

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

MOTION TO DISMISS

“Because the commuter service provided by Metra is exclusively intrastate, Metra does not believe that either the Interstate Commerce Act or the decertification of the State of Illinois subjects Metra to the Commission’s jurisdiction.”

Metra, Dec. 14, 1994¹

The petition for terminal access by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (herein “Metra”) suffers a fatal jurisdictional defect. To be eligible, Metra must demonstrate that it meets the pre-ICCTA requirements for jurisdiction over commuter rail operations. Yet pre-ICCTA, Metra repeatedly advised the Interstate Commerce Commission (“ICC”) that it was not a carrier subject to the ICC’s jurisdiction. When seeking to avoid federal approvals to lease a rail line, Metra stated that “Metra is not a carrier providing transportation

¹ Petition for Exemption at 1 n.1, *Commuter Rail Div. of the Reg’l Transp. Auth. of Ne. Ill. (d/b/a METRA)—Exemption—Tariff Filing Requirements*, Docket No. 41506 (filed Dec. 14, 1994) (attached as Exhibit A).

subject to the [ICC]’s jurisdiction under 49 U.S.C. § 10501.”² When seeking to avoid federal requirements relating to tariff filing, Metra similarly argued that its services were “exclusively intrastate” and not subject to the ICC’s jurisdiction.³ Now, seeking to use regulatory relief for its benefit, Metra claims it meets the pre-ICCTA jurisdictional requirements.

Metra does not satisfy the jurisdictional requirements. As discussed below, the “essential character” of Metra’s commuter rail service is plainly intrastate in nature. That is precisely why the state of Illinois had the authority to regulate Metra’s rates—under an ICC certified program—for years leading up to the passage of ICCTA. A *de minimis* amount of interstate transportation does not defeat the “inherently local” intrastate nature of the transportation. The 0.01% of Metra passengers that traverse to Kenosha, Wis., is plainly *de minimis* and does not transform the “essential character” of Metra’s overwhelmingly intrastate commuter passenger operations. And Metra acknowledges it has no joint ticketing arrangement with Amtrak.

But even if the Board were to conclude that this *de minimis* activity to Kenosha somehow fundamentally alters the “essential character” of the transportation over the UP-North line, 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-

² Brief at 12, *Commuter Rail Div. of the Reg’l Transp. Auth. Of Ne. Ill., d/b/a METRA—Acquisition—Line of Norfolk & W. Transp. Co.*, Docket No. FD 32279 (filed Dec. 21, 1995) (attached as Exhibit B).

³ *Supra* note 1.

West lines, which are plainly intrastate. Nor can the lack of state certification give the Board jurisdiction over these intrastate movements, as Metra suggests. The 1994 decertification of Illinois’s rate program is irrelevant, as pre-ICCTA precedent makes clear that a lack of certification does not bring activity unrelated to ratemaking under the agency’s jurisdiction. Decertification never gave the ICC jurisdiction over intrastate passenger facilities, operations, and transportation, including specifically jurisdiction over trackage rights like those Metra seeks here.

Accordingly, Union Pacific Railroad Company (herein “Union Pacific”) urges the Board to dismiss Metra’s application for lack of jurisdiction.⁴ Dismissal of this case will not leave the citizens of Chicagoland stranded. As reiterated to Metra in a letter dated May 21, 2025, Union Pacific “will not be stopping service to the millions of people who use Metra daily.”⁵ Rather, dismissal of Metra’s application—which is compelled by the governing pre-ICCTA jurisdictional principles—would simply require Metra to reengage in commercial discussions to resolve the lingering dispute over the access fee, rather than to hope for regulatory relief the agency lacks the authority to provide.

⁴ 49 C.F.R. § 1111.6 (“A motion to dismiss can be filed at anytime during a proceeding.”).

⁵ Letter from Union Pacific CEO Jim Vena to Metra CEO Jim Derwinski (May 21, 2025) (attached as Exhibit C).

I. The Board lacks jurisdiction over this proceeding because Metra does not meet the pre-ICCTA standards for jurisdiction.

A. The pre-ICCTA test for jurisdiction over commuter rail operations demands a showing of *interstate* transportation.

With the passage of ICCTA, Congress severely restricted the Board’s jurisdiction over “public transportation provided by a local government authority”—the kind of transportation that Metra provides. The Board’s jurisdiction is limited to only two types of proceedings: those under “sections 11102 and 11103,” and even then only with respect to “transportation provided by a local governmental authority . . . [that] meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996.” 49 U.S.C. § 10501(c)(3)(B). In other words, if the ICC had jurisdiction under the former 49 U.S.C. § 11103 to order joint use of terminal facilities with respect to such transportation, then so too does the Board. If not, then the Board does not.

The jurisdiction the ICC exercised under the former 49 U.S.C. § 11103 was a particular instance of the general jurisdiction it exercised over interstate transportation pursuant to the former 49 U.S.C. § 10501. Prior to ICCTA’s enactment, that section read in relevant part:

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation—

(1) by rail carrier, [or certain other methods of carriage]; and

(2) to the extent . . . [that] the transportation is in the United States and is between a place in—

(A) a State and a place in another State;

(B) the District of Columbia and another place in the District of Columbia;

(C) a State and a place in a territory or possession of the United States;

(D) a territory or possession of the United States and a place in another such territory or possession;

(E) a territory or possession of the United States and another place in the same territory or possession;

(F) the United States and another place in the United States through a foreign country; or

(G) the United States and a place in a foreign country.

(b) The Commission does not have jurisdiction under subsection (a) of this section over—

(1) the transportation of passengers . . . entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this subtitle;

49 U.S.C. § 10501 (1994).

Under pre-ICCTA precedent, ICC jurisdiction over rail transportation turned on whether the transportation was intrastate or interstate in nature. *See, e.g., S. Pac. Transp. Co.—Aban. Exemption—L.A. Cnty., CA*, 9 I.C.C.2d 385, 391–92 (1993) (finding commuter operations not subject to the Interstate Commerce Act because the transportation was intrastate and no interstate passengers were moving under common arrangements with connecting carriers); *Napa Valley Wine Train, Inc.—Pet. for Declaratory Order*, 7 I.C.C.2d 954, 964–65 (1991) (finding passenger operations not subject to the Interstate Commerce Act for similar reasons); *Magner-O’Hara Scenic Ry. v. ICC*, 692 F.2d 441, 444 (6th Cir. 1982) (affirming ICC decision that passenger operations were “purely intrastate in nature”).

There was one circumstance where the ICC had limited authority—but only over ratemaking, tariffs, and related activities. Under former 49 U.S.C. § 11501(b)(4)(B), “intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under Subchapter I ***.” As the ICC stated in *Southern Pacific*, “the lack of certification allows [us] to regulate only intrastate ratemaking and related activities.” 9 I.C.C.2d at 392 (citing *Napa Valley*, 7 I.C.C.2d at 958–60). The ICC stated that § 11501(b)(4)(B) does not bring activity unrelated to ratemaking—including specifically the “acquisition of trackage rights”—under its jurisdiction. *Id.*

B. The essential character of Metra’s operations is local and intra-state.

The touchstone test for whether transportation is interstate or intrastate depends upon the nature or “essential character” of the movement. *See, e.g., Atl. Coast Line R.R. v. Standard Oil Co. of Ky.*, 275 U.S. 257, 268 (1927); *Balt. & Ohio S.W. R.R. v. Settle*, 260 U.S. 166, 170–71 (1922); *see also Pa. RR. v. Clark Bros. Coal Mining Co.*, 238 U.S. 456, 468 (1915) (“[T]he jurisdiction of the Commission is determined by the essential character of the commerce in question.”); *Magner-O’Hara*, 692 F.2d at 444–45 (explaining that the ICC “lacks jurisdiction” over activity “purely intrastate in nature”). In assessing the essential character of transportation, context matters—“the determination of the character of the commerce is a matter of weighing the whole group of facts in respect to it.” *Atl. Coast Line*, 275 U.S. at 268–69.

“[T]raffic on a route may be interstate in character even if the route itself is geographically intrastate.” *See, e.g., Texas v. United States*, 866 F.2d 1546, 1553 (5th Cir. 1989). So too may traffic be intrastate in character even if the route briefly ventures beyond state lines. *See, e.g., Lehigh Valley R.R. v. Pennsylvania*, 145 U.S. 192, 204–05 (1892) (holding that “transportation by continuous carriage from points in Pennsylvania to other points therein, but passing out of Pennsylvania into another state and back again in the course of transportation” was intrastate transportation); *Interstate Towing Ass’n v. City of Cincinnati*, 6 F.3d 1154, 1165 (6th Cir. 1993) (“[J]ust because Cincinnati, or any other municipality, happens to be located on a state border does not alter th[e] essential character of towing, transforming an otherwise local service into ‘interstate motor carriage’ . . .”).

