

EXPEDITED CONSIDERATION REQUESTED
BY JULY 1, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36844

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

**METRA PETITION FOR TEMPORARY INJUNCTION AND/OR
EX PARTE APPLICATION FOR SECTION 11123(a) SERVICE ORDER**

Peter A. Pfohl
Robert D. Rosenberg
Slover & Loftus LLP
1828 L Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 347-7170

*Attorneys for the Commuter Rail
Division of the Regional Transportation
Authority d/b/a Metra*

Dated: June 30, 2025

ENTERED
Office of Proceedings
June 30, 2025
Part of
Public Record

EXPEDITED CONSIDERATION REQUESTED
BY JULY 1, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36844

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

**METRA PETITION FOR EX PARTE APPLICATION FOR SECTION 11123(a)
SERVICE ORDER AND/OR TEMPORARY INJUNCTION**

Metra has demonstrated its eligibility to obtain, and the Board's jurisdiction to grant, pursuant to 49 U.S.C. § 11102, terminal trackage rights over three UP Lines in its evidentiary filings. Because its historical agreement with UP is set to expire on June 30, 2025, and with no agreement or mechanism in place to ensure that Metra's service on UP's Lines continues after that date, immediate interim relief is required. Both Metra and UP have acknowledged the need for interim relief, so that the commuter rail service that has operated on the UP Lines for over a century can continue.

Accordingly, Metra is submitting this Petition pursuant to § 1321(b), § 11123(a), and 49 C.F.R. Parts 1117 and 1146, for the Board to grant relief. The substantive grounds and basis for relief are already addressed in Metra's prior pleadings. In particular, Metra's Rebuttal at pages 45-47 explains how Metra's situation fits within both § 1321(b) and § 11123(a). Cessation of service would

produce “irreparable harm” to Metra and the public interest and create “an emergency situation” with “substantial adverse effects on shippers or on rail service,” because residents of and visitors to the Chicago region will be unable to commute to work or will be forced to take other transportation, leading to gridlock.

Metra specifically requests that the Board take appropriate action to maintain the status quo between the parties as it existed on June 30, 2025, until further notice, including the period required to establish final conditions and compensation, subject to a retroactive adjustment in favor of either party to July 1, 2025.

Continuation of the status quo compensation would be subject to reconciliation and true-up later – in either direction – to conform to the compensation ultimately established between the parties or by the Board, so that both parties are adequately secured. Metra submits that neither side should seek to improve its position or degrade the other’s while the Board is determining the merits or before final conditions and compensation are established for Metra’s use of UP’s facilities and, therefore, Metra’s proposed Interim Conditions and Compensation provide the soundest and most appropriate interim solution.¹

¹ If, however, the Board is concerned about adopting Metra’s proposed Interim Conditions and Compensation, Metra requests that the Board simply order the parties to maintain the “status quo,” as it existed on June 30, 2025, until further notice. Such an order would be unambiguous and executable between UP and Metra during the interim time period, including the period required to establish final conditions and compensation.

Because no agreement is in place for continuing service after the parties historical agreement expires at midnight tonight, June 30, 2025, expedited action and immediate relief are requested under these extreme circumstances. In particular, Metra requests the Board to grant its request on an *ex parte* basis by and as soon as possible.² Metra further requests that the order remain in effect until Metra’s Application for Terminal Trackage is adjudicated on the merits.

ARGUMENT

A. A SECTION 11123(a) SERVICE ORDER SHOULD BE GRANTED

The ICC Termination Act of 1995 (“ICCTA”) grants the Board the statutory authority in 49 U.S.C. § 11123 to remedy “[s]ituations requiring immediate action to serve the public.” *Id.* Section 11123 specifically authorizes the Board to issue emergency service orders on an *ex parte* basis for 30 days, subject to extensions of up to 240 days.

In its initial rulemaking proceeding on expedited service relief, the Board noted that Section 11123 gives the Board wide “latitude to craft a variety of measures to remedy any particular service situation.”³ Metra serves tens of

² Under 49 U.S.C. § 11323(b)(1), the Board is empowered on its own or on application “to act immediately, without observing normal due process procedures.” *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968, 972 (1998). The Board can issue injunctive orders on a similar basis to prevent irreparable harm. 49 U.S.C. § 1321(b)(4). The Board need not wait for UP’s reply before acting. *E.g.*, *Foster Poultry Farms – Ex Parte Pet. for Emergency Service Order*, FD 36609 (STB served June 17, 2022) (granting relief requested two days before) (“*Foster Farms*”); *Hasa, Inc. v. Union Pac. R.R. Co.*, NOR 42165 (STB served Aug. 21, 2019) (“*Hasa*”) (granting relief requested the day before).

³ *Expedited Relief for Serv. Inadequacies*, EP 628 (STB Notice of Proposed Rulemaking served May 12, 1998), at 2.

thousands of Chicago-area residents and visitors daily on three UP Lines. UP is attempting to exploit public dependence on this vital transportation resource by extracting unreasonable concessions from Metra relating to the conditions and compensation for its operations on the UP Lines, with devastating consequences for Metra, its customers, and Illinois taxpayers. No agreement is in place for Metra's operation on the UP Lines after June 30, 2025. Prompt emergency service relief is essential.

