago terminal.

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I. Background and Qualifications.

A. John W. Turner

My name is John W. Turner. I am the Senior Vice President of Operations for the Northern Region for Union Pacific Railroad Company. I began my tenure at Union Pacific in 1998 as a train, engine, and yard craft professional stationed in Iowa, and have held my current position since March 2024. I am responsible for safe and efficient transportation operations on Union Pacific's Northern Region, which spans several states from the West Coast to the Great Lakes and includes the UP Lines in and around Chicago over which Metra provides commuter rail service.

Since joining Union Pacific, I have held various positions of increasing responsibility in the Operating Department, including as Senior Vice President of Harriman Dispatch Center and Network Planning (2022–2024), Vice President of Network Planning and Operations (2020–2022), and Assistant Vice President of Network Integration and Scheduling (2016–2020), among others. Prior to 2016, I served in various field operations roles on the West Coast.

I hold a Bachelor of Science degree in Transportation and Logistics from Iowa State University, and a Master's in Business Administration from the University of Notre Dame.

B. Mark Bristol

My name is Mark Bristol. My career at Union Pacific spanned 35 years and I recently retired in September 2024. I spent the last 18 years of my tenure in the Network Planning and Operations Group, rising to the position of Assistant Vice President of Network Development. My team specialized in developing

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partnerships and managing access to Union Pacific's network by non-freight railroads, including by Amtrak and other passenger service providers. This work entailed seeking new partnerships or renewing existing agreements with passenger railroad tenants. The pursuit of new passenger rail partnerships became part of a broader strategy to improve utilization of underutilized rail lines. Other responsibilities included evaluating potential mergers, leading Union Pacific's Network Extension process, conducting competitive analyses of other railroads, and managing approval of all changes in use of Union Pacific's network assets.

As part of my responsibilities in the Network Planning and Operations Group, I served as one of Union Pacific's representatives to the Chicago Planning Group ("CPG") from approximately 2012 until my retirement in 2024. I participated in CPG meetings and initiatives including related to monitoring of the Chicago area by the Chicago Transportation Coordination Office ("CTCO"). CTCO is a joint effort of multiple freight and passenger railroads in the Chicago area designed to improve rail network operations and fluidity in and around the city. I also worked on industry public-private partnership projects through the Chicago Region Environmental and Transportation Efficiency Program, known as CREATE, which is made up of railroads and government entities to develop rail infrastructure improvements in the Chicago area.

I served in the Network Planning Group from 1997 to 2006, first as Senior Director of Operating Measurements and then as General Director of Resource Planning. From 1994 to 1997, I held the position of Director of the Operations

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Analysis Group in the Operating Department. I started my career at Union Pacific in 1989 in the Finance Department.

I hold a Bachelor of Arts degree in Economics from Wheaton College, and a Masters of Management in Finance and Transportation from the Kellogg Graduate School of Management at Northwestern University.

II. Union Pacific Developed And Implemented A Marketplace Approach To Negotiating Rail Passenger Service Agreements.

In the early 2000s, the demand for commuter and intercity passenger service was growing, particularly in California. The Network Planning and Operations Group, which Mr. Bristol was a part of at the time, was tasked with determining how best to meet this new market demand while accommodating Union Pacific's common carrier obligation to serve freight traffic. Union Pacific was especially interested in relationships where the passenger rail providers were committed to a long-term partnership that protected the interests of both entities and that included financial investment necessary to maintain and improve rail lines for passenger service. The challenge was identifying an approach that balanced the economic value of making capacity available to passenger rail and the importance of offering fair terms to passenger rail providers—which are generally public agencies—that the market could bear. To do that, the team decided to equate the economic value of passenger train capacity to the economic value of capacity consumed by a freight train. The process proceeded in two steps.

First, using Union Pacific's internal costing data, the team developed a method to value the available capacity by calculating the economic value of the

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capacity consumed by a freight train on a per train mile basis. In making those calculations, the team considered various costs and inputs such as variable maintenance, insurance, liability, and the potential for future freight growth. Based on that assessment, the team ultimately determined that valuing the capacity consumed by passenger trains accessing Union Pacific's lines at { [REDACTED] } per train mile was the minimum price that would equate to the economic value that Union Pacific would realize on freight trains for access.

Next, the team needed to determine whether a public agency providing passenger service would pay that amount in the marketplace. The answer proved to be yes, as described below.

A. Union Pacific Negotiates Successful Partnerships With Public Agencies Providing Passenger Rail Service Under the Marketplace Approach.

After developing this new marketplace approach, Union Pacific began negotiating new agreements and renegotiating existing relationships with entities providing passenger service on Union Pacific lines. Union Pacific first used its new marketplace approach with the San Joaquin Regional Rail Commission ("SJRRRC") for the Altamont Commuter Express ("ACE") from Stockton to San Jose, California. The relationship between Union Pacific and SJRRRC reflected a changing dynamic between passenger agencies and host railroads. SJRRRC recognized that the best way to facilitate a strong passenger rail service was to develop a constructive partnership with host railroads.

To that end, SJRRRC and Union Pacific began negotiating modifications to the original 1997 agreement that first established the ACE service. The parties

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introduced an annual capital access usage charge in late 2003 based on the marketplace approach. The parties worked cooperatively over the years to refine various aspects of the agreement, including expanding the passenger schedules to accommodate demand and keeping the compensation terms current. By 2023, ACE was paying a capital access usage charge that equated to { [REDACTED] } per train mile pursuant to a November 27, 2023 amendment to the original 1997 agreement. That amendment also included a separate per train mile fee for dispatching and maintenance costs as well as a capitalized maintenance and safety charge. The ACE agreement represents the first successful implementation of Union Pacific's marketplace approach and was possible because the parties developed a mutually beneficial partnership.

Another arrangement under this new marketplace approach was with the Los Angeles–San Diego–San Luis Obispo (“LOSSAN”) Rail Corridor Agency. LOSSAN operates the Pacific Surfliner service on Union Pacific's Santa Barbara Subdivision between Moorpark (northwest of Los Angeles) and San Luis Obispo, California. This route runs parallel to the coastline, which makes maintaining the rail infrastructure necessary for safe operations extremely costly. For example, the many steel trestles that mark the route are impacted by the sea air and significant work is required to shore up the line as supporting cliffs are being washed away by the ocean.

