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BEFORE THE
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 36844

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

METRA REPLY TO MOTION TO DISMISS

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INTRODUCTION

Metra demonstrated and provided evidence supporting 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, which Metra uses to provide passenger service critical to the Chicago area’s economy and social well-being, in its Application for Terminal Trackage Rights, filed March 7, 2025, and its Opening Statement and Evidence, filed May 5, 2025.¹

On the issue of jurisdiction, Metra demonstrated that it is expressly eligible for relief under § 10501(c)(3)(B) because it is “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 [ICC] that were in effect immediately before January 1, 1996,” when the ICCTA took effect. Metra reviewed the intertwined statutory framework for those “standards and requirements” in

¹ All following statutory references are to 49 U.S.C. unless otherwise indicated. Defined terms have the same meaning as in Metra’s previous filings.

detail and established that its interstate transportation was subject to direct ICC regulation and that its intrastate portion was “deemed to be transportation subject the jurisdiction of the [ICC]” under former § 11501(b)(4)(B), as the ICC decertified the Illinois Commerce Commission in 1994 at its own request from exercising jurisdiction over intrastate transportation provided by a rail carrier.

UP’s Motion to Dismiss (“Motion”), filed May 21, 2025, does not directly take issue with Metra’s statutory analysis and supporting authority. UP contends instead that Metra’s system is too intrastate in its “essential character” to be eligible to obtain trackage rights. But nothing in § 10501(c)(3)(B), the pre-ICCTA provisions, the ICCTA Conference Report, or the Board decisions construing the provisions imposes the expanded “character” requirement that UP posits. The ICC objectively and indisputably had jurisdiction over Metra’s intrastate and interstate transportation before ICCTA took effect, and nothing more is required. To the extent that any greater interstate requirement might be deemed to apply, Metra satisfies it, because the UP-N Line on which Metra operates extends across the Illinois border to Kenosha, Wisconsin.

UP has failed to meet its burden, or even to raise a significant issue regarding the Board’s jurisdiction to grant the requested relief. *E.g.*, *Entergy Ark., Inc. & Entergy Servs., Inc. v. Union Pac. R.R. & Missouri & N. R.R.*, NOR 42104 (STB served Dec. 30, 2009) (noting that motions to dismiss are disfavored). UP’s Motion should be denied and the issue decided in Metra’s favor.

Although it has no bearing on the jurisdictional issue, UP's Motion also repeats the same inaccurate argument from its earlier Reply to Metra's Application that "dismissal ... would simply require Metra to reengage in commercial discussions." Motion at 3; *see* Reply at 2 (stating Metra "refuses to engage"). In addition, UP references and attaches a May 21, 2025, letter to Metra from its CEO Jim Vena, which UP also published to local officials in the Chicago area (Motion, Exhibit C), for its position that UP "will not be stopping service to the millions (sic) of people who use Metra daily." *Id.*²

On the first point, Metra has submitted evidence that, far from "refus[ing] to engage" in negotiations, Metra has exchanged multiple proposals with UP over a period of years for a contract to govern its use of UP's facilities after the parties' current Purchase of Service ("PSA") expires on June 30, 2025. Metra also detailed in evidence its concerns over the progress of those negotiations and UP's failure to provide complete and detailed information in support of its escalated pricing demands. Opening Statement and Evidence, Kane VS at ¶¶ 17-21.³ UP submitted no opposing evidence with its Reply Statement and Evidence.

On the second point, UP's Motion omits the related statement in Mr. Vena's letter that "On July 1, after the current contract extension expires, we will be

² The information on Metra's ridership is incorrect. The *annual* ridership on the three UP Lines involved is approximately 13.7 million passenger trips per year. Opening Statement and Evidence, Maertins VS at ¶ 8. *Daily* ridership on all of Metra's lines, including the three UP Lines, averages 146,700 passenger trips. *Id.*

³ "Metra understands and respects that UP's Reply includes an advocacy component, but the statement that Metra "refuses to engage" on the compensation question does not accurately state the facts." *Id.* at ¶ 21.

posting the new rates.” Motion, Exhibit C (emphasis added). On June 4, 2025, the day after it filed its Reply Statement and Evidence, UP delivered to Metra the attached “Conditions of Entry” (“COE”) (**Exhibit A**), through which UP plans to unilaterally impose on Metra, its riders, and Illinois taxpayers a more than 100% increase in Metra’s costs to use UP’s facilities along with other unreasonable and coercive terms and conditions, including Metra’s waiver of its constitutional right to a jury trial for any disputes arising out of the non-negotiated COE. Under the COE, as prescribed by UP, “Metra shall be bound to these terms of conditions of entry,” beginning on July 1, 2025. **Exhibit A** at § 12.6.⁴

UP’s actions do not look like negotiations because they are not. The escalated compensation and other unreasonable and monopolistic terms and conditions that UP seeks to impose on Metra unilaterally after June 30, 2025, during the pendency of this proceeding, reinforce why Metra filed its Application in the first place and the necessity and importance of the Board’s exercising its statutory jurisdiction under § 11102 and granting relief.

⁴ On June 11, 2025, Metra filed a motion to obtain a temporary restraining order and/or preliminary injunction from the Northern District of Illinois and asked the Court to maintain the status quo between the parties during the pendency of that case, which involves claims by Metra for UP’s alleged breach of contract, relating to more than \$1 billion in public investments made by Metra in the UP Lines, and UP’s alleged violation of federal antitrust law. As with the instant proceeding, UP has taken the position that the federal Court lacks jurisdiction to hear Metra’s claims.

ARGUMENT

I. Prior agency decisions confirm that Metra was a carrier subject to the ICC's jurisdiction as of December 31, 1995

The historical record makes clear that Metra was a carrier subject to ICC's jurisdiction as of December 31, 1995. The ICC exercised that jurisdiction when it granted Metra's requested exemption from the agency's tariff filing requirements. *Commuter Rail Div. of the Reg'l Trans. Auth. of Ne. Ill., d/b/a Metra - Exemption – Tariff Filing Requirements*, NOR 41506 (ICC served Feb. 24, 1995) (“*Exemption - Tariff Filing Requirements*”) (cited at 9 n.4 of Metra's Opening Statement). The exemption constituted the ICC's exercise of jurisdiction over Metra and its commuter rail services, whether provided directly or through a PSA. The decision establishes Metra's eligibility for the terminal trackage rights for purposes of § 10501(c)(3)(B).