Here, Metra emphasizes that its service “consist[s] only of inherently local operations.”⁶ Of its 243 stations, only one (Kenosha) lies outside Illinois⁷ and only 0.01% of riders travel to Kenosha.⁸ As described by Metra, its mission is to provide commuter rail service that “enhances the economic and environmental health of Northeast Illinois.”⁹ Metra repeatedly describes itself as providing transportation only in northeast Illinois.¹⁰

⁶ Metra Opening Statement & Evidence (“Metra Opening”), at 19 (filed May 5, 2025).

⁷ *See* Metra, *About Metra*, <https://metra.com/about-metra> (last visited May 19, 2025).

⁸ *See* RTAMS, *Metra Ridership by Station – Boarding and Alighting Survey (1979-2018)*, <https://www.rtams.org/media/datasets/metra-ridership>.

⁹ *See About Metra*, *supra* note 6.

¹⁰ *See, e.g.,* Amended and Restated Purchase of Service Agreement (Jan. 28, 2010), at 1 (describing the Commuter Rail Division as “provid[ing] Public Transportation Services by rail in the Metropolitan Region in the northeastern area of the State of Illinois.”)

The UP-West and UP-Northwest lines are located entirely in the state of Illinois. The UP-West line runs from Elburn, Ill., to the Ogilvie Transportation Center in downtown Chicago, and the UP-Northwest line runs from Harvard, Ill., to Ogilvie, with all intermediate stops in Illinois.¹¹ The UP-North line runs from Ogilvie to Kenosha, Wis., with all intermediate stops likewise in Illinois.¹² Metra contends that the mere fact that some “transportation on the UP-N Line [occurs] across the state line between Illinois and Wisconsin (Kenosha)” means that the transportation on the UP-North line satisfies the pre-ICCTA standards for ICC jurisdiction.¹³ But if it were that simple, there would have been no reason for the Board to state that the issue of its jurisdiction under the prior law was “a close question.”¹⁴

A *de minimis* amount of interstate activity does not transform the essential character of otherwise wholly local transportation. *See, e.g., Kimball v. Goodyear Tire & Rubber Co.*, 504 F. Supp. 544, 547 (E.D. Tex. 1980) (Goodyear not a carrier transporting property interstate where less than one percent of trips were in interstate commerce); *Interstate Towing*, 6 F.3d at 1163 (in a municipality that spreads over state borders, “even a trip to the grocery store may involve interstate travel, but this fact is incidental to the local nature of the activities in question here, and this accident of geography does not magically transform a local service into ‘interstate

¹¹ *See* Metra, *Lines & Schedules*, <https://metra.com/schedules> (last visited May 19, 2025).

¹² *Id.*

¹³ Metra Opening at 11–12.

¹⁴ *Norfolk & W. Ry.—Pet. for Declaratory Order—Lease of Line in Cook & Will Cntys., Il., to Commuter Rail Div. of the Reg’l Transp. Auth. Of Ne. Ill.*, Docket No. FD 32279 (STB served Feb. 3, 1999).

commerce”). *De minimis* limitations are inherent in any test for essential character, including transportation—a *de minimis* amount of one element necessarily works no change on the essential character of the overall composition. *Wisc. Dep’t of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992) (“[T]he venerable maxim *de minimis non curat lex* (‘the law cares not for trifles’) is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept.”).

As a matter of physical geography, the UP-North line may cross the border to Wisconsin, but the transportation is nonetheless essentially local and intrastate, with 25 of the 26 stations located within Illinois. What’s more, most UP-North trains do not actually travel to Kenosha. On weekdays, just 9 of 36 trains terminate in Kenosha. The vast majority never actually cross into Wisconsin at all and instead terminate in Illinois (Winnetka, Highland Park, or Waukegan).¹⁵ The intrastate nature of the transportation is reflected in ridership data as well. Based on data published by the Regional Transportation Authority Mapping and Statistics, only 0.01% of riders travel to Kenosha, Wis.¹⁶ This is true for both the most recent year of data (2018) and pre-ICCTA ridership data (1995). Even if only looking to ridership data on the UP-North line alone, only 1% of riders travel to or from Kenosha.¹⁷

¹⁵ See Metra, Schedule: Union Pacific North Line (May 20, 2024), <https://bit.ly/4397AxZ>.

¹⁶ See RTAMS, *Metra Ridership by Station*, *supra* note 7.

¹⁷ *Id.*; see also Commuter Rail System Station Boarding/Alighting Count, Summary Results Fall 2018, https://metrarail.com/sites/default/files/assets/planning/ridership/2018_summary_results_report_final.pdf.

The transportation takes place overwhelmingly within one state, carries intrastate passengers almost exclusively, and is run by an arm of that state’s government. Considering the totality of the facts and circumstances, with due regard for the *de minimis* principle, the essential nature of the transportation is unmistakably local and intrastate. This is no surprise. As Metra repeatedly states in its opening evidence, “Metra’s operations are inherently local.”¹⁸ This “inherently local” character gives rise to a natural presumption that such transportation is of an intrastate nature. *Cf. Wilmington Transp. Co. v. R.R. Comm’n of Cal.*, 236 U.S. 151, 156 (1915) (“[The transportation] is precisely of that local character which permits it to be left appropriately to the care of the state.”). Metra similarly concedes that its operations are “closed” and “self-contained” with no interchange to other systems.¹⁹ *Cf. Napa Valley*, at 960–61 (“The Commission and the courts have handed down a long line of decisions defining ‘interstate commerce’ subject to the Interstate Commerce Act and distinguishing purely local lines from lines that are connected to and part of the national rail system.”). Metra emphasizes that its “self-contained” commuter services involve “short distances” and short transit time, shuttling back and forth, and services that “do not travel outside on to the surrounding interstate rail network.”²⁰ Such transportation is “essentially local.” *See Port Richmond & Bergen Point Ferry Co. v. Bd. of Chosen Freeholders of Hudson Cnty.*, 234 U.S. 317, 330–32 (1914)

¹⁸ Metra Opening at 18; *see also id.* at 19, 20.

¹⁹ Metra Opening at 22.

²⁰ Metra Opening at 19, 20, 22.

(rejecting the argument that “the mere fact that interstate transportation [was] involved [was] sufficient to defeat the local regulation” and instead held that “a state may fix reasonable rates for ferriage from its shore to the shore of another state” because such transportation was “for a short distance,” “unrelated to other transportation,” and “essentially local, requiring regulation according to local conditions.”)

To the best of Union Pacific’s knowledge, there is no dispositive ICC decision on the nature of commuter service on the UP lines immediately prior to ICCTA. Metra cites a pre-Staggers 1980 directed service order that was issued in the context of the Rock Island’s collapse to support that NIRC was a “rail carrier subject to the jurisdiction of the [ICC].” As the Rock Island was being liquidated, the Regional Transportation Authority had petitioned for a “permissive” directed service order with respect to the Rock Island’s transportation between Joliet and Chicago.²¹ That order was issued without any analysis of whether it had jurisdiction over such intrastate transportation, and it does not appear that the issue of jurisdiction was raised.

Metra also cites *Tariff Filing Requirements*, Docket No. 41506 (ICC served Feb. 24, 1995), in which the ICC imposed tariff filing requirements on Metra. In that decision, the issue of jurisdiction was raised—indeed, Metra specifically argued that it was not subject to the ICC’s jurisdiction because it only offered intrastate services. The ICC stated that it need not make a decision on whether Metra was an interstate or intrastate carrier because of decertification, which vested authority over

²¹ See *Reg’l Transp. Auth.—Directed Service—Chi., Rock Island & Pac. R.R., Debtor (William M. Gibbons, Tr.)*, 360 I.C.C. 777, 779–81 (1980).

