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Via E-Filing

Ms. Cynthia T. Brown
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: FD 36844, *Commuter Rail Division of the Regional
Transportation Authority d/b/a Metra – Terminal
Trackage Rights – Union Pacific Railroad Company*

Dear Ms. Brown:

Metra responds to UP's December 15, 2025, reply to Metra's request that the Board establish conditions and compensation for trackage rights, pursuant to 49 U.S.C. § 11102(a). This response addresses two requests by UP that are outside the scope of Metra's filing: (1) a proposed bifurcation of the proceeding to address UP's incorrect "assum[ption]" that Metra is requesting "expanded access" to UP's facilities beyond that granted in the Board's September 3 Decision (Reply at 5-9), and (2) an additional mediation (*id.* at 9-10) – both of which Metra is entitled to respond to under 49 C.F.R. § 1104.13. Metra also addresses UP's misuse of settlement materials in violation the parties' confidentiality agreement and misstatement of related facts, for which fairness and good cause warrant Board acceptance of Metra's response.

A. UP's Request to Indefinitely Postpone Establishment of Conditions and Compensation Includes Misused Confidential Communications and Misstated Facts

UP does not take issue with Metra's proposed procedural schedule, which comports with the Board's statutory time limit for determinations under 49 U.S.C. § 11102(a), other than the time needed for discovery. UP instead urges the Board to require the parties to continue to negotiate, indefinitely, before initiating proceedings to establish the conditions of use and compensation.

While the parties have been negotiating for three-and-a half months after the September 3 Decision, and before that, since 2019 – along with four-and-a-half

months of STB-sponsored mediation – UP claims Metra’s request is “short-circuiting” the negotiations process. UP’s claims are premised on selective excerpts from a confidential letter sent by Metra as part of the parties’ settlement negotiations and an inaccurate chronology intended to support UP’s allegation that Metra timed its request to the Board as part of its “appellate strategy” before the U.S. Court of Appeals for the Eighth Circuit.

First, Metra’s November 21 letter to UP (attached as Exhibit A to UP’s Reply) is subject to the parties’ confidentiality agreement. Paragraph 6 of that agreement provides that: “[t]he parties *shall not refer to such communications (including protected information) in any way in any discovery requests, presenting testimony, or otherwise pursuing issues and claims involving the other party before any court, arbitrator, governmental agency, or tribunal*” (emphasis added). UP has done exactly what the parties’ agreement prohibits. UP’s redaction of some content does not cure its violation. The intent of the confidentiality agreement was to allow the parties as part of their ongoing negotiations to exchange information in trust, which UP has violated. Without repeating UP’s violation, Metra states that the selected information included with UP’s Reply was taken out of context. UP has been on notice since before the November 21 letter, as described below, that Metra planned to ask the Board in December to intervene and set conditions and compensation, if the parties remained at an impasse, which is exactly what occurred.

Second, contrary to the inaccurate chronology presented in its Reply (at 2-4), UP did not “learn[] via its counsel that Metra would be filing a petition at the Board claiming an impasse” only after Metra’s November 21 letter. On the contrary, Metra repeatedly had advised UP over the course of their post-decision negotiations that Metra’s goal was to reach agreement on all issues *by December*. Metra also specifically and unequivocally advised UP’s negotiating team, which included UP in-house counsel, of the planned December filing during a virtual meeting on November 18, *before* Metra sent the November 21 letter. The telephonic communication with UP’s outside counsel referenced in the Reply, which occurred on November 25, was an additional pre-filing courtesy.¹

UP’s related argument that “[t]he timing strongly suggests that Metra is claiming to have hit a roadblock in negotiations” in support of its “appellate strategy” (*id.* at 4) falls apart, as with many inaccurate narratives, because the pieces do not fit. It bears noting, in this respect, that Metra actually made its November 26 filing to the Eighth Circuit, which UP references (*id.* at 3), to correct UP’s misstatement to the Appellate Court the day before regarding Metra’s plans to file with the STB. In its November 25 filing with the Eighth Circuit, and in

¹ UP’s reference to its counsel’s follow-up email (Reply at 3, n.5) is misdated. The email was sent on November 26, 2025, not November 21.

reference to the conditions and compensation phase of this proceeding, UP stated that “[t]here is no deadline for that process, and neither party has asked the Board to intervene,” even though UP was on notice that Metra intended to file within the week.² Metra corrected the record with the Eighth Circuit the next day, as follows: “Metra previously advised UP and UP is on notice that Metra in December will file a petition asking the STB to proceed to the conditions and compensation for Metra’s use of the UP Lines. That filing will be made on December 1, 2025, and the schedule Metra will propose to the STB, consistent with the underlying statute, will call for completion of the second phase of the proceeding within 180 days.”³

Metra’s December 1, 2025, request identified five major remaining issues for the Board to resolve. UP’s Reply does not dispute that these essential issues are at an impasse. There is no inconsistency in Metra’s willingness to continue negotiations through the end of the year, and potentially beyond, which the proposed schedule calls for, while also recognizing that the parties have reached an impasse as to major areas of dispute and that the process for Board resolution, consistent with the statutory framework, should begin now.