UP's fixation on the opening footnote in Metra's petition seeking that exemption is a diversion. Motion at 1, quoting *Exemption – Tariff Filing Requirements*, NOR 41506 (Metra Petition for Exemption filed Dec. 14, 1994, attached as Exhibit A to Motion). UP fails to acknowledge the fact that the ICC necessarily determined it had jurisdiction when it granted the exemption. The exemption represents the exercise of ICC jurisdiction over the commuter services

that Metra provides, whether directly or through a PSA. The decision establishes Metra's eligibility for the terminal trackage rights for purposes of § 10501(c)(3)(B).⁵

The same footnote 4 of Metra's Opening Statement referenced the directed service order that the ICC issued in 1980 for Metra to operate over an intrastate segment. *Reg'l Transp. Auth. – Directed Service – Chi., Rock Island & Pac. R.R., Debtor (William M Gibbons, Trustee) over Chi. Commuter Line*, 360 I.C.C. 777 (1980). UP dismisses that order as conferring only “permissive” authority and not having analyzed the jurisdiction issue. Motion at 11 & n.21. But ICC and STB authorizations for construction, operation, abandonment, and control, such as the approval for the UP/SP merger, are normally permissive. The directed service order necessarily made and/or treated Metra as a jurisdictional carrier over the intrastate segment from Chicago to Joliet.

Accordingly, UP cannot meaningfully dispute that the ICC not only had, but had exercised, jurisdiction over Metra and its “intrastate” activities as of December

⁵ Metra's 1994 petition necessarily acknowledged the agency's jurisdiction. Regardless, what matters is not how a party describes its status, but how the agency determines that status. *E.g.*, *Union Pac. R.R. – Operation Exemption – In Yolo County, CA*, FD 34252 (STB served Dec. 5, 2002), at 4 (finding that UP's “mere assertion . . . that we should find that the track is now subject to our licensing authority does not meet its burden of demonstrating how its use of the Port trackage has changed so that it now falls within section 10901”); *Union Pac. R.R. – Pet. for Decl. Order*, FD 35021 (STB served May 16, 2007), at 3 (not accepting UP's claim that its Option 2 rates under its Circular 111 were necessarily common carrier rates); *Tri-City R.R. Co., LLC – Pet. for Decl. Order*, FD 36037 (STB served June 1, 2017), at 8 (“Even if the parties did structure their transaction so as to bring it within (or exclude it from) the Board's jurisdiction, the determination of what is or is not under the Board's jurisdiction does not turn on the label placed on the segment by the parties.”).

31, 1995. The ICC's prior actions resolve any jurisdictional questions as to the applicability of § 10501(c)(3)(B) to Metra and the availability of terminal trackage rights under § 11102.

II. UP incorrectly contends that Metra must meet an expanded interstate requirement to be eligible for terminal trackage rights

Metra's Application and Opening Statement explained how Metra is eligible for terminal trackage rights because it "meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the [ICC] that were in effect immediately before January 1, 1996," when the ICCTA took effect. § 10501(c)(3)(B).

UP does not directly disagree with Metra's statutory analysis. Instead, UP incorrectly asserts that an expanded "character" requirement applies and that the ICC's jurisdiction over Metra was too limited. UP claims that: (A) Metra's transportation needed to be inherently interstate (pp. 4-6); (B) Metra's operations were instead essentially local and intrastate, the interstate portion (to Kenosha) was "*de minimis*," and Metra has no joint ticketing arrangement with Amtrak (pp. 6-15); and (C) even if the UP-N Line is deemed interstate because it extends to Kenosha, the UP-W and UP-NW Lines remain intrastate (pp. 15-19).

But that expanded requirement does not exist in the statute, legislative history, or precedent. At best, UP can point to a few cases involving rail operations – not access to terminal trackage rights – involving factual circumstances that are dissimilar to those of Metra. The Board saw no such expanded interstate requirement when previously addressing Metra's potential eligibility for terminal

trackage rights for an intrastate facility. Even if such a requirement could be inferred, Metra satisfies it because its system crosses state lines.

A. Congress has not required and the Board has not adopted the expanded “interstate” requirement for terminal trackage rights that UP posits

Metra meets the requirement that Congress established for obtaining terminal trackage rights over intrastate facilities.

Current § 10501(c)(3)(B) asks only if Metra would have been “a rail carrier providing transportation subject to the jurisdiction of the [ICC]” as of December 31, 1995. The statutory language, the ICCTA Conference Report, and subsequent Board decisions provide no support for UP’s claim that the ICC’s jurisdiction needed to extend beyond the “intrastate rate, classification, rule, or practice” for this purpose.

The pre-ICCTA statutory text directly negates UP’s claim. Former § 11501(b)(4)(B) defined the ICC’s jurisdiction over intrastate transportation:

Any 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 of chapter 105 of this title.

(Emphasis added).

Metra is a “rail carrier” seeking terminal trackage rights under § 11102 to provide what UP posits is “intrastate” transportation in Illinois. As of December 31, 1995, Illinois was “a State” that “may not exercise any jurisdiction over intrastate rates, classifications, rules or practices” “due to a denial of certification.” Former § 11501(b)(4)(A); *Intrastate Rail Rate Auth. – Ill.*, EP 388 (Sub-No. 7) (ICC served

Dec. 12, 1994) (decertifying the Illinois Commerce Commission from intrastate regulation at its own request). Accordingly, Metra’s “intrastate transportation . . . *shall be deemed* to be transportation subject to the jurisdiction of the Commission.” Former § 11501(b)(4)(B) (emphasis added). Metra then “meets all of the standards and requirements for being a rail carrier providing [intrastate] transportation subject to the jurisdiction of the [ICC] that were in effect immediately before January 1, 1996,” as specified by current § 10501(c)(3)(B).

The restrictions on the ICC’s jurisdiction posited by UP are irrelevant. The transportation is “deemed to be transportation subject to the [ICC’s] jurisdiction” under the pre-ICCTA “standards and requirements” at former § 10501(b)(4)(b). Current § 10501(c)(3)(B) requires nothing more to be “a rail carrier providing transportation subject to the jurisdiction of the [ICC].”

This construction also comports with the legislative context and purpose. ICCTA made terminal trackage rights available as protection for the elimination of regulation of passenger rail transportation. “[A]lthough the regulation of passenger transportation is generally eliminated, public transportation authorities that meet the existing criteria for being rail carriers may invoke the terminal area and reciprocal switching access remedies of section 11102 and 11103.” H. Rept. No. 104-422 at 167 (1995) (ICCTA Conference Report) (addressing § 10501), 184 (“local transportation authorities satisfying the jurisdictional requirements of section 10501 could invoke the remedies of this section [11102] and section 11103”). The Conference Report did not specify the remedies were only for “interstate” carriers.

The eliminated protections included the ICC review over discontinuance of trains both interstate (former § 10908) and intrastate (former § 10909). UP premised its termination of the PSA on ICCTA’s removal of those provisions.⁶ *Union Pac. R.R. v. Reg’l Transp. Auth.*, No. 19-C7957, 2021 WL 4318106 (N.D. Ill. Sept. 23, 2021), *aff’d*, 74 F.4th 884, 887 (7th Cir. 2023). Having exercised the privilege conferred by ICCTA to “discontinue its services” (*id.* at 885), UP should not be allowed to render void the corresponding remedial protection that ICCTA provided for local transportation authorities, such as Metra.