“*intrastate rail rates*” with the ICC.²² As explained herein, decertification only affected ratemaking activities, which included tariff filing. *See* 9 I.C.C.2d at 392 (citing *Napa Valley*, 7 I.C.C.2d at 965–60). Union Pacific also notes that reconsideration of that decision was sought but never ultimately decided because the Board dismissed the entire case due to the passage of ICCTA.²³

The *Tariff Filing* decision cuts in favor of a lack of jurisdiction of the commuter rail transportation. The fact that Illinois had authority to regulate Metra’s rates and tariffs is because they were in fact local and intrastate. Moreover, there are other indications that the ICC and the Illinois Commerce Commission treated commuter service around Chicago as inherently local. For example, in *Chicago, Milwaukee, St. Paul & Pacific Railroad v. Illinois (Milwaukee Road)*, 355 U.S. 300 (1958), the ICC fixed “intrastate passenger fares for the Milwaukee Road’s Chicago suburban commuter service” under Section 13(4) of the Interstate Commerce Act. *Id.* at 301–02. As described by the Court, the commuter service at issue included transportation going from Chicago to Elgin, Ill., and transportation going “from Chicago to Walworth, Wisconsin; however, 62 of the 74 route miles in that direction, and 24 of the 26 station stops, [we]re located with Illinois.” *Id.* at 303. Section 13(4) was a special authority to prescribe rates for *intrastate* transportation, but only if the ICC found that the existing rates “cause[d] . . . undue, unreasonable, or unjust discrimination against

²² *Commuter Rail Div.—Exemption—Tariff Filing Requirements*, Docket No. 41506 (ICC served Feb. 24, 1995).

²³ *Commuter Rail Div.—Exemption—Tariff Filing Requirements*, Docket No. 41506 (STB served March 29, 1996).

interstate or foreign commerce.” Transportation Act of 1920, Pub. L. No. 66-152, § 416, 41 Stat. 456, 484.²⁴ In rejecting an argument “that the District Court erred in setting aside so much of the ICC order as authorized an increase in the interstate fares to the two Wisconsin points,” the Court explained that “[the interstate] rates [we]re so interwoven with and so closely bound to the intrastate rates that a proper disposition of this case reasonably require[d] that the Commission reconsider them as part of its reconsideration of the entire Chicago suburban commuter service.” *Milwaukee Road*, 355 U.S. at 311–12. Those same lines of the Milwaukee Road were later at issue before the Illinois Commerce Commission, which had entered an order investigating passenger fares on the Milwaukee Road’s two commuter lines with no indication that the Commission excluded the portion to Walworth, Wisconsin from its order. *See Ill. Com. Comm’n v. Chicago, Milwaukee, St. Paul & Pac. R.R.*, No. 81-0449, 1982 WL 915151 (Ill. C.C. Nov. 18, 1982).

Metra also points to “proximity to Amtrak,”²⁵ but Metra has no joint ticketing agreement with Amtrak or any other interstate passenger carrier that can transform the nature of the transportation on any of the UP lines to interstate. The ICC held that it could have jurisdiction “over intrastate operations by interstate carriers when those operations are sufficiently linked to, and part of, the interstate system.” *Napa*

²⁴ As the Court explained in a previous case, “Section 13(4) does not relate to the Commission’s power to regulate interstate transportation as such. . . . Intra-state transportation is primarily the concern of the state. The power of the Interstate Commerce Commission with reference to such intra-state rates is dominant only so far as necessary to alter rates which injuriously affect interstate transportation.” *North Carolina v. United States*, 325 U.S. 507, 510–11 (1945).

²⁵ Metra Opening at 12.

Valley, 7 I.C.C.2d at 960. Under ICC precedent, a through-ticketing arrangement with Amtrak could provide the ICC with jurisdiction over passenger service. *Id.*; *Cape Cod & Hyannis R.R.—Exemption Subtitle IV*, Docket No. 31229 (ICC served Mar. 25, 1988). Here, the services Metra provides are commuter rail services and, as the Board has explained, even interconnectivity with Amtrak would “not give the Board jurisdiction over all of these statutorily excepted mass transit operations.” *N.J. Ass’n of R.R. Passengers & Nat’l Ass’n of R.R. Passengers—Petition for Declaratory Order—Princeton Branch*, Docket No. FD 35745, at 5–6 (STB served July 25, 2014). In any event, Metra concedes that it has no joint ticket arrangement with Amtrak.²⁶ Nor has Metra provided a record that would demonstrate the movement of passengers in interstate commerce—rather, Metra asks the Board to use its “imagination” to think that some passengers use the UP lines to get to and from Amtrak.²⁷ That is not sufficient. *Cf. Napa Valley*, 7 I.C.C.2d at 964 (noting no demonstration of “any significant number” of passengers that would actually be moving in interstate commerce, thereby suggesting that a very small percentage would not be sufficient to confer jurisdiction). Finally, even if some “minuscule portion” of riders do use the UP lines to access Amtrak, that does not change the nature of Metra’s commuter operations—which Metra itself describes as “inherently local.” *Cf. Napa Valley*, 7 I.C.C.2d at 965 (noting that the train’s “actual operations and marketing” are more “local” than for through movements).

²⁶ Metra Opening at 15 n.8.

²⁷ *Id.*

Metra also points to the fact that its commuter services occur on freight lines that are part of the interstate network, but that is not at all relevant to whether the “transportation provided by a local governmental authority” (here Metra) is interstate or intrastate. Board precedent firmly rejects the notion that local passenger service becomes interstate in nature purely because it happens to occur on interstate freight lines. *See Magner-O’Hara*, 692 F.3d at 444 (affirming ICC decision that proposed passenger transportation was intrastate in nature despite argument that it would be inextricably intertwined with interstate commerce through the use of tracks owned by interstate freight carriers); *see also N.J. Ass’n of R.R. Passengers*, Docket No. FD 35745, at 6.

C. Even if the STB concludes that a *de minimis* amount of interstate activity occurs on the UP-North line, it still lacks jurisdiction to order relief on UP-West and UP-Northwest.

Even if the essential character of Metra’s commuter services over the UP-North line are interstate in nature rather than intrastate, that transportation cannot be used as a jurisdictional hook for transportation on other commuter lines.

The Board’s jurisdiction is defined in terms of the transportation, *see, e.g.*, § 10501(a)(2), § 10501(c)(3)(B), and the agency has historically looked to the character of the transportation. *See, e.g., Int’l Bhd. Of Teamsters v. ICC*, 921 F.2d 904, 907 (9th Cir. 1990) (addressing the “characterization of transportation between two points” and upholding ICC determination that the transportation was interstate commerce); *see also Pa. R.R. Discontinuance of Passenger Serv. Between Philadelphia, Harrisburg, & Pittsburgh, Pa.*, 317 I.C.C. 737 (1963) (determining that ICC had jurisdiction over transportation between Philadelphia and Harrisburg, but not transportation

between Philadelphia and Pittsburgh). Commuter transportation provided by Metra is distinct on each line. The jurisdictional status under pre-ICCTA standards must be determined by the status of the transportation on each individual line.

Metra appears to acknowledge that there must be separate jurisdictional bases for each of the three lines. For the UP-North line, Metra argues that the “*transportation on the UP-N Line* across the state line between Illinois and Wisconsin (Kenosha) is . . . eligible for trackage rights.”²⁸ For the other lines, which both terminate in Illinois, Metra relies on the decertification of the Illinois program in 1994 to contend that “the exclusion from ICC jurisdiction would not apply to negate ICC regulation of Metra’s *intrastate transportation* at the time of ICCTA.”²⁹

The certification provisions at § 11501(b)(4)(B) are unavailing.³⁰ That provision gave the ICC limited jurisdiction over intrastate *rates* due to a denial of certification, but it was well established before the passage of ICCTA that former § 11501(b)(4)(B) did not bring intrastate transportation, facilities, leases, or trackage rights within the jurisdiction of the ICC. *See S. Pac. Transp.*, 9 I.C.C.2d at 391–92 (finding no jurisdiction over commuter operations, notwithstanding the absence of a certified California program); *Napa Valley*, 7 I.C.C.2d at 959–60 (holding that the lack of state certification does not obviate the interstate vs. intrastate analysis);

²⁸ Metra Opening at 11–12 (emphasis added); *see also* Application for Terminal Trackage Rights at 14 (filed Mar. 7, 2025) (“Accordingly, Metra’s interstate transportation across the state line between Illinois and Wisconsin (Kenosha) is eligible for trackage rights.”).

²⁹ Metra Opening at 14.