The three UP Lines have been used to provide commuter rail service since their inception before the Civil War. UP and its immediate predecessor have operated those trains for decades. After deciding to discontinue providing the service itself, UP promised Metra, the courts, and the public that it was "not denying Metra access to its rail lines." *Union Pac. R.R. Co. v. Reg'l Transp. Auth.*, No. 22-1445, Dkt. 25 at 3 (7th Cir., Aug. 10, 2022).

UP has stated that it would "assent" to the Board ordering interim terms and conditions for Metra's use of the UP Lines, if the Board granted trackage rights. UP Reply Statement at 34-38, Exhibit B. But UP's proposed Interim Terms and Conditions also come with a catch. UP's proposal would not maintain the status quo as it existed on June 30, 2025, while the parties seek to negotiate a bilateral agreement on conditions and compensation or the Board performs its statutory function. Instead, UP's proposed Interim Terms and Conditions would impose many of the same conditions that UP is seeking to dictate if the Board did not act all: UP would obtain a 100%-plus increase in its rental compensation beginning Day 1,

impose new one-sided liability provisions on Metra, and degrade Metra's ability to deliver the same high-quality and dependable service its passengers deserve and rightly expect.

In the absence of an agreement or interim relief, UP delivered to Metra earlier this month an ultimatum titled UP's "Condition of Entry" (COE). In it, UP asserted that, if Metra continues to operate on the UP Lines, Metra "shall be bound," beginning July 1, 2025, to UP's extortionate demands, which include the more than 100% increase in compensation. In addition, UP under the COE seeks to require Metra to surrender its jury trial rights and accede to a host of additional poison-pill terms and conditions.

UP thus presents Metra with an impossible choice: If Metra stops commuter services on three of its most widely-used lines, Metra will lose 40% of its business overnight, irretrievably lose customers, and be forced to furlough employees. The public, too, would suffer, as tens of thousands of daily riders would be left stranded. But if Metra continues to use the lines, UP will insist that Metra has *agreed* to the exorbitant rates and unworkable and unjust operating restrictions and limitations. And it will claim that Metra has forever waived essential legal rights it holds for the protection of its customers and the region's taxpayers.⁴

The Board should issue emergency service relief preserving the status quo as

⁴ Metra has informed UP that it will continue to operate on the Lines after expiration of the existing agreement at midnight on June 30, 2025. Metra has also informed UP that Metra does not agree to and will not consent to the terms of the COE.

it existed on June 30, 2025: Metra should be entitled to continue operating its trains while paying status quo compensation, without a degradation in its service or waiver of its essential rights.

Continuing rail service under status quo terms during the pendency of the proceeding is critical for maintaining public access to passenger service, and the potential loss of such service would be devastating and far-reaching. Under such circumstances, “section 11123 permits us to act immediately, without observing normal due process procedures.” *Expedited Relief for Service Inadequacies*, 3 S.T.B. at 972; *accord* authorities cited at footnote 1, *supra*. This is the sort of “serious, localized railroad service problem[]” for which § 11123 “enable[s] the Board to provide temporary relief . . . quickly and effectively.” *Expedited Relief for Service Inadequacies*, 3 S.T.B. at 970. Just as in *Foster Farms* (granting immediate service relief in response to a degradation in UP service quality that threatened the food supply for livestock) and *Hasa* (granting immediate service relief in response to a reduction in UP service from five days per week to three days per week), the Board should enter an immediate order directing UP to preserve the status quo as it existed on June 30, 2025, and allow Metra to continue operating its trains during the pendency of this proceeding.

B. A TEMPORARY INJUNCTION SHOULD BE GRANTED

Under 49 U.S.C. § 1321(b)(4), the Board has the authority to “issue an appropriate order, such as a preliminary injunction when necessary to prevent irreparable harm.” *Central Valley Ag Grinding, Inc. and Central Valley Ag Transp.*

Inc. v. Modesto and Empire Traction Co., NOR 42159 (STB served June 12, 2018) (“CVAG”), at 4. The Board exercises this authority based on four *Holiday Tours*⁵ criteria and will grant an injunction where the requesting party shows that: (1) it is likely to prevail on the merits; (2) it will be irreparably harmed absent an injunction; (3) issuance of the injunction will not substantially harm other interested parties; and (4) granting the injunction is in the public interest.⁶

Here, Metra satisfies each element of the *Holiday Tours* criteria independently.⁷ *First*, Metra is likely to succeed on the merits in obtaining terminal trackage rights. UP does not dispute that the rights are practicable and do not impair UP’s ability to serve its freight traffic, nor could UP do so. UP disputes jurisdiction/eligibility on the grounds that Metra’s operations are too intrastate in their “essential character” to qualify. As explained in Metra’s Reply to Motion to Dismiss, no such requirement applies, and even if it did, Metra would meet it, as confirmed by several ICC and Metra decisions involving Metra.