B. UP’s argument for a more demanding “interstate” requirement relies on factually and legally inapposite cases

UP bases its expanded requirement on three pre-ICCTA cases (Motion at 5) where the ICC refrained from exercising jurisdiction over some aspects of intrastate passenger railroads. From those cases, UP seeks to extrapolate a rule that each individual line of a commuter railroad must cross state lines for the ICC to have had the right kind of jurisdiction as of December 31, 1995, to be able to award terminal trackage rights. The cases support no such inference, and later cases find no such restriction.

In the first case, the ICC found that it did not have jurisdiction over commuter operations of the Los Angeles County Transportation Commission (“LACTC”) or its acquisition of trackage rights. *S. Pac. Transp. Co. – Aban. Exemption – L.A. Cnty., Cal.*, 9 I.C.C.2d 385, 391–92 (1993). The ICC noted that §

⁶ UP’s Motion ignores these two provisions and the ICCTA Conference Report altogether.

11501(b)(4)(B) provides the “one circumstance under which we have limited jurisdiction over intrastate transportation and that California has not been certified for intrastate rate regulation.” *Id.* at 392 (citing *Napa Valley Wine Train, Inc. – Pet. for Decl. Order*, 7 I.C.C.2d 954, 958-60 (1991) (“*Napa Valley*”). The ICC found that LACTC’s acquisition was not related to ratemaking and that § 11501(b)(4)(B) did not bring the acquisition under its jurisdiction. *Id.* Nothing in the decision suggests jurisdiction over intrastate ratemaking would be insufficient to support a grant of terminal trackage rights under a provision that was yet to be enacted.

In the second cited case, *Napa Valley*, the ICC determined that the Napa Valley Wine Train’s operation of round-trip passenger excursion trains over an 18-mile segment lacked “a sufficient nexus to interstate commerce to permit Congress to regulate them if it chose to do so.” 7 I.C.C.2d at 967.⁷ Metra operates a commuter railroad, not a scenic railroad, and provides services that are vital for a metropolitan statistical area (“MSA”) that spans three states (Illinois, Indiana, and Wisconsin), even if Metra serves only two of them directly. Metra has a sufficient nexus to interstate commerce to allow Congress to regulate, as the ICC did regulate

⁷ The Napa Valley Wine Train handled 42,000 passengers over a nine-month period. *Id.* at 955. The UP-W line, the least used of the three UP Lines, had 278,000 trips in January 2025 alone. See <https://metra.com/document/january-2025-ridership-trends-and-2024-annual-ridership-memov11pdf> at 1, Exhibit 2.

UP’s Motion cites numerous older cases decided under a narrower view of the Congressional power to regulate interstate commerce. *E.g.*, *United States v. Darby*, 312 U.S. 100 (1941) (upholding application of Fair Labor Standards Act to regulate intrastate manufacturing of goods that cross state lines), *overruling Hammer v. Dagenhart*, 247 U.S. 251 (1918) (finding interstate shipment of goods does not make their intrastate production subject to Congressional control).

Metra in the exemption from the tariff filing requirements and the directed service order discussed above.

UP's third cited decision is *Magner-O'Hara Scenic Ry. v. ICC*, 692 F.2d 441, 444 (6th Cir. 1982), involving a scenic railroad within Michigan. The decision addressed licensing, not rate regulation, and predates ICCTA.

UP also cites a Board decision that found a commuter railroad's removal of a short segment of intrastate track did not trigger the Board's jurisdiction. *N.J. Ass'n of R.R. Passengers & Nat'l Ass'n of R.R. Passengers – Petition for Decl. Order – Princeton Branch*, FD 35745 (STB served July 25, 2014), at 5-6 (Motion at 14, 15). UP omits that the Board's decision noted its jurisdiction for the potential grant of trackage rights: "Moreover, the Board's jurisdiction over transportation provided by a local government authority like NJ Transit is limited only to authorizing joint use of terminal facilities, switch connections, and tracks under 49 U.S.C. §§ 11102 and 11103. 49 U.S.C. § 10501(c)(3)(B)." *Id.* at 6. Nothing in the Board's decision suggests that terminal trackage rights were unavailable because the railroad's 2.9-mile segment for the Dinky to Princeton Branch was too intrastate.⁸

⁸ A rail carrier need not be an "interstate" carrier to fall under the Board's jurisdiction. Almost all Class III and most Class II rail carriers only operate wholly within one state but are nonetheless subject to the Board's jurisdiction. The test is not whether the rail carrier crosses state lines, but rather whether it is "part of" interstate commerce. § 10501(a)(2)(A). Board jurisdiction even extends to tracks that "are located, or intended to be located, entirely in one State." § 10501(b)(2). There is no question that Metra was and is "part of interstate commerce." Absent § 10501(c) Metra would still be a rail carrier subject to the jurisdiction of the STB. Furthermore, UP ignores those cases where the Board has found passenger operations to be subject to its jurisdiction even when those passenger operations

The more definitive treatment of whether decertification is sufficient to support the grant of terminal trackage rights is in a decision involving Metra that UP ignores. *Commuter Rail Div. of The Reg'l Transp. Auth. & Ne. Ill. Reg'l Commuter R.R. Corp. – Pet. for Decl. Order – Status of Chi. Union Station*, FD 36171 (STB served Aug. 22, 2018). Metra asked the Board to declare that Metra had the ability to obtain terminal trackage rights to use Chicago Union Station (“CUS”), where six of Metra’s lines originate, <https://metra.com/train-lines/stations/union-station>.

The Board did not grant the declaratory order because the issue was premature but stated that Metra would need to show it “meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the [ICC].” *Id.* at 4 (quoting § 10501(c)(3)(B)). The decision did not express concern that Metra’s use of CUS would be too “intrastate.” CUS is a single point located in a single state, just two blocks from Metra’s Ogilvie Transportation Center, and Metra uses CUS only for commuter service that does not leave Illinois. If there were no concerns about CUS’s eligibility for terminal trackage rights, no questions should exist regarding the eligibility of the three UP Lines.

were wholly intrastate. *Cal. High-Speed Rail Auth. – Construction Exemption – In Merced, Madera & Fresno Cnty.s., Cal.*, FD 35724 (STB served June 13, 2013); *Am. Orient Express Ry. Co. LLC – Petition for Decl. Order*, FD 34502 (STB served Dec. 29, 2005), *aff’d sub nom. Am. Orient Express Ry. Co., LLC v. STB*, 484 F.3d 554 (D.C. Cir. 2007); *Roanoke S., LLC – Acquisition and Operation Exemption – Norfolk S. Ry.*, FD 35976 (STB served Dec. 31, 2015).