Union Pacific was not moving the freight volumes necessary to justify the ongoing maintenance expense associated with the Santa Barbara Subdivision and

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there was substantial deferred maintenance on this underutilized freight line. Union Pacific approached LOSSAN to renegotiate the existing agreement, explaining that Union Pacific was not earning enough revenue on the line to justify the maintenance expense required of a passenger service. LOSSAN was receptive to negotiating a new arrangement and worked cooperatively with Union Pacific to reach an agreement that helped the line get caught up on deferred maintenance to support the passenger service and pay a fair rate for access.

On December 15, 2022, Union Pacific and LOSSAN executed a new Passenger Rail Cooperative Agreement to expand passenger service offerings, enhance service reliability, and improve on-time performance. That new agreement established a base operating rate of { [REDACTED] } per train mile, which was lower than Union Pacific's initial bargaining position of { [REDACTED] } per train mile. Since executing these agreements, LOSSAN has already replaced two bridges along the route. LOSSAN continues to be an excellent partner to Union Pacific.

Union Pacific has also reached agreements with private passenger service providers. For example, American Rocky Mountaineer, LLC ("ARM") provides multi-day luxury tourism train service over freight railroads in Canada and approached Union Pacific about expanding into the western United States. In 2021, Union Pacific negotiated an agreement with ARM to operate the Rocky Mountaineer passenger excursion service between Denver, Colorado and Moab, Utah. The parties negotiated a track access fee that phases in over a ten-year period. The rate began at { [REDACTED] } per train mile in 2021, is currently { [REDACTED] } in 2025,

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and will culminate at { [REDACTED] } per train mile from 2028 to 2030, after which point the rate will be subject to an annual adjustment and renewal every five years. ARM requested an accommodation on the market rate to afford ARM time to establish a successful service and grow its customer base. In response, Union Pacific was willing to negotiate a gradual implementation of a market rate where the rate escalates over time. The ARM agreement is another strong example of a passenger-host partnership where both railroads can mutually benefit.

B. Union Pacific has successfully partnered with another public agency in Illinois under this marketplace approach.

Union Pacific has proven that this marketplace approach works in Illinois. For many years, the Illinois Department of Transportation (“IDOT”) desired to re-establish intercity passenger rail service between Chicago and Rockford. This proposed service would operate over a route of approximately 90 miles, of which approximately 50 miles are owned by Union Pacific and the remaining mileage is owned by Metra. Union Pacific and IDOT had originally reached an agreement in April 2014 for the design, construction, and operation of the intercity passenger service along that corridor. As part of that overall arrangement, IDOT agreed to fund the remaining portions of a third main line track on the UP-West Line from River Forest to Melrose Park and then from West Chicago to Geneva to better facilitate this shared freight-passenger corridor. In addition, IDOT agreed to fund major capacity improvements on the Chicago-to-Rockford route (Union Pacific’s Belvidere Subdivision) between West Chicago and Rockford. The Chicago-to-

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Rockford service was ultimately not realized at that time due to political forces beyond Union Pacific and IDOT's control.

As the political environment changed over the years, Union Pacific and IDOT reengaged and reached a revised agreement in December 2023. IDOT agreed to pay a rate that encompassed an access fee together with maintenance costs in exchange for significantly reduced upfront capacity improvement investments compared to the 2014 agreement. In other words, IDOT agreed to pay more for access to existing capacity on the route rather than to fund significant new capacity necessary to support passenger service through infrastructure projects as compared to the 2014 arrangement.

Union Pacific initially sought a starting access fee of { [REDACTED] } per train mile. The parties ultimately negotiated a starting access fee in the 2023 agreement of approximately { [REDACTED] } per train mile subject to annual adjustments through 2031. If the Rockford service commenced in 2025, the access fee would be { [REDACTED] }. By the projected service commencement date of 2027, the access fee will be { [REDACTED] } per train mile.

The agreement also contemplates the construction of a passing track as well as work to upgrade degraded portions of the line near Rockford. These improvements are only necessary to attain the passenger service schedules IDOT wants to achieve. IDOT agreed to fund 100% of these infrastructure improvements to the route as well as 100% of the franchise access fee and the incremental operations and maintenance fees. Passenger rail service between Chicago and

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Rockford with intermediate stops is anticipated to begin by the end of 2027. Metra has agreed to serve as the operator for this intercity passenger service.

III. Union Pacific Made A Franchise Access Fee Offer to Metra Based On the Marketplace Approach.

Union Pacific decided to transfer responsibility for operating commuter service to Metra in 2019. As part of that process, the parties needed to renegotiate the contractual arrangement with Metra including the cost of access to the UP Lines. Mr. Bristol was part of the original team tasked with representing Union Pacific in that process and related negotiations, and Mr. Turner joined the team in 2020 when he assumed the role of Vice President of Network Planning and Operations. Union Pacific made multiple compensation offers to Metra over the last six years. Union Pacific also signaled to Metra that it was open to treating certain capital investments—such as a flyover project at Proviso Yard—as credits towards the franchise access fee, including funds provided by Metra and obtained from federal sources secured by Metra. In response, Metra routinely counteroffered with an access price that was below market rate and conflated the value and cost of access to the UP Lines with other compensation terms such as maintenance and access to ancillary facilities that support commuter service.

In October 2023, Union Pacific presented a competitive offer to Metra based on the marketplace approach described above and the access rates Union Pacific charges to other passenger service providers across its network. Of particular note, the value of capacity consumed by a freight train had increased substantially between the early 2000s and 2022 due to operational efficiencies and changes to

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how freight pricing is determined. But instead of seeking the maximum possible value under the marketplace approach, Union Pacific's fair October 2023 offer included an annual franchise access fee of { [REDACTED] }, which equates to approximately { [REDACTED] } per train mile based on an estimated { [REDACTED] } train miles per year operated by Metra on the UP Lines. This per train mile rate was consistent with other passenger rail access rates, as discussed above.

