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Via E-Filing

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

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

Dear Ms. Brown:

The Board should deny UP's Motion for Protective Order filed December 15, 2025 ("Motion"), seeking to suspend Metra's limited second set of discovery requests.

UP contends that Metra's discovery is unwarranted because the Board has not yet initiated a "proceeding" to establish conditions and compensation for use of the UP's facilities, and UP has since made clear that it will not respond until the Board rules on its Motion. UP also has a separate request that the Board extend and bifurcate this proceeding.¹ If the Board denies UP's request to bifurcate, or adopts a procedural schedule such as Metra proposed on December 1, then UP's Motion must be denied as well.

The case authority UP cites in support of its Motion is inapposite. There is no pending motion to dismiss, and UP's request for bifurcation would not limit or alter the scope of the discovery requests Metra has propounded. None of UP's cases involves terminal trackage rights, which have already been awarded, and the associated statutory time limit for determining conditions and compensation under 49 U.S.C. 11102(d).

¹ UP's request for bifurcation to consider an issue already addressed in the September 3 Decision is unwarranted for the reasons Metra stated in its December 18, 2025, response to UP's Reply.

Metra needs the requested ATC cost data to be able to apply the Capitalized Earnings analysis under the *SSW Compensation* framework and UP's other trackage rights agreements to help establish what are standard provisions for, *inter alia*, liability, indemnification, and claims handling. UP does not dispute that the parties have reached an impasse on these compensation and liability issues. The responsive discovery information requested by Metra will still be needed to resolve the issues raised in Metra's December 1 request for the Board to establish conditions and compensation, even if UP's separate request is granted.

The statute links the time limit to the request, not the formal initiation of the proceeding or issuance of a procedural schedule: "The Board shall complete any proceeding under subsection (a) or (b) within 180 days after the *filing of the request for relief*" (emphasis added). Even granting UP's request for mediation over Metra's objection would not override the deadline. 49 C.F.R. 1109.3(e) (statutory deadlines not tolled if one party does not voluntarily consent to mediation). Metra's request is also in furtherance of and in accordance with the Board's September 3 decision.

UP has not provided a valid basis for its requested relief. Its Motion should be promptly denied so as to avoid any further delay that would compromise the Board's ability to act within the time frame that Congress specified in 49 U.S.C. § 11102(d).

Respectfully submitted,



Peter A. Pfohl

Robert D. Rosenberg

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Regional Transportation Authority d/b/a Metra*

CERTIFICATE OF SERVICE

I hereby certify this 29th day of December 2025, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by more expeditious means to all parties of record.

/s/ Peter A. Pfohl