The expanded interstate requirement that UP seeks to impose is a convenient argument for its purposes, but not one grounded in the statutory text, the legislative history, or the Board's previous treatment of the provision at issue and is not applicable to Metra in any event.

C. The UP-N Line's service to Kenosha satisfies any "interstate" requirement that may exist for Metra's system

Metra's position is that its eligibility for terminal trackage rights does not hinge on whether any portion of the UP Lines extends outside of Illinois.⁹

Nonetheless, a portion of the UP-N Line extends to Kenosha, Wisconsin. The UP-N Line also has an equipment yard at Kenosha that supports operations along the entire Line, as explained in Metra's Opening Statement at 24.

UP seeks to minimize the significance of Kenosha's presence on the UP-N Line for meeting its posited interstate requirement, claiming that Kenosha is "*de minimis*" because it amounts to only 0.01% of Metra's total ridership and 1% of the ridership on the UP-N Line. Motion at 9. UP thus concludes that the Metra system

⁹ UP's Motion argues that Metra's description of its operations as "inherently local" supports the conclusion that the transportation involved is not subject to the Board's jurisdiction. UP is incorrect on the law and takes the description from Metra's Opening Statement (at 18) out of context. Metra included a detailed discussion of its operations on the UP Lines in its Opening Statement to demonstrate that the facilities involved function as and/or are located within a terminal area. Metra showed that its operations, even if performed within a larger region, the UP Lines, Metra's other lines, and Metra's hub-and-spoke system as a whole fit well within the terminal area concept as articulated in 49 C.F.R. § 1145.1 and *Reciprocal Switching for Inadequate Serv.*, EP 711 (Sub-No. 2) (STB served Apr. 30, 2024). The localized nature of the commuter operations in the terminal facilities involved in no way detracts from the interstate significance of Metra's operations or limits the Board's jurisdiction to require Metra's use of the UP Lines.

is intrastate in its entirety, with a backup position that only the UP-N Line is an interstate line.

The Board, however, has not employed or required a quantitative analysis to conclude that a commuter railroad that serves a second state is interstate in its entirety. In *Mass. Bay Commuter R.R. Co., LLC – Pet. for Decl. Order*, FD 34332 (STB served June 5, 2003) (“*Massachusetts Bay*”), the petitioner, Massachusetts Bay Commuter Railroad (“MBCR”), was to replace Amtrak as the operator over the commuter rail system of the Massachusetts Bay Transit Authority (“MBTA”). The MBTA system includes 13 rail lines totaling approximately 350 route miles in the Boston area, including one line extending to Providence, Rhode Island. Freight railroads used some of the MBTA lines for freight service, and Amtrak used two lines as well.

MBCR sought and obtained a declaratory order that “but for the exception for mass transportation at 49 U.S.C. § 10501(c)(2), [it] would be subject to the Board’s jurisdiction.” *Id.* at 1. The Board found the line to Providence sufficient to make the petitioner an interstate rail carrier. “The rail service would be provided across a state line between Boston and Providence. MBCR thus satisfies the definition of a rail carrier set forth in 49 U.S.C. 10102(5) and would provide *interstate* transportation as specified in 49 U.S.C. § 10501(a).” *Id.* at 2 (emphasis added; footnote omitted). The Board went on to find that MBCR would be excepted from Board jurisdiction because it was a local governmental authority providing mass transportation. *Id.* at 3.

Metra fits well into the parameters of the *Massachusetts Bay* decision. Like MBCR, Metra provides service across a state line into Kenosha. In addition to transporting the passengers themselves, Metra utilizes the yard at Kenosha to facilitate and support its operations throughout the UP-N Line. Metra also hosts Amtrak intercity service.¹⁰ Metra further has granted trackage rights to freight railroads.¹¹ Metra is an interstate rail carrier for the same reasons that the Board found MBCR met the statutory definition.

The *Massachusetts Bay* decision found MBCR to be an interstate railroad not just on the line to Providence, but for its entire system. Metra functions as a unified system, and not merely as a set of individual lines. Passengers purchase one-way and other tickets not merely to ride a particular line, but to traverse one or more zones that can span different lines. See <https://metra.com/document/fare-zone-mappdf> (showing the fare zones within Metra's system) and <https://metra.com/fare-table> (fare table showing one-way and other ticket fares by zone).

¹⁰ Amtrak Host Railroad Report – March 2025 lists Metra as a host at page 9, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/March-2025-Amtrak-Host-Railroad-Report.pdf>.

¹¹ *Chicago and N.W. Transp. Co. – Trackage Rights Exemption – The Commuter Rail Div. of the Reg. Transp. Auth.*, FD 31911 (ICC Notice of Exemption served July 15, 1991) (overhead trackage rights for 4.05 miles); *Iowa, Chi. & E. R.R. Corp. – Trackage Rights Exemption – Commuter Rail Div. of Reg. Transp. Div. of Northeast Ill. & Soo Line R.R. Co.*, FD 34177 (Sub-No. 1) (STB served Apr. 11, 2003) (Soo granting overhead trackage rights of 33.7 miles of track owned by Metra); *The Belt Ry. Co. of Chi. – Trackage Rights Exemption – The Commuter Rail Div. of the Reg. Transp. Auth., Metra*, FD 32139 (ICC Notice of Exemption served Oct. 20, 1992) (overhead trackage rights of 4.15 miles); and *Wisc. Cent. Ltd. – Trackage Rights Exemption – Commuter Rail Div. of the Reg. Transp. Auth.*, FD 33295 (STB served Nov. 27, 1996) (non-exclusive trackage rights for 6.0 miles).

In sum, while there is no basis to find that a local governmental authority needs to be or have been an “interstate” rail carrier under the pre-ICCTA standards and requirements to obtain terminal trackage rights, Metra qualifies as one with respect to its entire system, and not just the UP-N Line.

Finally, with no factual or legal support, UP claims that “every intrastate commuter railroad operation in America would be eligible to seek terminal access relief under Metra’s theory.” Motion at 19. That is not Metra’s position, and Metra’s Application leads to no such conclusion. The Application rests on a careful reading of the intertwined statutory provisions, as applied to Metra’s particular facts, including Illinois’ decertification from intrastate regulation as of December 31, 1995, past Metra precedents, and the interstate nature of Metra’s operations. Metra’s Application should be decided on the merits – not a strawman argument.¹²

III. Metra’s service on the UP Lines after June 30, 2025

UP asserts that “[d]ismissal of this case will not leave the citizens of Chicagoland stranded.” Motion at 3. UP’s assertion has no direct bearing on the Board’s statutory jurisdiction but warrants a response, because it fails to

¹² Metra is unaware how many local governmental authorities providing transportation exist that could meet the jurisdictional criteria of § 10501(c)(3)(B). The AAR identifies 16 commuter railroads that operate on freight-owned track, but that number does not account for whether those entities, like Metra, could meet the jurisdictional bar. See <https://www.aar.org/issue/freight-railroads-amtrak/#:~:text=According%20to%20the%20American%20Public,contract%20out%20for%20the%20service>. The point is moot in any event because Board’s jurisdiction to determine whether a local governmental entity should be granted trackage rights turns on the statutory language, not UP’s preference that no local governmental entity is given the chance.

acknowledge that without trackage rights and the opportunity to negotiate a bilateral agreement for its use of the UP Lines, Metra would be forced to accede to a 100%-plus increase in costs to pass along to its riders and the taxpayers along with a host of one-sided terms and conditions harmful to the public interest.