To demonstrate the generous nature of this market-based offer, Union Pacific also undertook an analysis of the fair rental rate for access to these three corridors based on an across-the-fence appraisal of just the land value (*i.e.*, excluding track and improvements). We understand that the track and improvements were excluded given Metra's position regarding capital investments relating to the track infrastructure. The results plainly demonstrate the generous nature of our market-based proposal, as the market value of the land alone for these three rail corridors was {{ [REDACTED] }}. Applying any rental rate to just the land values would have resulted in a substantially higher access fee. While this could also be a reasonable approach for determining the access fee, our team focused on the marketplace approach to ensure we reached a rate that both compensated Union Pacific based on market factors and that the marketplace had demonstrated passenger service providers would be willing to pay.

We also surveyed the access fees other freight railroads received from passenger service providers on their lines through publicly available information. For example, our team obtained copies of and information regarding agreements

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with public agencies through Freedom of Information Act requests and equivalent state laws. Through those materials, Union Pacific confirmed that { [REDACTED] } was reasonable because it was similar to other marketplace arrangements.

* * *

We continue to believe that a privately negotiated resolution to the franchise access fee is possible. But for such a deal to be realized, Metra must come to terms with the fact that its current fee arrangement is substantially below what the marketplace will support, as demonstrated by other, similar arrangements on Union Pacific's network and the lines of other freight railroads.

IV. The Chicago Switching District Is the Best Reflection of the Chicago Terminal.

We understand that a key issue in this proceeding is what constitutes the Chicago terminal. While we understand that a terminal area is a legal concept, we have been asked for our view on the Chicago terminal.

We understand that Metra has suggested that the scope of territory monitored by the CTCO could represent the "Chicago terminal." We respectfully disagree. CTCO's scope is intentionally broader than just the terminal operations because CTCO's focus is predicting and preventing railroad congestion. To do that, CTCO created systems with the help of industry partners like the Association of American Railroads and Railinc to forecast inbound traffic into Chicago based on data from member railroads and then to identify potential congestion for the member railroads before it materialized. CTCO needed systems to see approaching

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traffic from all carriers so it could coordinate with individual railroads on forecasted or developing congestion.

CTCO chose to use the limits of the first crew district specifically to advance this objective of forecasting congestion. A crew district is approximately 120 to 150 miles away operationally from the next crew district and also serves as a general measure of how much time a crew has left of their hours of service. Based on the size of a crew district and typical freight train speeds in the region, events occurring one crew district away functionally provided CTCO with approximately 12 hours of warning concerning inbound traffic. In other words, CTCO's geographic scope has nothing to do with the traditional definition of a terminal.

CTCO's expansive scope would include numerous yards and facilities that have nothing to do with traditional "terminal" operations. For example, it would include yards and facilities in and around the former Elgin, Joliet and Eastern Railway ("EJ&E") line. While CTCO might look to this line as part of forecasting inbound traffic into Chicago for purposes of preventing congestion, it has nothing to do with traditional terminal interchange and industry operations, which were generally understood to occur within the boundary of the Chicago Switching District.

We are aware that Union Pacific's Reply Statement and Evidence provides various historical maps defining the Chicago Terminal District based on switching limits. Based on our operational experience, we believe these maps are a reasonable reflection of the Chicago terminal. The switching limits encompass

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Union Pacific's major terminal yard in Chicago—Proviso—as well as other railroad facilities reflecting interchange patterns within the terminal.

The Chicago terminal as depicted on those maps is consistent with our understanding of terminal operations in Chicago. For example, the switching limits extend farther south of downtown Chicago than they do north, reflecting the substantial amount of interchange activity that occurs in that part of Chicago between eastern and western railroads. In contrast, the terminal limits to the north reflect fewer railroads and rail lines coming into Chicago from that direction.

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VERIFICATION

I, John W. Turner, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 3rd day of June, 2025.

/s/ John W. Turner
John W. Turner

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VERIFICATION

I, Mark Bristol, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 3rd day of June, 2025.

/s/ *Mark Bristol*
Mark Bristol

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Exhibit A

Maps

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**Railway Terminal Map of Chicago
1913**

*Available at the National Archives
<https://catalog.archives.gov/id/26335507>*

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RAILWAY TERMINAL MAP OF CHICAGO

Blue Line denotes outer Zone of "Chicago Switching District," as defined in Official Map.
Inner Zone not shown.

INDEX TO RAILROADS ENTERING CHICAGO DEPOTS.

By No.	Depot No.
1	Atchison, Topeka & Santa Fe
2	Baltimore & Ohio
3	Baltimore & Ohio, Chicago Terminal
4	Chesapeake & Ohio of Indiana
5	Chicago, Burlington & Quincy
6	Chicago Junction Ry.
7	Chicago Great Western
8	Chicago, Indianapolis & Louisville
9	Chicago, Indiana & Southern
10	Chicago, Milwaukee & St. Paul
11	Chicago, Rock Island & Pacific
12	Chicago, Terre Haute & Southwestern
13	Chicago & Alton
14	Chicago & Eastern Illinois
15	Chicago & Erie
16	Chicago & North Western
17	Chicago & Western Indiana
18	Cleveland, Cincinnati, Chicago & St. Louis
19	Grand Trunk Railway System
20	Illinois Central
21	Illinois Central, Suburban
22	Illinois Northern
23	Lake Shore & Michigan Southern
24	Michigan Central
25	Minneapolis, St. Paul & Sault Ste. Marie
26	New York, Chicago & St. Louis
27	Pennsylvania Lines West of Pittsburgh
28	Pere Marquette
29	Valparaiso