³⁰ Metra’s filing refers at various points to § 10501 when it likely means § 11501. *See, e.g.*, Metra Opening at 12 (referring to “§ 10501(b)(4)(B)” —which did not exist—but quoting from the former § 11501(b)(4)).

accord North Carolina, 325 U.S. at 510–11 (explaining that ratemaking under Section 13(4)—the predecessor of the former § 11501(b)—does not bring that transportation within the ICC’s general jurisdiction). The D.C. Circuit explained the role of § 11501 in *Illinois Commerce Commission v. I.C.C.*, 879 F.2d 917 (D.C. Cir. 1989). At issue in that case was an ICC decision holding that the Interstate Commerce Act preempted all authority of a state agency over abandonment of spur tracks lying wholly within the state’s borders. The ICC argued, in part, that former § 11501(b) outlawed all rail regulation by the states. After a careful review of the entire statutory framework, and the legislative history behind that provision, the Court disagreed, holding: “Everything in [former] Section 11501 that follows subsection (b)(2) is unquestionably referable solely to ratemaking.” *Id.* at 925. While § 11501(b) spoke “in terms of state exercises over ‘intrastate transportation,’ those words must be read in context, which here is emphatically and exclusively ratemaking and related activities” which did not include “trackage abandonment and other noneconomic matters.” *Id.* at 926.

Here, Metra seeks trackage rights over Union Pacific. But following the *Illinois Commerce* case, the ICC said very plainly that, because the acquisition of trackage rights is not related to ratemaking, former “§ 11501(b)(4)(B) does not bring it under our jurisdiction.” *S. Pac. Transp.*, 9 I.C.C.2d at 392. The past decertification of the state rate program is therefore irrelevant to the question of whether the ICC would have had jurisdiction to grant terminal trackage rights to Metra under pre-ICCTA standards. That question is governed entirely by former 49 U.S.C.

§ 10501(a)(2) and the intrastate versus interstate nature of the commuter rail transportation at issue.

Further, Metra’s reliance on the former decertification provisions to give broad authority over commuter railroads is in conflict with the current statute’s plain text. Metra attempts to leverage the present and past tenses in making its various jurisdictional arguments.³¹ With respect to decertification, Metra argues that the ICC “*had* jurisdiction over Illinois intrastate rail transportation.”³²

But reading § 10501(c)(3)(B) to reference past facts as a grandfathering provision is inconsistent with its plain text and contravenes Congressional instructions on how to interpret statutes. For the Board to have jurisdiction over transportation provided by a local government authority for purposes of § 11102 and § 11103, it is required that the Board find that such transportation “*meets*”—present tense—the jurisdictional prerequisites that “*were* in effect”—past tense—prior to the ICCTA. 49 U.S.C. § 10501(c)(3)(B) (emphasis added). The plain text requires that present facts be measured against past standards. Because the entire certification program was discontinued by the ICCTA, there is not a single state in the country that is *presently* forbidden from “exercis[ing] jurisdiction over an intrastate rate, classification, rule, or practice of [a rail] carrier [providing intrastate transportation] *due to a denial of certification* under [the former § 11501(b)].” 49 U.S.C. § 11501(b)(4)(B)

³¹ Compare Metra Opening at 11–12 (transportation on the UP-North line “*is* ‘between a State and a place in another State’ and [therefore] eligible for trackage rights”) (emphasis added) versus *id.* at 11 (“if the transportation *was* ‘subject to the [ICC’s] jurisdiction’ as that jurisdiction was ‘in effect’ on December 31, 1995”) (emphasis added).

³² Metra Opening at 13.

(1994) (emphasis added). Those agency-approved programs no longer exist, and Metra is thus faced with an absurd result: because no state is currently certified under the former § 11501, every intrastate commuter railroad operation in America would be eligible to seek terminal access relief under Metra’s theory. Such a reading would create inherent conflict—it is simply not credible to believe that Congress, in limiting such relief only to those commuter rail operations that meet certain requirements, would have made said restrictions immediately ineffective. As “a special and limited grant of jurisdiction,” the Board’s authority under § 10501(c)(3)(B) “must be strictly construed.” *Schatte v. Int’l All. of Theatrical Stage Emp.*, 84 F. Supp. 669, 673 (S.D. Cal. 1949), *aff’d*, 182 F.2d 158 (9th Cir. 1950).

Accordingly, the Board’s assessment must turn on the intrastate versus interstate nature of the commuter rail transportation for each line. Even if the Board concludes that the “essential character” of the UP-North line is interstate in nature—which Union Pacific contends it is not—the Board must dismiss the request for terminal trackage rights over the UP-West and UP-Northwest lines, as Metra’s transportation over those lines is unquestionably intrastate in nature and former “§ 11501(b)(4)(B) does not bring it under [the STB’s] jurisdiction.” *See S. Pac. Transp.*, 9 I.C.C.2d at 392.

CONCLUSION

For the reasons set above, the Board should dismiss this proceeding for lack of jurisdiction.

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James B. Boles
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Omaha, NE 68179

/s/ Raymond A. Atkins
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*Attorneys for Union Pacific
Railroad Company*

Dated: May 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of May 2025, the foregoing Motion to Dismiss 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

Exhibit A

Petition for Exemption, *Commuter Rail Div. of the Reg'l Transp. Auth.
of Ne. Ill. (d/b/a METRA)—Exemption—Tariff Filing Requirements*,
Docket No. 41506 (filed Dec. 14, 1994)

Assign to Scht-bren

HOPKINS & SUTTER

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NOR41506

ANDREW M. RAY
(202) 835-8000

December 13, 1994

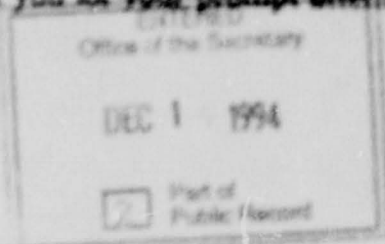
BY HAND

The Honorable Vernon Williams
Secretary
Interstate Commerce Commission
12th and Constitution Avenues, N.W., Room 2215
Washington, D.C. 20423

Re: Petition for Exemption - Tariff Filing Requirements
Expedited Consideration Requested

Dear Secretary Williams:

On behalf of the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois ("METRA"), please find enclosed for filing the original and ten (10) copies of a Petition for Exemption from the Commission's tariff filing requirements, as well as a check in the amount of \$60 for the required filing fee. Please date stamp the enclosed copy of this letter and return it to our messenger. Thank you for your prompt attention to this matter.



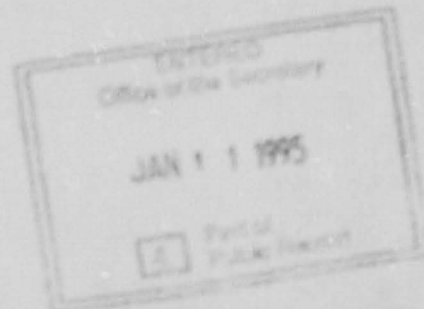
Respectfully submitted,

Andrew M. Ray

Andrew M. Ray

Enclosure

cc: Douglas J. Babb, Esquire
Robert Opal, Esquire
Joseph Dettmar, Esquire



FILED

DEC 14 1994

INTERSTATE
COMMERCE COMMISSION

FILED

DEC 14 1994

INTERSTATE
COMMERCE COMMISSION

Before the
INTERSTATE COMMERCE COMMISSION
Washington, D.C.

Docket No. 41506

ENTERED
Office of the Secretary

DEC 14 1994

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Public Record

**Commuter Rail Division of the
Regional Transportation Authority of Northeast Illinois
(d/b/a METRA) - Exemption -
Tariff Filing Requirements**

PETITION FOR EXEMPTION

I.

Introduction

The Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a METRA (hereinafter "METRA") hereby requests that the Commission issue an order pursuant to 49 U.S.C. § 10506 exempting METRA and the carriers described below who provide service for METRA from all tariff filing requirements imposed by Subtitle IV of Title 49, to the extent such requirements would apply to rail commuter passenger services which are either: (i) provided by METRA, or (ii) provided by such other carriers pursuant to purchase of service agreements ("PSAs") with METRA.¹

¹ Because the commuter service provided by METRA is exclusively intrastate, METRA does not believe that either the Interstate Commerce Act or the decertification of the State of Illinois subjects METRA to the Commission's jurisdiction. Nevertheless, because certain of METRA's contracting carriers provide interstate transportation subject to the Commission's jurisdiction, 49 U.S.C. § 11501(b)(4)(B) arguably extends Commission jurisdiction to the intrastate commuter and other services of these contracting carriers.