In late May, after Metra had filed its Opening Statement and Evidence, UP sent (and publicized) its CEO Mr. Vena's May 21, 2025, letter, stating that UP "will not be stopping service to the millions of people who use Metra daily" and that "[o]n July 1, after the current contract expires, we will be *posting* the new rates." Motion, Exhibit C (emphasis added). UP has provided several iterations of what those new posted rates might be. With Mr. Vena's letter, UP provided a draft Passenger Rail Operating Agreement ("PROA"), that included escalated costs and unreasonable terms for Metra's post-PSA use of the UP Lines, similar to those that Metra previously had advised were unacceptable.¹³ The PROA at least in theory was subject to negotiation. On June 3, 2025, with its Reply Statement and Evidence, UP then proposed "Interim Terms and Conditions" for the Board to order for Metra's post-PSA use, but redacted the rates from the public version of its filing.¹⁴ The next day, on June 4, 2025, UP unveiled its COE.

¹³ The PROA was only the second contract proposal made by UP during the parties' years of negotiations over the conditions and compensation for Metra's post-PSA use of the UP Lines. The first was on July 8, 2024, which UP rescinded three weeks later. *See* Metra Resp. in Opp'n to Appl. for Mediation (FD 36800, filed Aug. 8, 2024) at 5, n.1.

¹⁴ Reply Statement and Evidence, Joint Verified Statement of John W. Turner and Mark Bristol, Exhibit B.

The COE is unilateral. It provides that Metra will be automatically “bound by these terms and conditions of entry,” beginning July 1, 2025, and barred from entering the track and operating its trains on the UP Lines unless Metra complies with its non-negotiated provisions. Exhibit A, §§ 11.1, 12.6. The usage rate is \$18.50 per train mile, with a 2.9% escalation each January 1. This rate (also included in the PROA) is double the parties’ existing agreed interim compensation of \$21 million annually, and at least triple a reasonable calculation under the capitalized earnings framework of the *SSW Compensation* formula.¹⁵ The COE provides that UP will be paid additional amounts for use of stations, platforms, mechanical yards, platforms, and the like, previously included in UP’s PSA return.

The COE imposes numerous other unreasonable and coercive terms and conditions. For example, the COE claims as UP’s property parts of the UP Lines that, in fact, are owned by Metra. **Exhibit A** at § 1.9.¹⁶ The COE unreasonably degrades Metra’s ability to make previously routine service changes that are necessary to operate Metra’s commuter rail service effectively. *Id.* at § 2.3. The COE unreasonably requires Metra to pay for all capital expenditures to the UP Lines, rather than proportionally in accordance with Metra’s use. *Id.* at § 4.4. The COE unreasonably fails to provide assurances of on-time performance and, instead, only

¹⁵ Metra has included as **Exhibit B** some representative calculations under the capitalized earnings framework.

¹⁶ Specifically, the COE claims as rail property parts of the UP Lines owned by Metra from Mile Post (MP) 0.0 at Ogilvie Transportation Center to approximately MP 0.2, where UP’s property interest begins.

promises “reasonable efforts to minimize disruption of Metra’s schedules.” *Id.* at § 7.1. The CEO unreasonably shifts liability from UP onto Metra by requiring Metra to indemnify UP for its strict liability offenses and negligence wholly attributable to UP’s wrongdoing. *Id.* at §§ 9.1, 9.2.

In addition, the COE resorts to naked self-help by requiring Metra to waive its constitutional right to a jury trial for all matters arising out of or relating to the COE, including the claims currently pending against UP in Metra’s lawsuit in the Northern District of Illinois. *Id.* at § 12.5.

Make no mistake: UP is presenting its COE on a take it or leave it basis – now that the parties have completed the transfer of the commuter service to Metra and less than a month before Metra’s current usage rights expire. At the same time, UP is asserting that its unilateral pricing and terms of service are immune from any form of review. UP has made clear how it views Metra’s position in this proceeding: “[T]hey are looking to obtain[] rights that they do not currently have, sir.” Deposition of David Hughes, Tr. 124:2-3 (**Exhibit C**). UP also has made clear that, while it intends to impose its own non-negotiated terms on Metra, it will not post a § 11101 common carrier rate, as clarified in a letter the same day UP filed its Motion. *See* Letter from UP’s counsel dated May 23, 2025, attached as **Exhibit D** (stating that “no rates provided by Union Pacific, nor or in the future, are pursuant to 49 U.S.C. § 11101, as Union Pacific does not have a common carrier obligation to provide commuter service”).

UP's legal right to have discontinued provision of the commuter service is not in dispute. *Union Pac. R.R. Co. v. Reg'l Transportation Auth.*, 74 F.4th 884, 886 (7th Cir. 2023). The issue is whether UP can dictate monopolistic terms for a vital and irreplaceable public service free of any regulatory oversight. In essence, UP is claiming all the benefits of establishing a "filed rate," while absolving itself of any associated responsibilities and obligations.

Congress drafted § 11102 with the public interest squarely in mind and the recognition that "a local transportation authority's request [for trackage rights] would virtually always satisfy the public interest standard." H.R. Rep. No. 104-422, at 184 (1985) (Conf. Rep.). UP's recent actions do not bear directly on the Board's jurisdiction, but they strongly suggest why Congress, when it passed the ICCTA, provided the Board with authority to grant the rights that Metra is requesting here along with the opportunity for a prompt, transparent, and reasonable resolution of the conditions and compensation for its use of the UP Lines.

IV. Conclusion

UP's Motion to Dismiss should be denied. UP has raised no legal or factual basis to support a conclusion that the Board lacks the statutory jurisdiction to grant, or that Metra is ineligible to obtain, the requested terminal trackage rights. The unreasonable and coercive terms and conditions that UP has dictated for Metra's post-PSA rail service beginning July 1, 2025, confirm the need for the Board to exercise its discretion to grant the remedial relief requested.

Respectfully submitted,

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

Dated: June 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2025, a copy of the foregoing Reply to Motion to Dismiss has been served by first-class U.S. Mail, or more expeditious means, on counsel for Union Pacific Railroad Company.