TEAM TRACKS

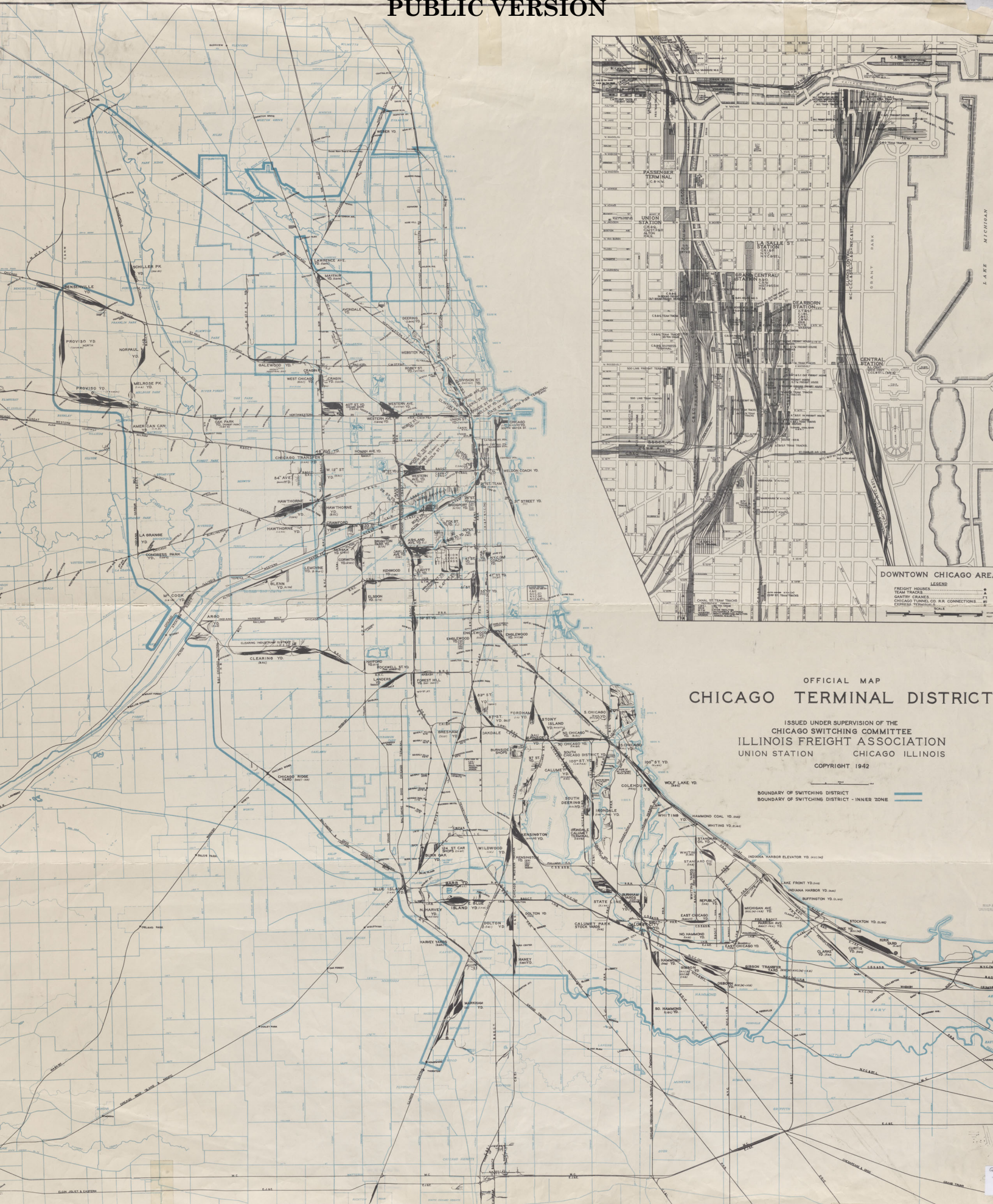
Hand Made by A. C. & Co. New Machine Terminal Map of Chicago.
Copyright 1913, by Hand Made by A. C. & Co.



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**Official Map
Chicago Terminal District
1942**

Available at the University of Illinois Urbana-Champaign
<https://digital.library.illinois.edu/items/340a14c0-b9b5-013a-c42a-02d0d7bfd6e4-e#?c=0&m=0&s=0&cv=0&r=0&xywh=-42%2C615%2C4020%2C1902>