B. UP’s New Requests to Bifurcate and Mediate Are Unsupported and Contrary to the Public Interest

UP seeks bifurcation based on its incorrect “assum[ption]” that Metra plans to ask the Board to “expand the scope of the September 3 order” to cover “a potentially wide array of other real estate and/or facilities.” Reply at 5. UP asserts that this undefined “expanded access,” if sought, would exceed the scope of the September 3 Decision. On this basis, UP requests that the Board extend and bifurcate this proceeding, so that this assumed issue, which has not been raised and will not be, can be resolved before the Board can determine conditions and compensation for use of the facilities under 49 U.S.C. § 11102(a).

To address UP’s incorrect assumption, Metra’s request did identify “scope of trackage rights” as one of the remaining disputed issues to be addressed, but Metra is not attempting to “expand the scope” of the trackage rights granted by the Board in any way. The September 3 Decision makes clear that terminal facilities are to be broadly construed for passenger traffic. *Id.* at 14 & n.28. The Decision framed “the concept of a terminal area in functional terms” as it “may also encompass activities related to the transport of passengers” and “what is ‘necessary for the convenience of passengers.’” *Id.* The Decision further explained that references in cases to

² UP Resp. to Respondents’ Status Report ¶ 11, *Union Pac. R.R. v. STB*, No. 25-2919 (8th Cir. Nov. 25, 2025).

³ Metra Resp. to Respondents’ Status Report, ¶ 5, *Union Pac. R.R. v. STB*, No. 25-2919 (8th Cir. Nov. 26, 2025).

freight-related facilities “are not delimiting because they did not involve functions or facilities pertaining to the transportation of passengers.” *Id.* (citations omitted).

The appropriate delineation of the facilities involved in actual contract language has been a point of discussion between the parties. Metra’s reference to the scope of the rights in its request simply reflects the reality that the Board likely will need to determine the “functions and facilities” covered by the Decision in the context of Metra’s operations and the implementing terms of the parties’ trackage rights agreement. If UP believes that the trackage rights agreement terms that Metra proposes include facilities that are beyond the scope of relief provided by the Board, it will have every opportunity to challenge Metra’s position during the conditions and compensation phase, just as Metra will have the opportunity to establish that such terms are within the Board’s scope of relief. UP provides no relevant support for its novel bifurcation request, and Metra is aware of none. *Cf. Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36223 (STB served Mar. 29, 2019), at 6 (denying bifurcation); *New England Cent. R.R., Inc. – Trackage Rights Order – Pan Am S. LLC*, FD 35842 (STB served Feb. 12, 2016), at 5 (denying bifurcation).

Metra also opposes UP’s mediation proposal. The parties mediated previously at UP’s request from August 14, 2024, to January 31, 2025, without success prior to the grant of trackage rights, when UP was negotiating from the position that Metra had no independent right to use its lines. Metra cautioned at the time that UP’s July 31, 2024 request for mediation, including over “the fee Metra will pay for access to Union Pacific’s tracks and other property used for commuter rail service” (App. for Mediation at 3) was “premature” and the mediation “would become stalled at the outset” because of a lack of “complete and transparent supporting information” from UP. Metra Resp. in Opp’n to UP App. for Mediation, FD 36800 (filed Aug. 8, 2024). UP now seeks to repeat that experience with respect to the conditions and compensation for Metra’s trackage rights. While they have made progress on some elements in the interim, it is evident that the two sides regardless of how much longer they negotiate will not reach agreement on other issues, including the major disputed issues identified in Metra’s request. A second mediation is unlikely to add anything other than delay.

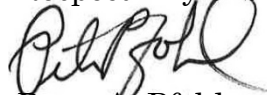
With its mediation request, UP would have the Board “behave like Penelope, unravelling each day’s work to start the web again the next day.” *Western Coal Traffic League v. I.C.C.*, 785 F.2d 1408, 1411 (D.C. Cir. 1984). More troubling is UP’s statement to the Eighth Circuit earlier this week that, if the Board commences a conditions and compensation phase, as Metra has requested: “all signs suggest

that such a proceeding will not take months to resolve, *but years*.”⁴ The governing statute, 49 U.S.C. § 11102(d), provides for resolution within 180 days. Metra crafted its proposed schedule to allow the Board to meet that requirement. UP has not disagreed with Metra’s schedule or proposed one of its own, other than to propose one for a bifurcated schedule on an extraneous assumed issue.

Timely initiation and resolution of the conditions and compensation for Metra’s trackage rights is vital for Metra and should be important for UP, as well, which has claimed that it is being undercompensated and is otherwise at risk pending final conditions and compensation. Metra sought the “statutorily available rights to operate a public service over the UP Lines for a compelling reason: so that it can provide that service to the public on transparent, reasonable, and bilateral terms and with the *certainty* required, as Congress understood, to run a railroad.” September 3 Decision, at 26 (emphasis added). “Under these circumstances,” as the Board determined, “the public interest requires greater *certainty* and granting Metra terminal trackage rights is warranted to ensure the provision of adequate rail service to the public.” *Id.* at 30 (emphasis added). Delay can only put that certainty out of reach.

Metra will reply separately to UP’s Motion for Protective Order from discovery by January 5, unless the Board rules first, *e.g.*, by establishing a procedural schedule. UP’s Motion presumes adoption of the positions in its Reply and is deficient for the same reasons.

Respectfully submitted,



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Regional Transportation Authority d/b/a Metra*

⁴UP Resp. in Opp’n to Respondents’ and Metra’s Abeyance Mots., at 4, *Union Pac. R.R. v. STB*, No. 25-2919 (8th Cir. Dec. 15, 2025) (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify this 18th day of December 2025, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by more expeditious means to all parties of record.

/s/ Peter A. Pfohl