/s/ Peter A. Pfohl

Exhibit A
Union Pacific Condition of Entry (“COE”)



CONDITION OF ENTRY METRA COMMUTER OPERATIONS

This **PASSENGER RAIL CONDITION OF ENTRY** (herein “COE” or “Agreement”) is effective on 1st day of July 2025 (“**Effective Date**”) to set the terms and conditions for the COMMUTER RAIL DIVISION of the Regional Transportation Authority Act (“Metra” or “CRD” or “Passenger Agency”) condition of entry to use certain property of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Union Pacific” or “UP” or “Railroad”) to provide passenger rail service. Metra and Union Pacific may be individually referred to as a “Party,” and jointly referred to as the “Parties.”

PASSENGER RAIL CONDITION OF ENTRY TERMS AND CONDITIONS

Section 1. DEFINED TERMS

Section 1.1 “*Claim*” shall have the meaning as set forth in Section 9.

Section 1.2 “*Confidential Information*” means any information delivered to either Party (the “Receiving Party”) by or on behalf of the other Party (the “Providing Party”) that: (a) is proprietary, privileged, or confidential in nature; and or (b) was visibly marked, labeled, or otherwise adequately identified as such when provided to the Receiving Party. Notwithstanding the foregoing, Confidential Information does not include information that: (i) was publicly known or otherwise known to the Receiving Party prior to the time of such disclosure; (ii) subsequently becomes publicly known through no act or omission by the Receiving Party or any person acting on the Receiving Party’s behalf; or (iii) constitutes financial statements that are otherwise publicly available; or (iv) is independently developed by the Receiving Party without reliance on or reference to the Providing Party’s Confidential Information; (v) is rightfully received by the Receiving Party from a third party that is not under any obligation to keep such information confidential; or (vi) is approved for release by the Providing Party in writing.

Section 1.3 “*Designated Operator*” means a legal entity designated by Metra and authorized and approved by Union Pacific, at its sole discretion and in writing, to be responsible for the control, management, and operation of Metra’s trains on Union Pacific Rail Lines. As of the Effective Date, Metra is the Union Pacific-approved Designated Operator.

Section 1.4 “*Force Majeure Event(s)*” means: (a) governmental orders, laws, actions, or pronouncements of local, regional or national emergencies that impair Union Pacific’s performance under this COE; (b) terrorist threats, acts, or explosions of any kind; (c) riots, insurrection, war, terror, occupation, coup, or civil unrest; (d) picket lines, strikes, labor stoppages or slowdowns, or lockouts by third parties providing labor, material, or services under contract to a Party, or other occurrences that make a Party unable to procure critical materials despite commercially reasonable efforts to procure such materials; (e) derailments, wrecks, freight embargoes or blockades, or unforeseen catastrophic railroad emergencies anywhere on or adjacent to rail lines; (f) pandemic outbreaks of communicable diseases or other public health emergencies; (g) acts of God, earthquakes, fires, explosions, floods, cloudbursts, tornados, or other natural phenomena beyond the power of a Party to reasonably foresee or to make preparation in defense against, but not including rain, windstorm, or other natural phenomena of normal intensity based on U.S. Weather Bureau reports for the particular locality and for the particular season of the year in which the work is being performed; or (h) other events beyond the reasonable control of the impacted Party.

Section 1.5 “*Government Requirements*” means any order, ordinance, regulation, standard, statute, or other obligation imposed by any governmental body with jurisdiction over the relevant area or activity and/or the Parties.

Section 1.6 “*Insurance Requirements*” shall have the meaning as set forth in Section 10.

Section 1.7 “*Operator Requirements*” shall have the meaning as set forth in Section 6.

Section 1.8 “*Providing Party*” shall have the meaning as set forth in Section 1.2.

Section 1.9 “*Rail Line*” means Union Pacific’s main track, main-track-proximate appurtenances (e.g., ballast, bridges, pocket tracks, rail and fastenings, siding and connecting tracks, signal equipment, signals, switches, and ties.), and underlying subgrade-land for the Union Pacific’s Geneva (mile post 0 to mile post 44), Harvard (mile post 0 to mile post 63), Kenosha (mile post 0 to mile post 52) and McHenry (mile post 58.2 to mile post 65.8) subdivisions. Rail Line excludes all other properties such as stations and parking lots. Access to industry and yard tracks e.g., non-main tracks, including mechanical facility yard tracks, require separate agreements.

Section 1.10 “*Railroad Activities*” means, collectively, (a) the performance of construction, maintenance, or repair of Rail Lines; (b) the construction, maintenance, and repair of highways, utility lines, or other public works that cross or are adjacent to Rail Lines; or (c) any other activities or situations as may arise.

Section 1.11 “*Railroad Indemnified Parties*” shall have the meaning as set forth in Section 9.

Section 1.12 “Railroad Requirements” means the rules, regulations, standards, and requirements established or modified by Union Pacific from time to time.

Section 1.13 “Receiving Party” shall have the meaning as set forth in Section 1.2.

Section 1.14 “Rolling Stock” means all locomotives, carriages, wagons, or other passenger rail vehicles used on Rail Lines.

Section 1.15 “Special Trains” means a Train that is operated on an occasional, seasonal or non-regular basis such as Ravinia and NASCAR.

Section 1.16 “Specified Claim” shall have the meaning as set forth in Section 9.

Section 1.17 “Term” means as of the Effective Date through July 1, 2026, unless terminated accordance with the provisions of this COE.

Section 1.18 “Train” means a series of connected passenger rail vehicles used to transport Metra passengers on the Rail Line. Such vehicles include locomotives, cars, and all other Rolling Stock.

Section 2. ACCESS TO RAILROAD RAIL LINES

Section 2.1 Access to Railroad Rail Lines. Union Pacific grants Metra a non-exclusive, revocable limited license to access and operate trains on Rail Lines during the Term, subject to Union Pacific's reserved rights and these terms and conditions. Metra may operate trains on the Rail Line according to the officially published commuter train service schedule as of the Effective Date. Each train consist operated by Metra shall not exceed 1,100 feet in length. This license is contingent upon Metra's compliance with all applicable laws, regulations, and agreements governing such operations. The license does not constitute an interest in real property.

Section 2.2 Rolling Stock. Metra's Rolling Stock must meet Government Requirements and Railroad Requirements including the requirement that Rolling Stock equipment must properly shunt to activate Union Pacific's signal system (e.g., automatic crossing warning device).

Section 2.3 Service Changes of Train Schedules and Consists. Union Pacific has no obligation to permit the operation of additional Trains, route changes, schedule changes, consist changes, improvements, enhancements, or any other changes.

Section 2.4 Discontinuation and Modification of Service. If a Train is suspended for a period of more than thirty (30) consecutive days, such Train shall be deemed discontinued, and Metra will no longer have the right to the COE for that Train unless Union Pacific expressly agrees in writing to reinstate the COE.