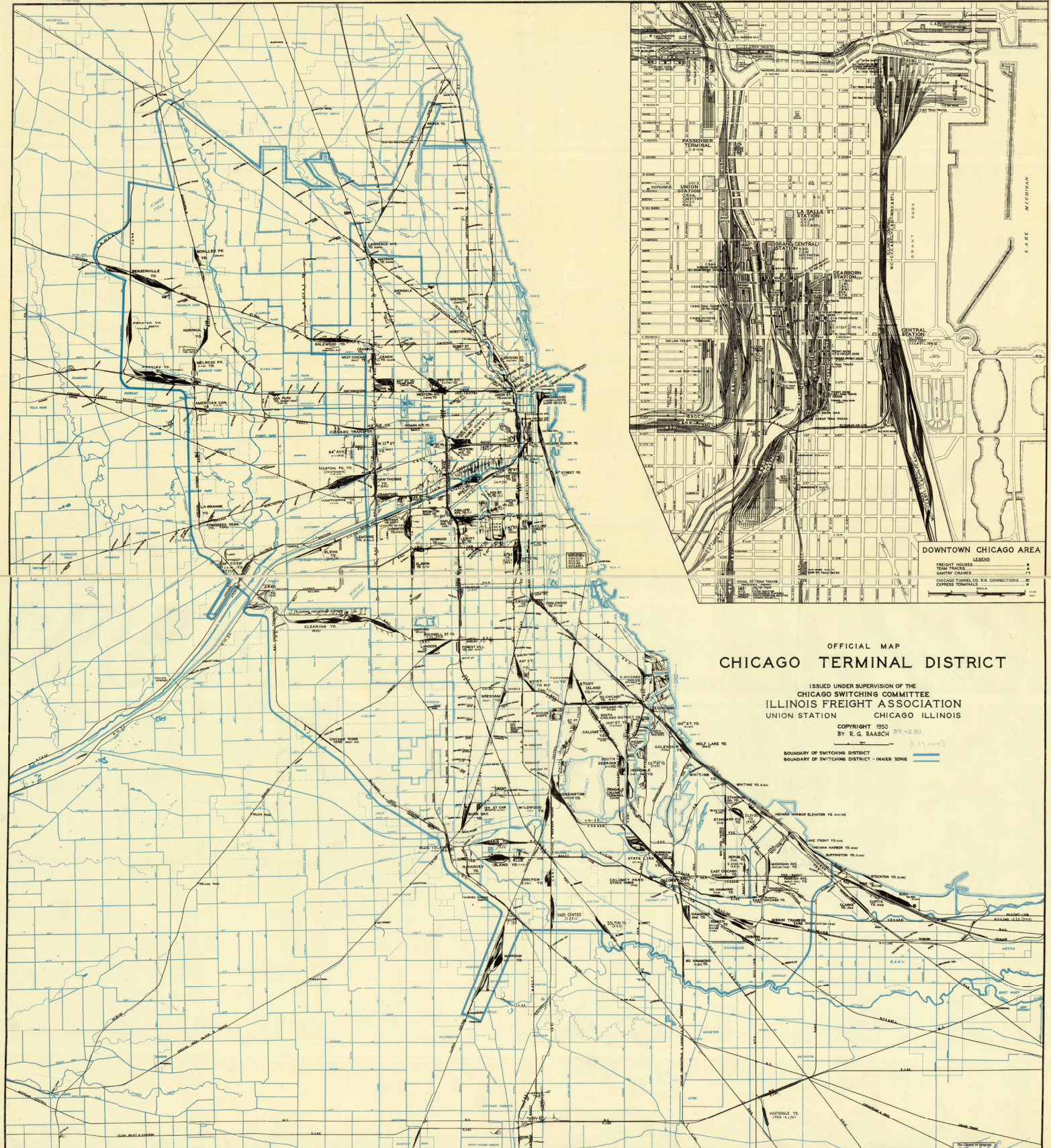


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**Official Map
Chicago Terminal District
1950**

*Available at the University of Wisconsin-Milwaukee
<https://collections.lib.uwm.edu/digital/collection/agdm/id/6932/>*

Revised from Chicago, Ill. 1934

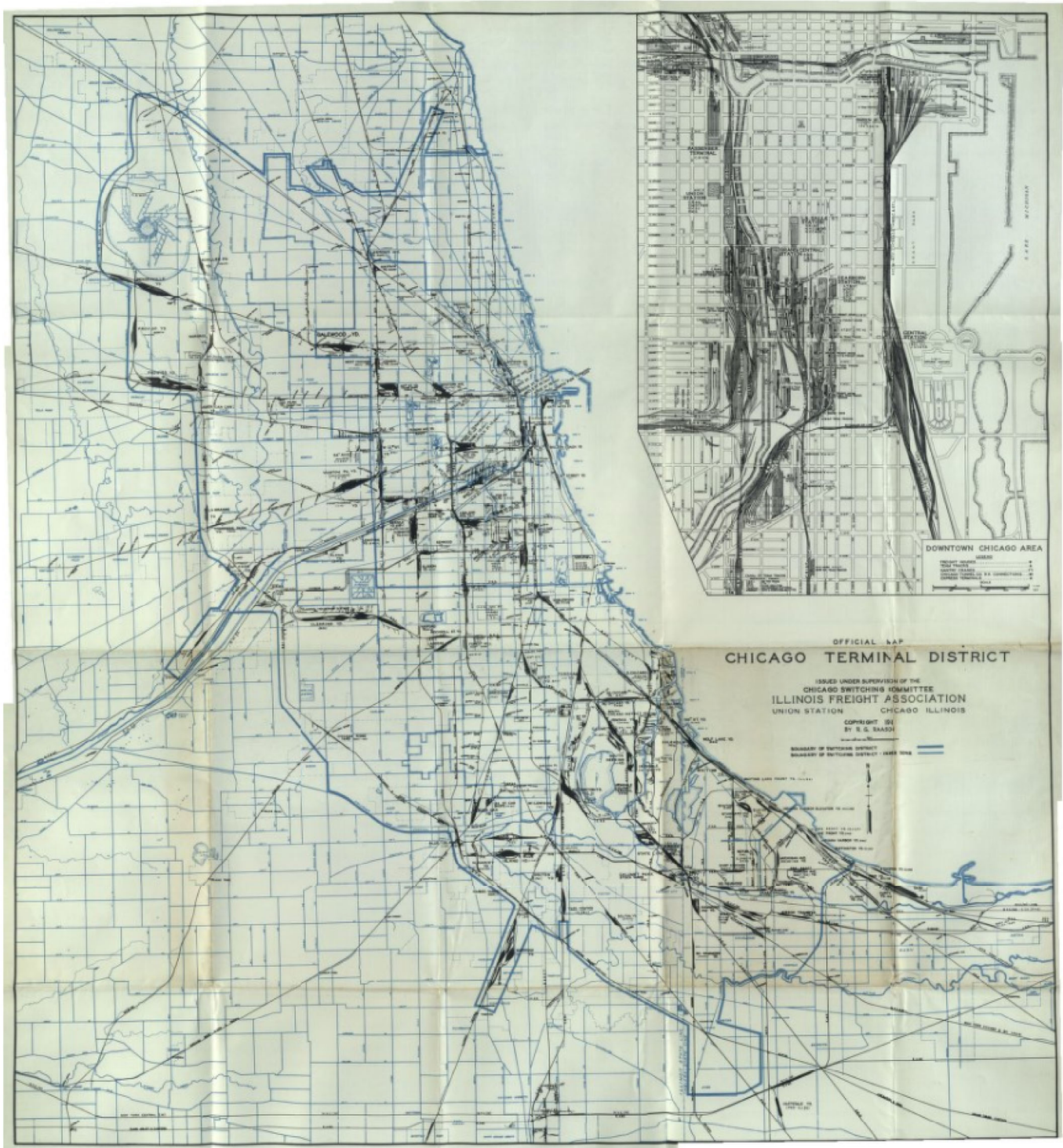


1930
 C. P. S.

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**Official Map
Chicago Terminal District
1961**

*Available at the University of Missouri-St. Louis
<https://dl.mospace.umsystem.edu/umsl/islandora/object/umsl%3A203004>*



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Official Map Chicago Terminal District 1978

*Available at
<http://multimodalways.org/docs/railroads/RRMedia/RRmaps/Cities/Chicago%20Terminal%20District%201978.pdf>*



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Exhibit B

Union Pacific's Interim Terms and Conditions

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INTERIM TERMS AND CONDITIONS

Section 1. SCOPE OF OPERATIONS

Section 1.1 Operation on Union Pacific Rail Lines. Metra may operate passenger trains on the portions of Union Pacific rail lines outlined by the Surface Transportation Board (“STB”) in Docket No. FD 36844 (herein “Rail Lines”). Such access does not extend to other properties such as stations, parking lots, industry tracks, or yard tracks.