⁵ *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977) (citing *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

⁶ *E.g.*, CVAG; *N. Coast R.R. Auth. & Nw. Pac. R.R. v. Sonoma-Marin Area Rail Transit Dist.*, NOR 42148 (STB served Oct. 21, 2016), at 3; *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42149 (STB served May 4, 2012), at 4; *Stagecoach Grp. PLC – Acquis. of Control – Twin Am., LLC*, MC-F-21035 (STB served Mar. 9, 2011), at 2 (“*Stagecoach Group*”); *R.R. Salvage & Restoration, Inc. – Pet. for Investigation & for Emergency Relief Under 49 U.S.C. 1321(b)(4) – Sec. Deposit for Demurrage Charges, Mo. & N. Ark. R.R.*, NOR 42107 (STB served June 30, 2008).

⁷ *League of Women Voters of U.S. v. Newby*, No. 16-5196, 2016 WL 5349779, at *3 (D.C. Cir. Sept. 26, 2016).

As shown in Metra's Opening Statement and Evidence (at 15-38), and in its Rebuttal Statement and Evidence (at 8-28), the UP Lines constitute terminal facilities located within a terminal area or within a reasonable distance thereof based on operating characteristics that UP does not challenge. Even under UP's preferred approach, a portion of the UP Lines falls within a terminal area and is thus eligible. Metra meets the public interest requirement whether measured by the ICCTA Conference Report language, the volume of ridership, or the standards of UP's own CEO, as shown in Metra's Opening Statement and Evidence (at 40-48), and in its Rebuttal Statement and Evidence (at 28-46).

Second, Metra will suffer irreparable harm without an injunction. The COE substantially degrades Metra's existing usage rights – including scheduling flexibility and alterations for public safety. For example, on May 16, 2025, Metra requested a schedule change to add additional trains to accommodate spectators for the NASCAR racing event over July 5-6, 2025, in downtown Chicago. UP did not grant the request because the parties' historical agreement would no longer be in place after June 30, 2025. Absent emergency relief, Metra and the public will be harmed in a way that could not be rectified later via compensation or otherwise – irreparable harm will have been done. The COE also provides that UP may exclude Metra from the UP Lines for non-performance. Any threat of exclusion warrants agency intervention.

Third, issuance of relief will not cause UP any cognizable hardship. To the contrary, Metra will continue to provide the same service and movement of

passengers in place as of the effective date of the emergency relief. The feasibility of the service is self-evident. UP will also still be compensated for continuing to provide the same access and use as of the date of the emergency relief, until final conditions and compensation are established between the parties or by the Board in accordance with § 11102(a), subject to a retroactive adjustment either way to July 1, 2025. A temporary injunction maintaining the status quo as it existed on June 30, 2025 will not “substantially harm” UP.⁸

Fourth, a stay will promote the public interest by providing Metra with critical access and use of the UP Lines, as Metra has demonstrated in its Opening Statement and Evidence (at 40-48), and in its Rebuttal Statement and Evidence (at 28-46). UP has acknowledged that Metra’s transportation service is important to the economic well-being and quality of life in the communities located along the three lines. The ICCTA Conference Report states that “a local transportation authority’s request would virtually always satisfy the public interest standard.” H.R. Rep. No. 104-422, at 184 (1995) (Conf. Rep.).

C. IMMEDIATE RELIEF IS NECESSARY

Metra’s Rebuttal noted that Metra filed a motion for a temporary restraining order and/or preliminary injunction in its pending litigation against UP in the U.S. District Court for the Northern District of Illinois to prevent UP from imposing the COE on June 11, 2025. The Court held a hearing on the motion on June 23, 2025, and issued an order denying the requested relief on June 27, 2025.

⁸ *Stagecoach Group*, at 2

The Court's action does not impair the Board's ability to act and makes Board action all the more necessary. Metra's claims before the Court arise from UP's contractual obligations in exchange for hundreds of millions of dollars in public investment made by Metra in the UP Lines, as well as application of federal antitrust law to UP's conduct. The Board's authority rests on its emergency powers and its jurisdiction to grant terminal trackage rights under § 11102(a). The Board's authority is separate and independent and sufficient to grant the relief requested with this Motion.

CONCLUSION

Metra respectfully requests that the Board issue an emergency order and/or a temporary injunction and related relief in the form requested above by July 1, 2025, on an ex parte basis. Preserving Metra's ability to deliver commuter rail service on the UP Lines, without the degradation in service that the COE would impose, is within the Board's statutory authority and serves the public interest for all concerned.

Respectfully submitted,

/s/ Peter A. Pfohl
Robert D. Rosenberg
Slover & Loftus LLP
1828 L Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 347-7170

*Attorneys for the Commuter Rail
Division of the Regional Transportation
Authority d/b/a Metra*

Dated: June 30, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2025, a copy of the foregoing has been served by first-class U.S. Mail, or more expeditious means, on counsel for Union Pacific Railroad Company.

/s/ Peter A. Pfohl