Section 3. COMPENSATION, COST REIMBURSEMENT, AND OTHER EXPENSES

Section 3.1 Rail Access Fee. Metra shall pay \$18.50 per train mile operated on the Rail Lines. The rail access fee rate shall increase 2.9% annually each January 1st.

Section 3.2 Engineering, Dispatching, Crew Calling and Timekeeping. The expenses incurred by Union Pacific in connection with engineering, dispatching, crew calling, timekeeping, and other operational activities shall be calculated based on the actual labor charges attributable to the Union Pacific's employees who are engaged in commuter operation roles or are rendering support or services for the facilitation of Metra's operations. This calculation shall include the costs of materials and other related expenditures. The aggregate amount of these expenses is subject to modification contingent upon the following factors: (a) alterations in labor and material rates; (b) adjustments in the number of required positions; (c) variations in the duration of time allocated to the provided service; and (d) additional pertinent factors. Both direct costs and associated costs shall be recognized as reimbursable expenses.

Section 3.3 Other Expenses and Costs. Other costs, including taxes and logistical transportation expenses for materials, shall be allocated and invoiced to Metra based on its respective train miles operated over the Rail Line, or by an alternative method determined by Union Pacific.

Section 3.4 Special Trains. Metra may submit a written request to Union Pacific for Special Trains. Upon receipt of such a request, Union Pacific shall issue a written response within thirty (30) days. If the request is approved, the Parties shall enter into a separate agreement that clearly defines and establishes the terms and conditions for the Special Train.

Section 3.5 Billing and Monthly Payment. Metra shall pay all invoices within five (5) days of receipt of a billing statement from Union Pacific. Union Pacific reserves the right to adjust future billing statements to correct errors or to include previously omitted items.

Section 3.6 Overdue Payments. All unpaid sums of money due and payable by Metra to Union Pacific shall accrue interest at the greatest of: (a) the maximum percentage permitted under Illinois law; (b) six percent (6%) per annum; or (c) the Prime Rate plus two percentage points, based on the Prime Rate published in the Money Rates section of the Wall Street Journal on the due date. Interest shall begin to accrue thirty (30) days after the payment due date.

Section 3.7 Billing Disputes. The existence or pendency of any dispute under this COE shall not, under any circumstances, exempt, suspend, or modify Metra's payment obligations as stipulated in this COE. Metra is required to fulfill any and all payment obligations promptly and in full, irrespective of any disputes.

Section 4. MAINTENANCE OF RAIL LINES AND STRUCTURES

Section 4.1 Maintenance of Rail Lines. Subject to Sections 4.4 and 4.5 below, Union Pacific shall maintain the Rail Lines in accordance with the standards necessary to maintain the schedules as of the Effective Date. The maintenance of Rail Lines shall also include regular inspection of tracks, signal equipment, and structures as prescribed by Government Requirements and Railroad Requirements.

Section 4.2 Maintenance of Signal and Communications. Union Pacific's signal and communications systems shall be maintained in accordance with applicable Government Requirements and Railroad Requirements.

Section 4.3 Other Maintenance and Government Requirements. All maintenance performed under Sections 4.1 and 4.2 are reimbursable costs as described in Section 3.

Section 4.4 Capital Expenditures. Metra is responsible for capital expenditure needed for the Rail Lines, including costs associated with acquisition, construction, modification, renewal, replacement, and installation, or permanent improvement. If Metra fails to provide any capital expenditure needed for the Rail Lines, in Union Pacific's reasonable judgment, then Metra shall adjust its operations on the Rail Lines as needed to adapt to the condition of the Rail Lines.

Section 4.5 Restoration of Rail Lines. In the event of a casualty or catastrophic service interruption, including but not limited to bridge failures, roadbed collapses, and tunnel collapses, Union Pacific shall decide in its sole discretion on whether to restore the Rail Line or any subsection thereof. In the event Union Pacific elects to undertake the restoration of the Rail Line, or any subsection thereof, the costs associated with such restoration shall be apportioned and invoiced to the parties in accordance with their respective train miles operated over the affected Rail Line, or subsection thereof, during the twelve (12) month period immediately preceding the commencement of the month in which the casualty or catastrophic event occurs. In the event the Union Pacific determines not to restore the Rail Line or subsection thereof, Metra may elect to fund the restoration at its sole cost.

Section 4.6 Notice and Accommodation of Railroad Activities. Union Pacific shall use reasonable efforts to provide Metra with notice of scheduled Railroad Activities no later than fourteen (14) days prior to the beginning of Railroad Activities. Such a notice shall be in writing and sufficiently describe the Railroad Activities (e.g., date, location, and, if practicable, the hours). Such notice is merely informative and does not bind Union Pacific to conduct Railroad Activities according to the schedule in the notice, nor does it grant Metra any right to object to Railroad Activities for which fourteen (14) days' notice is not given. Such notice need not be provided in the event of an emergency. Regardless of whether Union Pacific was able to provide such notice, Metra shall provide temporary accommodation in its routes, schedules, or consists for the purpose of minimizing interference with Railroad Activities. Metra shall be solely responsible for all the costs and expenses it incurs to accommodate the Railroad Activities.

Section 5. PROPERTY OF RAILROAD

Section 5.1 No Rights in Union Pacific's Real Property. Notwithstanding anything to the contrary, nothing in this COE grants Metra any rights in any real property owned, leased, licensed, or otherwise used by Union Pacific.

Section 5.2 Access onto Rail Lines or Other Railroad Property for Work. Prior to Metra accessing, or having its contractors access, Rail Lines or other property of Union Pacific in order to perform any work on any property of Union Pacific, or other property adjacent to Rail Lines, Metra shall, and shall cause its contractors to, enter into a right of entry agreement with Union Pacific.

Section 5.3 No Warranty of Title; DISCLAIMER. WITH RESPECT TO RAIL LINES OR ANY OTHER RAILROAD PROPERTY, UNION PACIFIC MAKES NO COVENANT OR WARRANTY OF TITLE OR QUIET POSSESSION OR AGAINST ENCUMBRANCES. RAIL LINES AND ALL OTHER PROPERTY OF UNION PACIFIC ARE PROVIDED AS-IS, WHERE-IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ANY AND ALL OTHER WARRANTIES OR OBLIGATIONS ARE HEREBY EXPRESSLY DISCLAIMED.

Section 5.4 Condition of Access Granted Subject to Outstanding Rights. The COE granted to Metra by Union Pacific is subject to: (a) any existing encumbrances and rights (whether public or private), recorded or unrecorded, and any renewals thereof, and (b) the rights of any other railroads to operate on Rail Lines, whether existing as of the date hereof or granted by Union Pacific in the future, provided that the operations of any such railroad shall be reasonably coordinated with Metra's operations. If any property or rights other than the rights hereby granted are necessary for the operation of Trains on Rail Lines, Metra shall acquire all such other property and rights at its own expense and without expense to Union Pacific, and no such need or expense by Metra shall reduce any amounts payable by Metra to Union Pacific.