Section 1.2 Train Schedules. Metra may operate passenger trains according to the officially published commuter train service schedule effective as of the date of the STB’s order in Docket No. FD 36844. Each train consist shall not exceed 1,100 feet in length.

Section 1.3 Rolling Stock. Metra’s rolling stock (locomotives, carriages, wagons, or other passenger rail vehicles) must meet the rules, regulations, standards, and requirements established or modified by Union Pacific (“Railroad Requirements”), including but not limited to the requirement that rolling stock equipment must properly shunt to activate Union Pacific’s signal system (e.g., automatic crossing warning device).

Section 1.4 Service Changes of Train Schedules and Consists. Absent an order from the Surface Transportation Board, Union Pacific has no obligation to permit the operation of additional trains, route changes, schedule changes, consist changes, improvements, enhancements, or any other changes.

Section 2. COMPENSATION, COST REIMBURSEMENT, AND OTHER EXPENSES

Section 2.1 Rail Access Fee. Metra shall pay { [REDACTED] } per train mile operated on the Rail Lines. The rail access fee rate shall increase 2.9% annually each January 1st while the interim terms and conditions are in effect.

Section 2.2 Engineering, Dispatching, Crew Calling and Timekeeping. The expenses incurred by Union Pacific in connection with engineering, dispatching, crew calling, timekeeping, and other operational activities shall be calculated based on the actual labor charges attributable to Union Pacific's employees who are engaged in commuter operation roles or are rendering support or services for the facilitation of Metra’s operations. This calculation shall include the costs of materials and other related expenditures. The aggregate amount of these expenses is subject to modification contingent upon the following factors: (a) alterations in labor and material rates; (b) adjustments in the number of required positions; (c) variations in the duration of time allocated to the provided service; and (d)

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additional pertinent factors. Both direct costs and associated costs shall be recognized as reimbursable expenses.

Section 2.3 Other Expenses and Costs. Other costs, including taxes and logistical transportation expenses for materials, shall be allocated and invoiced to Metra based on its respective train miles operated over the Rail Lines, or by an alternative method determined by Union Pacific.

Section 3. MAINTENANCE OF RAIL LINES AND STRUCTURES

Section 3.1 Maintenance of Rail Lines and Signal and Communications Systems. Union Pacific shall maintain the Rail Lines and signal and communications systems in accordance with the standards necessary to maintain Metra train schedules established as of the date of the STB's order in Docket No. FD 36844. The maintenance of Rail Lines shall also include regular inspection of tracks, signal equipment, and structures as prescribed by government requirements and Railroad Requirements.

Section 3.2 Other Maintenance and Government Requirements. All maintenance performed under Section 3.1 are reimbursable costs as described in Section 2.1.

Section 3.4 Restoration of Rail Lines. In the event of a casualty or catastrophic service interruption, including but not limited to bridge failures, roadbed collapses, and tunnel collapses, Union Pacific shall decide in its sole discretion on whether to restore the Rail Lines or any subsection thereof. In the event Union Pacific elects to undertake the restoration of the Rail Lines, or any subsection thereof, the costs associated with such restoration shall be apportioned and invoiced to the parties in accordance with their respective train miles operated over the affected Rail Lines, or subsection thereof, during the twelve (12) month period immediately preceding the commencement of the month in which the casualty or catastrophic event occurs. In the event the Union Pacific determines not to restore the Rail Line or subsection thereof, Metra may elect to fund the restoration at its sole cost.

Section 3.5 Notice and Accommodation of Railroad Activities. Union Pacific shall use reasonable efforts to provide Metra with notice of scheduled Railroad Activities no later than fourteen (14) days prior to the beginning of Railroad Activities. Railroad Activities is defined to mean collectively, (a) the performance of construction, maintenance, or repair of Rail Lines; (b) the construction, maintenance, and repair of highways, utility lines, or other public works that cross or are adjacent to Rail Lines; or (c) any other activities or situations as may arise. Regardless of whether Union Pacific was able to provide such notice, Metra shall provide temporary accommodation in its routes, schedules, or consists for the purpose of minimizing interference with Railroad Activities. Metra shall be solely

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responsible for all the costs and expenses it incurs to accommodate the Railroad Activities.

Section 4. DISPATCHING AND INSTRUCTIONS

Section 4.1 Dispatching Control. The movement of Metra trains over and along Rail Lines shall be subject to the exclusive direction and control of Union Pacific. Union Pacific shall use reasonable efforts to minimize disruption of Metra's schedules.

Section 4.2 Railroad Control and Instruction. All Metra personnel rendering any service in connection with the handling or movement of any train while on the Rail Lines shall comply with any and all operating rules, timetables, and instructions of Union Pacific.

Section 5. COMPLIANCE WITH REGULATIONS AND RULES

Section 5.1 Union Pacific Rules. Metra shall comply with: (a) all applicable Railroad Requirements, including those relating to the operation, maintenance, condition, inspection, testing, or safety of trains and other equipment on the Rail Lines; (b) the General Code of Operating Rules and any successor published by the American Association of Railroads; (c) Union Pacific's timetables, general orders, bulletins, and other standards as established and modified from time to time; and (d) applicable permit requirements, environmental or otherwise.

Section 5.2 Environmental Compliance. Metra shall use Union Pacific's property and all activities performed upon the property in accordance with all government requirements relating to environmental matters, including, without limitation, all applicable laws pertaining to the protection of the environment (e.g., prevention of pollution and remediation of contamination) and human health and safety, and all analogous applicable state and local laws and regulations and subsequent amendments and or updates.