As explained in more detail below, these commuter rail services have not been subject to tariff filing requirements for over twenty years under Illinois state law. However, because of a request by the Illinois Commerce Commission that it be "decertified" to regulate rail transportation, and the assumption of jurisdiction by the Commission over intrastate rail rates, classifications, rules, and practices in the State of Illinois effective December 12, 1994, see Ex Parte No. 388 (Sub-No. 7), *Intrastate Rail Rate Authority-Illinois* (served Dec. 12, 1994), unless the Commission grants this Petition, certain of the commuter rail services described above could become subject to the tariff filing requirements of the Interstate Commerce Act. See 49 U.S.C. § 11501(b)(4)(B). METRA therefore respectfully requests that the Commission exempt METRA and its contracting carriers from any tariff filing requirement resulting from decertification. Because the decertification -- and the Commission's assumption of jurisdiction over intrastate service -- became effective yesterday, METRA requests expedited consideration of this Petition.

II.

Factual Background

METRA is a division within the Regional Transportation Authority of Northeast Illinois (the "RTA"). The Illinois Regional Transportation Authority Act, 70 I.L.C.S. §§ 3615, et seq. (1993), which created both the RTA and METRA, provides that "[t]here is established within the Authority the Commuter Rail Division as the operating division responsible for providing public transportation by commuter rail." 70 I.L.C.S. § 3615/3B.01. METRA has

responsibility for commuter rail service in the six county Chicago metropolitan area, the METRA system comprises 475 route miles, with 230 stations, and it generates approximately 76 million passengers annually.³ Service is provided by METRA itself on certain lines, and by freight railroads on certain other lines, pursuant to PSAs with METRA.

A. Regulation by the Illinois Commerce Commission From 1973 Until the Present.

Prior to the 1970s, intrastate commuter rail services in Illinois were provided by private railroad companies, and were subject to regulation by the Illinois Commerce Commission. The laws administered by the Illinois Commerce Commission required these railroad companies to file tariffs for these services, generally paralleling the requirements imposed by the Interstate Commerce Act with respect to interstate passenger services.

By the 1970s, commuter rail services were imposing serious financial burdens on the railroads which provided them. Accordingly, in order to preserve these services, in 1973, the Illinois General Assembly passed the Regional Transportation Authority Act (the "RTA Act"). As here relevant, the RTA Act established a Regional Transit Authority (the "RTA") and authorized it to acquire and operate public transit facilities in the six county Chicago metropolitan area, or to enter into PSAs with public or private entities to provide such services.

³ In addition to the service provided in the six-county Chicago area, certain trains operated by Chicago and North Western also continue to Kenosha, Wisconsin.

Following the passage of this legislation, the RTA entered into PSAs with all of the railroads providing commuter service in Illinois, except for the Chicago South Shore and South Bend Railroad and Penn Central (both of which were primarily Indiana carriers). In 1983, the statute was amended to establish the Commuter Rail Division within the RTA. During the 1980s, RTA, through affiliated public bodies, acquired the commuter rail lines and other assets used in commuter service of the Illinois Central Railroad (electric lines only), Chicago Rock Island and Pacific Railroad, and Chicago Milwaukee St. Paul and Pacific Railroad. METRA (which was created by new legislation in 1983) directly manages these lines and establishes their fare levels.

Under the 1973 RTA Act, services provided by RTA, or provided by another carrier pursuant to a PSA, were generally exempted from the jurisdiction of the Illinois Commerce Commission. The current version of this exemption is codified at 70 I.L.C.S. § 3615/2.06(c). The effect of this exemption has been to eliminate all intrastate tariff filing requirements for these services. Accordingly, as passenger services were acquired by the RTA following the enactment of the 1973 legislation, or became subject to PSAs, the carrier providing service ceased filing tariffs with the Illinois Commerce Commission. Currently, no tariffs are filed with the Illinois Commerce Commission for any METRA commuter rail service.

B. The Interstate Commerce Act and the Request For Decertification by the Illinois Commerce Commission.

As a result of the Staggers Rail Act of 1980, states which desired to regulate intrastate transportation provided by rail carriers within their jurisdiction were required to apply to the Interstate Commerce Commission for certification. Sec 49 U.S.C. § 11501(b)(2). Once a state became certified, it was permitted to regulate intrastate rail transportation for successive five year periods. Sec 49 U.S.C. § 11501(b)(4)(A). Illinois, through the Illinois Commerce Commission, was the first state to be fully certified under this section, see Ex Parte No. 388 (Sub. No. 7), *State Intrastate Rail Rate Authority - Illinois*, 367 I.C.C. 149 (1983), and, until its recent decision to become decertified, had continuously maintained its certification. This request was granted by the Interstate Commerce Commission effective yesterday.

By letter dated September 23, 1994, the Illinois Commerce Commission requested that Illinois be decertified to regulate intrastate rail rates effective December 19, 1994. The Illinois Commerce Commission also advised that, effective December 19, all tariffs governing Illinois intrastate transportation would be filed with the Interstate Commerce Commission.

METRA has concluded that decertification could impose a tariff filing requirement on interstate carriers who provide METRA rail services - a completely unintended and heretofore unrecognized consequence. This could occur because 49 U.S.C. § 11501(b)(4)(B) provides that intrastate rail transportation provided by an interstate rail carrier in an uncertified state is "deemed to be transportation subject to the jurisdiction of the interstate

Commerce] Commission under subchapter I of chapter 105 of this title.* In other words, the intrastate transportation becomes subject to all federal Interstate Commerce Act requirements that apply to interstate rail transportation.

Because the Interstate Commerce Act does not include statutory exemptions for commuter rail services similar to that provided by Illinois law,² the sections of the Interstate Commerce Act generally requiring the filing of tariffs (chiefly 49 U.S.C. § 10761 and 10762) could arguably require tariffs for METRA services to be filed with the Commission, unless the Commission grants an exemption from these requirements under 49 U.S.C. § 10505. For the reasons discussed below, these requirements would serve no useful purpose and an exemption is clearly warranted.

III.

The Requested Tariff Filing Exemption Meets the Requirements of 49 U.S.C. § 10505

Section 10505 directs the Commission to grant an exemption where (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101a; and (2) either (A) the transaction or service to be exempted is of limited scope, or (B) regulation is not needed to protect against an "abuse of market power."

² Title 49 U.S.C. § 10504 provides a statutory exemption for "rail mass transportation provided by a local public body" if certain conditions are met. This exemption is not available as to services provided by or for METRA, because METRA fares are not subject to the approval of the "chief executive officer of the state" as required by § 10504(b)(2). Nor does it apply to services provided by carriers pursuant to PSAs.

A. The Requested Exemption is Consistent with the Rail Transportation Policy.

Requiring tariff filing with respect to METRA service would not further any aspects of the Rail Transportation Policy. Tariff filings for METRA services would have no bearing on the pricing abuses enumerated in the Rail Transportation Policy, which chiefly consist of unreasonable rates (49 U.S.C. § 10101a(6)), predatory pricing and practices, and unlawful discrimination (49 U.S.C. § 10101a(13)).

Furthermore, the usual rationale for tariff filing requirements is that public tariffs assist in the elimination of undesirable pricing practices in markets where pricing decisions are not disciplined by normal competitive pressures. This rationale has no application to METRA services. Pricing decisions are made or directed by METRA. METRA and RTA are local governmental units, not profit-making entities. Their governing boards are appointed by, and accountable to, the communities they serve. The pricing decisions made by METRA are not designed to obtain a "profit" from the service. Indeed, a profit is not even possible, since farebox revenues do not fully cover operating costs, let alone the capital costs of the commuter rail system. The role of METRA and RTA is to determine the proper mix of farebox revenues and services which, together with available sources of public funding, best meet the transportation needs of the Chicago metropolitan area. In effect, they are trying to approximate the "public interest" as would a regulatory agency.

Tariff filing is not only unnecessary to further Rail Transportation Policy goals, in fact, an exemption from tariff filing requirements would further Rail

Transportation Policy goals. It would minimize the need for federal regulatory control over the rail transportation system consistent with 49 U.S.C. § 10101a(2). By eliminating the need to expend scarce resources on useless paperwork and Commission review, the exemption would also assist in fostering "sound economic conditions in transportation" consistent with 49 U.S.C. § 10101a(5).

B. The Services Covered by the Proposed Exemption are of Limited Scope.

The commuter services provided by interstate rail carriers for METRA are only a small part of the services provided by these carriers, affecting an insignificant part of their operations. Moreover, the requirement to file tariffs is intended to ensure that price information is adequately disseminated. However, published fare information with respect to METRA service is already provided to the travelling public by other means. Consequently, exempting these carriers from the requirement to file tariffs would have little if any impact on dissemination of price information, and would merely be costly, duplicative, and redundant.