Section 6. INDEMNIFICATION AND LIABILITY

Section 6.1 Metra's Indemnification of Union Pacific in General. Metra assumes liability for and agrees to indemnify, defend, and save harmless Railroad Indemnified Parties from and against any and all claims including but not limited to (a) environmental claims, (b) claims of vicarious liability, and (c) personal injury claims by any person, including Union Pacific employees for loss, damage, personal injury, death, damage to property (including but not limited to damage to infrastructure) and equipment, cost or expense (including costs of investigation, attorney fees, consultant fees, expert fees, court costs, and costs incurred in enforcing these indemnification provisions), fine, penalty, settlement, or judgment

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of whatever kind or nature, where such harm arises from, relates to, or is in connection with Metra's service, or related to the action, inaction, or omission of Metra, its employees, contractors, vendors, volunteers, invitees, delegates, representatives, or agents, ("Claim or Claims"). Railroad Indemnified Parties is defined to include the following: Union Pacific and its affiliates, shareholders, officers, employees, successors, assigns. Railroad Indemnified Parties also includes designated agents and representatives where, because of the absence of insurance, absence of an indemnity agreement, or inadequate insurance or indemnity protection, such agent's acts or omissions would otherwise result in liability to Union Pacific (collectively, "Railroad Indemnified Parties"). To clarify, Metra is not assuming liability for or agreeing to indemnify, defend, or save harmless Union Pacific for incidents that do not involve a Metra train, Metra services or equipment or Metra contractor services or equipment.

SECTION 6.2 Metra's Indemnification of Union Pacific Specifically. Without limiting or modifying the obligations of Metra under Section 6.1, Metra will indemnify, defend, and save harmless Railroad Indemnified Parties from and against any liability: (a) irrespective of whether the liability is vicariously implied in law, strict, or is a result of a Railroad Indemnified Party's own negligence; (b) caused as a result of a collision of a vehicle or a person with a Metra train; (c) caused as a result of vagrants and trespassers using Metra facilities; (d) incurred in connection with the use or presence of a taxi or other arranged transportation service providing transportation to or adjacent to the Rail Lines; (e) caused by any locomotive, private rail car, passenger car, or any other property or equipment owned by, leased to, used by, or otherwise in the control, custody, or possession of either Metra or Railroad; (f) arising out of, caused by, or in any manner resulting from a collision with or derailment of a Metra owned or operated passenger train; or (g) arising from, caused by, or in any manner resulting from any spill, response, mitigation, cleanup, or disposal of fuel, oil, or other pollutant arising from, related to, or in connection with Metra's or its contractors activities on the Rail Lines.

Section 6.3 Metra's Obligation to Defend Union Pacific. Union Pacific shall give written notice to Metra of the receipt or pendency of any claim for which Metra is liable or potentially liable to indemnify and save harmless the Railroad Indemnified Parties pursuant to the terms of Section 6. For such Specified Claims, Metra shall, at its own cost and expense and without any cost or expense to the Railroad Indemnified Parties, defend the suit and indemnify and save harmless the Railroad Indemnified Parties against all costs and expenses pursuant to the terms of this Section 6. Union Pacific will use commercially reasonable efforts to give to Metra information relating to each such claim to the extent reasonably necessary and will cooperate in good faith in the defense of any such claim. Metra agrees that it will not settle any claim in any manner that would impose any expense, penalty, obligation, or limitation on any Railroad Indemnified Party without the impacted Railroad Indemnified Party's prior written consent to the specific and fully disclosed

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expense, penalty, obligation or limitation.

Section 6.4 Union Pacific's Right to Defend Itself. Union Pacific has the right, but not the obligation, upon notice to Metra, to defend any claim against a Railroad Indemnified Party, to select counsel to defend any Railroad Indemnified Party against that claim and to control the defense and settlement of that claim as against the Railroad Indemnified Party. If Union Pacific opts to do this, Metra will nonetheless be obligated to protect, indemnify and save harmless each Railroad Indemnified Party from and against all such claims to the extent the Metra is obligated to do so under these conditions. Such expenses and settlement shall be fair and reasonable.

Section 6.5 Survival of Indemnity Obligation. The obligations outlined in Section 6 shall survive any removal or termination of these conditions.

Section 7. MAINTENANCE OF INSURANCE

Section 7.1 Insurance Requirements. Metra shall keep in full force and effect insurance coverage that provides the same insurance coverages Metra has in effect as of June 3, 2025, which includes (1) in amounts not less than the insurance Metra has in effect as of June 3, 2025, (2) policy(ies) with coverage(s) substantially the same as the insurance Metra has in effect as of June 3, 2025, (3) all policies must continue to include Union Pacific as an "Additional Insured," providing Union Pacific the broadest possible coverage available by operation of law, and such additional insured coverage not limited by Metra's liability under the indemnity requirements, and (4) the coverage(s) of all policy(ies) must continue to include punitive damages except to the extent prohibited by the state law in which the Rail Lines are located. This obligation to maintain insurance coverage applies regardless of (a) any monetary caps on Metra's liability or limitations on Metra's liability to others under any state or federal law; or (b) any immunity from liability provided to Metra under any state or federal law.

Section 8. GENERAL TERMS

Section 8.1 Force Majeure Events. Notwithstanding anything to the contrary, the parties shall be temporarily excused from the performance of any of their obligations under these interim terms and conditions, except obligations involving indemnification, maintenance of insurance, or the payment of money to the other party, during the time when such nonperformance is caused by a force majeure event. A "Force Majeure Event" means events beyond the reasonable control of the impacted party, including without limitation derailments, wrecks, acts of God, fires, floods, riots, insurrection, strikes, labor stoppages and slowdowns, and public health emergencies.

PUBLIC VERSION

Exhibit C

**Metra's Responses and Objections to Union Pacific's First
Set of Interrogatories, Requests for Production of
Documents, and Requests for Admission to Metra**

(April 21, 2025)

Excerpts

PUBLIC VERSION

**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**

**METRA’S RESPONSES AND OBJECTIONS TO UNION
PACIFIC’S FIRST SET OF INTERROGATORIES, REQUESTS
FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR
ADMISSION TO METRA**

Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”), pursuant to 49 C.F.R. Part 1114, hereby responds, through undersigned counsel, to Union Pacific’s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission (collectively, “Requests”) that Union Pacific Railroad Company (“UP” or “Union Pacific”) served on Metra on April 4, 2025.