C. Tariff Filing is not Necessary to Protect Against an Abuse of Market Power.

As previously discussed, 49 U.S.C. § 10505 directs the Commission to grant an exemption if either the limited scope or the abuse of market power criteria is met. Since the proposed exemption meets the limited scope criteria, it is not necessary for the Commission to consider the alternate "abuse of market

power" criterion. Nevertheless, if the Commission chooses to reach this issue, it should find that the proposed exemption fully meets this criterion as well.

Requiring tariff filing will not protect against a purported "abuse of market power", because there is no market power to abuse. METRA services compete against various other forms of passenger transportation in the Chicago metropolitan area, especially private automobiles. METRA's service is priced below its operating expenses in order to encourage its use by commuters instead of automobiles. One of the most important reasons that METRA has not increased commuter fares in many years is that any significant increase could be expected to cause passengers to desert the trains for their cars, a result contrary to both METRA finances and to its public transportation policy goals. The absence of market power therefore provides further support for the Commission to grant METRA's request for an exemption.

Conclusion

For the reasons stated above, Petitioners respectfully request the Commission to issue an order granting METRA's contracting rail carriers an exemption from all tariff filing requirements imposed by Subtitle IV of Title 49 to the extent that such requirements would apply to Illinois intrastate rail commuter passenger services which are either (1) provided by METRA, or (2) provided by other carriers pursuant to a PSA with METRA.

Respectfully submitted,

Andrew M. Ray

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Counsel for Northeast Illinois Regional
Commuter Railroad Corporation

Dated: December 13, 1994

Exhibit B

*Brief, Commuter Rail Div. of the Reg'l Transp. Auth. Of Ne. Ill., d/b/a
METRA—Acquisition—Line of Norfolk & W. Transp. Co., Docket No.
FD 32279 (filed Dec. 21, 1995)*

54564

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CHARLES A. SPITULNIK
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December 20, 1995

BY HAND DELIVERY

The Honorable Vernon Williams
Secretary
Interstate Commerce Commission
Room 2215
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

ENTERED
Office of the Secretary

DEC 21 1995

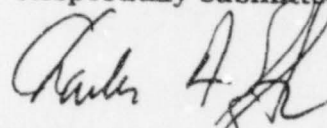
3 Part of
Public Record

Re: Commuter Rail Division of the Regional Transportation Authority of
Northeast Illinois, d/b/a METRA -- Acquisition -- Line Of Norfolk And
Western Transportation Company In Cook And Will Counties, Illinois;
Finance Docket No. 32279

Dear Secretary Williams:

On behalf of the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois ("METRA"), please find enclosed the original and ten (10) copies of its Brief for filing in the above-referenced action. Please date stamp the enclosed copy of this brief and return it to our messenger. Thank you for your prompt attention to this matter.

Respectfully submitted,



Charles A. Spitulnik

Enclosure

cc: All parties of record

Before The
INTERSTATE COMMERCE COMMISSION
Washington, D.C.

Finance Docket No. 32279

Commuter Rail Division Of The
Regional Transportation Authority
Of Northeast Illinois
-- Acquisition --
Line Of Norfolk And Western Transportation Company
In Cook And Will Counties, Illinois

**BRIEF OF THE
COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY OF NORTHEAST ILLINOIS**

The Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois d/b/a METRA ("METRA") hereby submits its brief on the issues raised by the Interstate Commerce Commission (the "Commission") in its notice served November 20, 1995: (1) whether METRA is an intrastate or interstate carrier; and (2) if it is an interstate carrier, whether 49 U.S.C. § 11343(a)(6) applies to the agreement between METRA and the Norfolk and Western Transportation Company ("N&W").¹

METRA submits that its status does not by itself determine whether the Commission has jurisdiction over the lease transaction between METRA and N&W.

¹ The notice was issued in accordance with the remand order issued by the Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") on April 25, 1995. See *United Transportation Union - Illinois Legislative Board v. Interstate Commerce Commission*, 52 F.3d 1074 (D.C. Cir. 1995).

Regardless of whether METRA is or is not providing transportation subject to the jurisdiction of the Commission, the Commission was correct in its earlier finding that it does not have jurisdiction over the Joint Line Agreement between METRA and N&W because the agreement -- by virtue of N&W's retention of its common carrier obligations and a permanent and unconditional easement on the line to permit the exercise of those obligations -- does not implicate transportation concerns over which the Commission has jurisdiction under the Interstate Commerce Act. Even if, however, the Commission were to decide that it must make a determination as to METRA's status, METRA submits that it is not a carrier providing interstate transportation subject to the Commission's jurisdiction under 49 U.S.C. § 10501 because it provides no transportation outside of the State of Illinois.

I. BACKGROUND

METRA is a public corporation formed under the Illinois Regional Transportation Authority Act, 70 I.L.C.S. §§ 3615, et seq. (1993), with responsibility for commuter rail service in the six county Chicago metropolitan area. See Verified Statement of James Burcham ("Burcham V.S.") at ¶ 5, attached hereto as Exhibit A. The METRA system comprises 475 route miles, with 230 stations, and it generates approximately 76 million passengers annually. *Id.* Service is provided by METRA itself on certain lines, and by freight railroads on certain other lines, pursuant to Purchase of Service Agreements ("PSA") with METRA. *Id.*

The line at issue in this case, a 32.9 mile joint line running from Chicago, Illinois to Manhattan, Illinois (the "Joint Line") has been operated by N&W since 1979 pursuant to a PSA with METRA. *Id.* at ¶ 6. Prior to that time, and since the early 1970s, the

State of Illinois provided the funding for commuter rail transportation operated by the N&W. *Id.* The Regional Transportation Authority of Northeast Illinois took over the responsibility for such funding in 1974 and executed its first PSA in 1979. *Id.* In 1993, with the expansion of commuter service to southwest Chicago, METRA sought to alter the relationship with N&W to allow METRA greater control over the daily operation of commuter trains over the Joint Line. This resulted in the negotiation of the Joint Line Agreement, which is the subject of this proceeding. The Joint Line Agreement provides for METRA to lease the Joint Line from N&W, but retains for N&W the right and obligation to provide for all freight service on the line. *Id.* at ¶ 7. N&W also retains control over all aspects of the operation on the line -- including the right to dispatch both freight and passenger service -- except for maintenance, which will be provided by METRA at a higher speed classification than that required for freight operations. *Id.*

On April 2, 1993, N&W filed a petition with the Commission seeking a declaratory order that the Joint Line Agreement with METRA was not subject to the Commission's jurisdiction and, consequently, that no approvals would be required prior to its consummation. In response to the Commission's notice of the declaratory order request and solicitation of comments thereon by May 3, 1993, the United Transportation Union, Illinois Legislative Board ("UTU") filed an opposition to N&W's request. UTU's opposition was premised upon the faulty argument that METRA was a carrier subject to the Commission's jurisdiction and that the agreement would therefore require approval pursuant to 49 U.S.C. § 11343.² The Commission rejected

² UTU also disputed the use of a declaratory order proceeding to resolve the jurisdictional question, an argument which was also rejected by the Commission in its May 28, 1993 opinion.

the UTU's arguments and approved N&W's request for a declaratory order in a decision served May 28, 1993. In that decision, the Commission found that METRA's status was irrelevant to the question of jurisdiction. See Finance Docket No. 32279, 1993 ICC LEXIS 107, served May 28, 1993, at *7. The Commission found further that it had no jurisdiction over the Joint Line Agreement because N&W would be retaining the common carrier obligations and its ability to carry out the obligation would be unfettered. *Id.* at *8.³ The Commission relied upon several recent cases creating an exception to jurisdiction in purchase and lease cases involving State transit authorities when a freight operator retains a permanent, unconditional easement to perform all common carrier freight operations over the line (the "State of Maine" exception). *Id.* at *3-4.⁴

After the Commission denied the UTU's Petition to Reopen, the UTU appealed the Commission's decision to the D.C. Circuit. The D.C. Circuit found that the Commission did not provide ample support for its decision. *United Transportation Union -- Illinois Legislative Board v. Interstate Commerce Commission*, 52 F.3d 1074 (D.C. Cir. 1995). The Court, while accepting application of the State of Maine exception

³ This easement was unconditional, according to the Commission, even though N&W would not have the right to make repairs on the line. This is because METRA is obligated under the Joint Line Agreement to maintain the track at a higher speed classification than that required for freight operations. See Finance Docket No. 32279, at *8.