Metra is conducting a reasonable, good faith search for non-privileged information and documents responsive to UP’s Requests. Subject to, and without waiving the general and specific objections that follow, and to the extent reasonably available, responsive non-privileged information and documents will be produced.

GENERAL RESPONSES AND OBJECTIONS

In addition to the specific objections raised below in response to individual Requests, Metra objects to UP’s Definitions, Instructions,

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information is conditioned upon compliance with the Protective Order governing the production and disclosure of confidential or highly confidential information and documents in this proceeding. Metra reserves its right to designate documents or information produced in this litigation as “Confidential” or “Highly Confidential” at the time they are produced, or at any other time, and to revise or amend such designations at any time.

11. By producing information, Metra does not concede that it is relevant, material, competent or admissible, and Metra reserves the right to object on any ground to any use of the information in this or a successor proceeding. Metra reserves the right to supplement its responses and objections.

12. Consistent with past practice in cases of this nature, Metra has not secured verifications of the answers to interrogatories herein.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to its General Objections that apply to each Request, Metra states below its specific objections and responses to each Request. Metra preserves all its General Objections stated above, and none of the following specific objections and responses waives those General Objections or limits their scope, breadth, generality, or applicability.

REQUESTS FOR ADMISSION

Request for Admission No. 1

In the event the Surface Transportation Board orders Union Pacific to provide access to Metra over the Union Pacific Lines, such access must be accompanied by an agreement governing liability allocation and indemnification.

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Response: Metra objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Metra also objects to “liability allocation and indemnification” as undefined, vague, ambiguous, and open-ended. Metra further objects to this Request as calling for legal interpretation, and because it is premature and inconsistent with the applicable statutory provisions and the Board’s schedule insofar as conditions and compensation for use of the facilities at issue would be relevant, if at issue, only at a later phase of the proceeding. *E.g.*, *Minnesota Power* (denying requests to “preview” complainant’s case). Subject to and without waiving these objections, Metra states that it would be willing to discuss liability allocation and indemnification conditions with UP regarding Metra’s use of the UP Lines, if such use is required by the Board in this proceeding. Metra expects that any conditions and compensation for use of the facilities established with UP, or established by the STB if Metra and UP cannot agree, would include provisions addressing liability allocation and indemnification.

Request for Admission No. 2

Metra has the ability to obtain a bond or other adequate security instrument in the amount of \$45 million.

Response: Metra objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Metra also objects to “adequate security instrument” as undefined, vague, ambiguous, and open-ended. Metra further objects to this Request as premature and inconsistent with the applicable statutory provisions and the Board’s schedule insofar as conditions and compensation for use of the facilities at issue would be relevant, if at issue, only at a later phase of the proceeding. *E.g.*, *Minnesota Power* (denying requests to “preview” complainant’s case). In addition, Metra objects to this Request as overbroad and unduly vague in

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its conditions and compensation for use of the terminal facilities at a later phase of the proceeding, including evidence pertaining to the subject of this Request, if the parties cannot agree on such conditions and compensation. Notwithstanding the above, Metra will produce non-privileged information or documents that Metra can locate or identify after a reasonable search.

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

Dated: April 21, 2025

PUBLIC VERSION

Exhibit D

Excerpt of Thomas Stuebner Deposition

(May 1, 2025)

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 ~ ~ ~ ~ ~
4 COMMUTER RAIL DIVISION OF
5 THE REGIONAL TRANSPORTATION
6 AUTHORITY d/b/a METRA,
7 ~ TERMINAL TRACKAGE RIGHTS ~
8 UNION PACIFIC RAILROAD COMPANY
9 ~ ~ ~ ~ ~

10
11 DEPOSITION OF
12 THOMAS STUEBNER

13
14 May 1, 2025
15 8:03 AM Central
16 McDERMOTT WILL & EMERY
17 444 West Lake Street, Suite 4000
18 Chicago, Illinois

19
20 Stenographically Reported By:
21 Deanna Amore - CRR, RPR, CSR - 084-003999
22

23 **REDACTED, PUBLIC VERSION**
24
25

APPEARANCES OF COUNSEL

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of the REGIONAL TRANSPORTATION AUTHORITY, d/b/a
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ALSO PRESENT:

Metra Commuter Rail, Blaire Theuerkauf
Senior Counsel

Job Number: 7338829

* * * * *

1 (Whereupon, Stuebner Exhibit 14
2 was marked for identification.)

3 BY MS. DAVIS:

4 Q. So this is Exhibit 14.

5 Are you aware that there is a complaint
6 that has been filed by Metra against Union Pacific
7 outside of the STB?

8 A. Yes.

9 Q. I'll just have you turn to page 18,
10 paragraph 108. Do you see where it says
11 "Metra cannot afford what Union Pacific demands"?

12 MR. PERGOLIZZI: I am going to object to the
13 question as mischaracterizing what UP is demanding.
14 You can answer.

15 THE WITNESS: What was the question?

16 BY MS. DAVIS:

17 Q. Do you see where it states "Metra cannot
18 afford what Union Pacific demands"?

19 A. Yes.

20 Q. Do you agree with that statement?

21 A. Yes.

22 Q. And what is your understanding of why
23 Metra cannot afford what Union Pacific demands?

24 A. My own personal understanding is because
25 I don't fully grasp what Union Pacific demands.

1 Q. But you believe that Metra could afford a
2 [REDACTED] access fee?

3 A. Again, yes, I believe so.

4 Q. Are there other aspects of compensation
5 other than the access fee that remain unresolved as
6 far as you know?

7 A. Yes.

8 Q. And what are those?

9 A. The best way I can answer is an
10 overarching agreement.

11 Q. What do you mean by that?

12 A. Meaning UP has -- I believe the goalposts
13 have moved over the last five and a half years.
14 The characterization of the agreement has shifted.
15 Most recently my understanding is that UP professes
16 to want to continue a, what I would describe as a
17 shell of a PSA, and I believe we have said we don't
18 have interest in that, and we're looking for a
19 new -- UP wanted to change the relationship. We
20 want to see what that changed relationship looks
21 like.

22 Q. So the form of the agreement is
23 outstanding from your perspective?

24 A. Yes, but it's more than form.

25 Q. Are there other substantive areas as far