⁴ See Finance Docket No. 32186, *Utah Transit Authority -- Acquisition Exemption - Line of Union Pacific Railroad Co.* (not printed), served December 31, 1992, reconsideration denied by decision served April 14, 1993; Finance Docket No. 31971, *South Orient Railroad Co. Ltd. -- Acquisition and Operation Exemption - Line of Atchison, Topeka and Santa Fe Railway Co.* (not printed), served September 2, 1992; and Finance Docket No. 31847, *Maine DOT -- Acq. Exemption, Me. Central R. Co.*, 8 I.C.C.2d 835 (1991).

in 49 U.S.C. § 10901 cases -- where the State transit authority is not a carrier and does not become one when the freight carrier retains common carrier obligations -- was unclear as to why the exception would apply in Section 11343 cases. *Id.* at 1077-78. It therefore remanded the proceeding to the Commission for clarification. The Court also took note of the rationale provided by Commission counsel during oral argument that Section 11343(a)(6) could not apply because METRA was not "acquiring" an obligation to provide service from N&W. *Id.* at 1079. According to the Commission, the Joint Line Agreement did not provide METRA with the authority or obligation to provide service, rather, METRA had already been providing such service and jointly using the line for the past twenty-five years. *Id.* While taking no position on the validity of this rationale, the Court noted that the Commission may adopt the rationale on remand. *Id.*

In accordance with the D.C. Circuit's opinion, the Commission must now articulate a rational basis for its decision not to assert jurisdiction over the Joint Line Agreement. To aid its effort, the Commission served a decision on November 20, 1995, seeking comments on METRA's status and on whether, if METRA is a carrier, the Commission has jurisdiction over the Agreement under 49 U.S.C. § 11343(a)(6). As shown in Part II.A. below, the Commission need not address the question of METRA's status in order to decide whether it has jurisdiction over the Agreement under Section 11343. The Commission's May 28, 1993 decision was correct and should be affirmed with additional explanation. However, even if the Commission were to decide that it must make a determination as to METRA's status, METRA submits that it is not a carrier providing interstate transportation subject to the Commission's jurisdiction. METRA does not provide any transportation out of state. While some of its lines do

extend into other states, the passenger operations in those states are provided by other carriers in accordance with Purchase of Service Agreements between those carriers and METRA. As such, METRA does not provide transportation subject to the Commission's jurisdiction under 49 U.S.C. § 10501.

II. ARGUMENT

A. Regardless Of METRA's Status, The Commission Was Correct In Concluding That It Did Not Have Jurisdiction Over The Joint Line Agreement Between METRA And N&W

The Commission was correct in its May 28, 1993 decision that METRA's status is irrelevant to the question of whether jurisdiction, under either Section 10901 or Section 11343, attaches to a transaction between a public entity and a freight carrier in which the freight carrier's common carrier obligations are not transferred. See Finance Docket No. 32279, served May 28, 1993, at *7. The Commission's jurisdiction over such transactions does not rest primarily on the jurisdictional status of the parties but rather on whether the transaction involves issues affecting the transportation over which the Commission has jurisdiction.

Under 49 U.S.C. § 10501, the Commission has jurisdiction over transportation provided by, among others, rail carriers. See 49 U.S.C. § 10501(a) ("Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation -- (1) by rail carrier . . .") (emphasis added). The statute is clear. It is the transportation and the transportation alone that is of interest to the Commission. The only time that the Commission has a statutory reason to care about transactions between carriers is when they impact upon transportation -- such as when they affect common carrier obligations, competition, access to transportation services or a carrier's

ability to provide service. See, e.g., 49 U.S.C. § 11343 (requiring prior approval of consolidation of carriers and transactions involving the purchase, lease or contract to operate property and the acquisition of trackage rights, joint use or joint ownership of a railroad line). All the transactions specified in Section 11343 involve a transfer of operating rights or extensive ownership or other controlling interests that could affect one party's ability to fulfill its common carrier obligations so that the transportation over which the Commission has jurisdiction will be impacted.

In transactions between carriers that do not involve issues impacting transportation, the Commission does not assert jurisdiction. So for example, the Commission would not need to approve under Section 11343 a lease of office space from one class I carrier to another even though the transaction involves a lease between two carriers that provide transportation subject to the Commission's jurisdiction. The issue involved there, the lease of realty, is of no interest to the Commission because it would not affect the rights and obligations of the parties to provide transportation services. This has been true in cases already decided by the Commission. In the past, the Commission has refused to assert jurisdiction under Section 11343 in cases where no transfer of common carrier obligations take place but where business decisions necessitate the transfer of certain railroad functions. See, e.g., *Simmons v. ICC*, 871 F.2d 702 (7th Cir. 1989) (haulage agreement did not constitute a grant of trackage rights subject to the Commission's jurisdiction); *Black v. ICC*, 837 F.2d 1175 (D.C. Cir. 1988) (transaction involving the operation of one railroad's car over a second railroad's line to interchange cars did not require Commission approval); *American Train Dispatchers Ass'n v. ICC*, 671 F.2d 580 (D.C. Cir. 1982) (Commission did not assert jurisdiction over the amendment of joint trackage agreements providing for the transfer

of dispatching, supervisory and maintenance from one participating carrier to another). The common thread running through all of these cases -- even though they involve transactions between two carriers otherwise subject to the Commission's jurisdiction - is that there is no transfer of rights that affect the ability of the parties to fulfill their common carrier obligations.

The Commission has not yet had the opportunity to apply the State of Maine exception articulated in Section 10901 cases specifically to transactions falling under Section 11343. Yet this does not mean that the rationale applied in those cases does not apply under Section 11343. The reason for not asserting jurisdiction over transactions where the common carrier obligation is not transferred has nothing to do with whether one or two carriers is involved, but rather, as shown above, with whether the issues involved are those that impact the transportation over which the Commission has jurisdiction. This being the case, the Commission should not assert jurisdiction over any sale or lease transaction, be it under Section 11343 or Section 10901, where common carrier obligations are not transferred.

Applying these principles to the facts of this case, the Commission was correct in finding that it had no jurisdiction over the lease between METRA and N&W because N&W would retain the common carrier obligation to provide freight service (and N&W was granted a sufficiently unconditional and permanent easement to allow it to carry out that obligation). See Finance Docket No. 32279, served May 28, 1993, at *8. N&W will retain control over almost every aspect of the operations, including dispatching of

both freight and passenger service on the line.⁵ It does not matter whether METRA is or is not a carrier subject to the Commission's jurisdiction or whether the transaction falls under Section 10901 or Section 11343. The fact that no rights are transferred that impact N&W's ability to carry out its common carrier obligations means that the transaction involves no transportation concerns over which the Commission has jurisdiction under either Section 10901 or Section 11343. Accordingly, the Commission should reaffirm its earlier May 28, 1993 decision and find that it has no jurisdiction over the lease transaction between METRA and N&W.

At oral argument before the D.C. Circuit, the Commission articulated a second, and equally persuasive, reason as to why jurisdiction should not attach to the lease transaction between METRA and N&W. The transaction between METRA and N&W can not be characterized as an acquisition of a joint use pursuant to Section 11343(a)(6) because METRA has already been jointly using the line for the past twenty-five years. 52 F.3d at 1079. Rather than an acquisition, the transaction involves a continued joint use, albeit in a different form than previously. Rather than a PSA which governed the parties' relationship along the line from 1979 to 1993, the parties relationship will be governed by the Joint Line Agreement, which involves a lease of the line. The Joint Line Agreement simply altered the pre-existing relationship between the parties, but did not result in the transfer, consolidation or acquisition of a trackage rights, joint

⁵ N&W will not maintain the track or signals on the line. However, the Commission already found that this did not adversely affect N&W's unconditional easement to perform its common carrier obligations on the line because METRA is obligated under the Joint Line Agreement to maintain the track at a higher speed classification than that required for freight operations. See Finance Docket No. 32279, at *8. Indeed, METRA has undertaken significant capital improvements to the track and signals that have facilitated N&W's ability to perform its common carrier obligations and provide freight service on the line. Burcham V.S. at ¶ 7.

ownership or joint use of the line under Section 11343(a)(6). This additional reason only serves to confirm the conclusion that the Commission has no jurisdiction over the transaction between METRA and N&W, even if the Commission were to find that METRA were a carrier subject to its jurisdiction.

B. Even if METRA's Status Was Relevant To The Jurisdictional Question, The Commission Would Nevertheless Be Without Jurisdiction Over The Joint Line Agreement Because METRA Is Not A Carrier Providing Transportation Subject To The Commission's Jurisdiction Under 49 U.S.C. § 10501

Under 49 U.S.C. § 10501, the Commission has jurisdiction over a "rail carrier" providing transportation "between a place in (A) a State and a place in another State." 49 U.S.C. §§ 10501(a)(1), (2)(A). In addition, section 10501(b)(1) specifically excludes from ICC jurisdiction "the transportation of passengers . . . entirely in a State." METRA's operations fall squarely within this exclusion because it does not provide transportation services to passengers outside the State of Illinois.

METRA's commuter rail system runs almost exclusively within the State of Illinois. *Burcham V.S.* at ¶ 3. Only two of its lines extend beyond the Illinois State border, one to South Bend, Indiana and the other to Kenosha, Wisconsin. *Id.* However, in both of these cases, METRA does not provide the passenger service. *Id.*⁶ In Indiana, the Northern Indiana Commuter Transportation District ("NICTD") operates passenger

⁶ METRA only operates passenger service on the following lines which are located entirely within the State of Illinois: the Rock Island District, the Milwaukee District, the Metra Electric District, the Heritage Corridor and the South West service. *Burcham V.S.* at ¶ 4.

service and in Wisconsin, Union Pacific is the operator. *Id.*⁷ Both NICTD and UP operate the lines into Indiana and Wisconsin, respectively, pursuant to a purchase of service agreement ("PSA") with METRA, which governs passenger operations and provides for the funding paid by METRA to these carriers for the operations. *Id.*⁸ Thus, it is these other carriers, and not METRA, that provide passenger services outside of Illinois. Under the authority of 49 U.S.C. § 10501, METRA is not a carrier because it provides service solely within the State of Illinois. Accordingly, the Commission has no jurisdiction over METRA.

⁷ Originally it was the Chicago & North Western Railroad Company ("C&NW") that operated the trains on this line. However, by virtue of C&NW's 1994 merger into the UP, UP is now the operator of the line.

⁸ In both cases, METRA does not own either the track or the train stations located outside of Illinois in Indiana or Wisconsin. *Burcham V.S.* at ¶ 4.

III. CONCLUSION

For all of the reasons stated herein, METRA respectfully requests that the Commission find that METRA is not a carrier providing transportation subject to the Commission's jurisdiction under 49 U.S.C. § 10501 and reaffirm its decision served May 28, 1993 in this docket finding that the Commission has no jurisdiction over the lease transaction between METRA and N&W.

Respectfully submitted,

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Counsel for METRA

Dated: December 20, 1995

EXHIBIT A

Before The
INTERSTATE COMMERCE COMMISSION
Washington, D.C.

Finance Docket No. 32279

Commuter Rail Division Of The
Regional Transportation Authority
Of Northeast Illinois
-- Acquisition --
Line Of Norfolk And Western Transportation Company
In Cook And Will Counties, Illinois

VERIFIED STATEMENT OF JAMES BURCHAM

1. My name is James Burcham and I am the Director of Real Estate and Contract Management for the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois ("METRA"). I have held this position with METRA since October, 1982. As Director, I am responsible for managing all of the contracts that METRA executes with common carriers relating to the joint use of METRA's lines.

2. I am submitting this statement in support of METRA's position that it is not a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission. I understand that jurisdiction turns on whether METRA provides transportation services to passengers solely within the State of Illinois (an intrastate carrier), or whether it provides such services outside of the State (an interstate carrier). Because of the contracts that METRA maintains with other carriers to provide services outside of the State of Illinois, METRA does not itself operate outside

the State of Illinois. It should not, therefore, be considered an interstate carrier subject to the Commission's jurisdiction.

3. METRA's commuter rail system runs almost exclusively within the State of Illinois. Only two of its lines extend beyond the Illinois State border, one to South Bend, Indiana and the other to Kenosha, Wisconsin. However, in both of these cases, METRA does not provide the passenger service. In Indiana, the Northern Indiana Commuter Transportation District ("NICTD") operates passenger service and in Wisconsin, Union Pacific is the operator. Both NICTD and UP operate the lines into Indiana and Wisconsin, respectively, pursuant to a purchase of service agreement ("PSA") with METRA, which governs passenger operations and provides for the funding paid by METRA to these carriers for the operations.

4. METRA only operates passenger service on the following lines which are located entirely within the State of Illinois: the Rock Island District, the Milwaukee District, the Metra Electric District, the Heritage Corridor and the South West service. Likewise, METRA owns only the property on the following lines which are located entirely in the State of Illinois: the Rock Island District, the Milwaukee District, the Metra Electric District, and approximately seven miles of track on the South West service. METRA does not own either the track or the train stations located outside of Illinois in Indiana or Wisconsin.

5. METRA is a public corporation formed under Illinois state law, with responsibility for commuter rail service in the six county Chicago metropolitan area. The METRA system comprises 475 route miles, with 230 stations, and it generates approximately 76 million passengers annually. Service is provided by METRA itself on

certain lines, and by freight railroads on certain other lines, pursuant to Purchase of Service Agreements ("PSA") with METRA.

6. The line at issue in this case, a 32.9 mile joint line running from Chicago, Illinois to Manhattan, Illinois (the "Joint Line") has been operated by N&W since 1979 pursuant to a PSA with METRA. Prior to that time, and since the early 1970s, the State of Illinois provided the funding for commuter rail transportation operated by the N&W. The Regional Transportation Authority of Northeast Illinois took over the responsibility for such funding in 1974 and executed its first PSA in 1979.

7. In 1993, with the expansion of commuter service to southwest Chicago, METRA sought to alter the relationship with N&W to allow METRA greater control over the daily operation of commuter trains over the Joint Line. This resulted in the negotiation of the Joint Line Agreement which is the subject of this proceeding. The Joint Line Agreement provides for METRA to lease the Joint Line from N&W, but retains for N&W the right and obligation to provide for all freight service on the line. N&W also retains control over all aspects of the operation on the line, including the right to dispatch both freight and passenger service except for maintenance, which will be provided by METRA at a higher speed classification than that required for freight operations. In fact, METRA has already undertaken significant capital improvements to the track and signals that have facilitated N&W's ability to perform its common carrier obligations and provide freight service on the line.

STATE OF ILLINOIS)) SS.
COUNTY OF COOK)

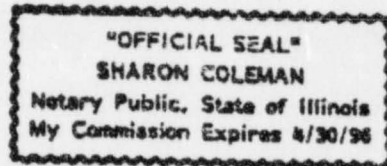
VERIFICATION

I, JAMES BURCHAM, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein and that the same are true as stated.

James W. Burcham
James Burcham

Subscribed and Sworn to before me
this 19th day of December, 1995.

NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, Alicia M. Serfaty, certify that on this 20th day of December, 1995, I caused a copy of the foregoing Brief Of The Commuter Rail Division Of The Regional Transportation Authority Of Northeast Illinois to be served by first-class U.S. mail, postage prepaid, to all parties of record in this proceeding.

Dated at Washington, D.C. this 20th day of December, 1995.

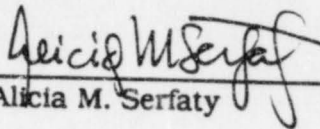

Alicia M. Serfaty

Exhibit C

Letter from Union Pacific CEO Jim Vena to Metra CEO Jim Derwinski
(May 21, 2025)



BUILDING AMERICA®

May 21, 2025

Jim Derwinski
CEO and Executive Director
Metra
547 W. Jackson Blvd.
Chicago, IL 60661

Dear Mr. Derwinski:

Thank you for partnering with Union Pacific Railroad for more than 30 years in service of Chicagoland commuters. I applaud Metra for embracing the transfer of approximately 800 employees and welcoming them to your team. Based on my nearly 50 years of railroading, I expect these changes will allow you to optimize your operation and deliver stronger service at a substantially lower expense. I look forward to seeing the results.

We have worked through several hurdles to make this transition smooth and not impact commuters. However, one last issue remains – an agreement on the price for Metra to access our network. Union Pacific has offered many innovative methods to find a resolution, including arbitration. But after nearly six years, we have not come to a reasonable result.

As I have indicated in several phone conversations with you, we will not be stopping service to the millions of people who use Metra daily. I personally saw how important the service is when I lived in Chicagoland and used the train to travel downtown.

Our teams need to work together toward a reasonable conclusion. Union Pacific has the benefit of having agreements with several commuter organizations across the nation, and the rate we offered Metra is competitive compared to any other service. On July 1, after the current contract extension expires, we will be posting the new rates. While we would rather have an agreement in place with Metra, after nearly six years, it is time to move forward.

I welcome the opportunity to discuss should you have any questions.

Sincerely,