Section 5.5 No Interference. Metra shall not damage, destroy, or interfere with the property or rights of nonparties in, upon, or relating to Union Pacific's property, unless Metra at its own expense settles with and obtains releases from such nonparties, and all such expenses shall be subject to indemnification by Metra in accordance with Section 9. Union Pacific reserves the right to use and to grant to others the right to use Rail Lines for any purpose not inconsistent with the COE, including, but not limited to, the right to construct, reconstruct, maintain, operate, repair, alter, renew, and replace tracks, facilities, and appurtenances on the property, to cross Rail Lines with all kinds of equipment, and to grant other persons or entities the right to operate passenger trains on Rail Lines.

Section 5.6 Taxes or Assessments. To the extent any entity imposes any tax or assessment of whatever kind on the COE granted to Metra or the amounts paid by Metra to Union Pacific, Metra shall assume, bear, and pay all such taxes and assessments or, if paid by Union Pacific, reimburse Union Pacific for any such taxes or assessments, in addition to all other sums payable to Union Pacific by Metra.

Section 6. DESIGNATED OPERATOR

Section 6.1 Designated Operator. Nothing herein shall be construed to limit or waive the rights of the Union Pacific to seek indemnification or damages from Metra for the actions of a Designated Operator or another person or entity acting on Metra's behalf.

Section 6.2 Railroad's Approval of Designated Operator. No Designated Operator may perform any action on any Rail Line without the express written approval of Union Pacific. Union Pacific may approve or reject any proposed Designated Operator at Union Pacific's sole discretion. Designated Operator shall have no rights with respect to this COE. While Union Pacific has sole discretion to approve any proposed Designated Operator, Union Pacific shall not be liable for any actions indirectly or directly relating to or regarding any proposed Designated Operator.

Section 6.3 Designated Operator Profile. The Designated Operator must: (a) be operationally capable of safely performing Metra's obligations under this COE ; (b) meet all state, federal, and Union Pacific safety and operational protocols, including but not limited to 49 C.F.R. Part 239 "Passenger Train Emergency Preparedness"; (c) be qualified under the General Code of Operating Rules; (d) require employees to obtain and maintain applicable Federal Railroad Administration certifications, licenses, and fulfill other necessary requirements; (e) be financially viable; and (f) not be a freight Class I railroad or a wholly directly or indirectly owned subsidiary of a freight Class I railroad; (g) ensure equipment utilized in the rail passenger service operations meets Government and Railroad Requirements, including but not limited to the requirement that rolling stock equipment must properly shunt to activate Union Pacific's signal system (e.g., automatic crossing warning device); and (h) not perform any action that would cause Railroad to fall under the jurisdiction of the STB or any other entity for the purpose of 49 U.S.C. § 24308 or any other section within Chapter 243 ("Operator Requirements"). Union Pacific reserves the right, in its sole discretion, to remove the Designated Operator or restrict its operations or take any action it deems reasonable, if the Designated Operator fails to comply with the Operator Requirements.

Section 7. RAILROAD CONTROL AND INSTRUCTIONS

Section 7.1 Dispatching Control. The movement of Trains over and along Rail Lines shall be subject to the exclusive direction and control of Union Pacific. Union Pacific shall use reasonable efforts to minimize disruption of Metra's schedules.

Section 7.2 Railroad Control and Instruction. All Metra or Designated Operator personnel rendering any service in connection with the handling or movement of any

Train while on Rail Lines shall comply with any and all operating rules, timetables, and instructions of Union Pacific.

Section 7.3 Persons Prohibited or Removed. Union Pacific may prohibit any person from performing services pursuant to this COE. In connection with such prohibition, Union Pacific may remove any person from Rail Lines or any other Union Pacific property. Reasons for such prohibition and/or removal including, but are not limited to, safety concerns or misuse of the Union Pacific's intellectual properties.

Section 8. COMPLIANCE WITH REGULATIONS AND RULES

Section 8.1 Regulation and Rules. Metra shall comply with: (a) all applicable Government Requirements and Railroad Requirements, including those relating to the operation, maintenance, condition, inspection, testing, or safety of Trains and other equipment on Rail Lines; (b) the General Code of Operating Rules and any successor published by the American Association of Railroads; (c) Union Pacific's timetables, general orders, bulletins, and other standards as established and modified from time to time; and (d) applicable permit requirements, environmental or otherwise.

Section 8.2 Environmental Compliance. Metra shall use Union Pacific's property and all activities performed upon the property in accordance with all Government Requirements relating to environmental matters, including, without limitation, all applicable laws pertaining to the protection of the environment (e.g., prevention of pollution and remediation of contamination) and human health and safety, including, without limitation, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. § 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; the Noise Control Act, 42 U.S.C. § 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Atomic Energy Act, 42 U.S.C. § 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 *et seq.*; and all analogous applicable state and local laws and regulations and subsequent amendments and or updates (collectively, the "Environmental Laws").

Section 9. INDEMNIFICATION AND LIABILITY

Section 9.1 Metra's Indemnification of Union Pacific in General. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, METRA ASSUMES LIABILITY FOR AND AGREES TO INDEMNIFY, DEFEND, AND SAVE HARMLESS

RAILROAD INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS INCLUDING BUT NOT LIMITED TO (A) ENVIRONMENTAL CLAIMS, (B) CLAIMS OF VICARIOUS LIABILITY, AND (C) PERSONAL INJURY CLAIMS BY ANY PERSON, INCLUDING UNION PACIFIC EMPLOYEES, FOR LOSS, DAMAGE, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY (INCLUDING BUT NOT LIMITED TO DAMAGE TO INFRASTRUCTURE) AND EQUIPMENT, COST OR EXPENSE (INCLUDING COSTS OF INVESTIGATION, ATTORNEY FEES, CONSULTANT FEES, EXPERT FEES, COURT COSTS, AND COSTS INCURRED IN ENFORCING THESE INDEMNIFICATION PROVISIONS), FINE, PENALTY, SETTLEMENT, OR JUDGMENT OF WHATEVER KIND OR NATURE, WHERE SUCH HARM ARISES FROM, RELATES TO, OR IS IN CONNECTION WITH METRA'S SERVICE PROVIDED PURSUANT TO THIS AGREEMENT, OR RELATED TO THE ACTION, INACTION, OR OMISSION OF METRA, ITS EMPLOYEES, CONTRACTORS, VENDORS, VOLUNTEERS, INVITEES, DELEGATES, REPRESENTATIVES, OR AGENTS, ("CLAIM OR CLAIMS"). FOR PURPOSES OF THIS AGREEMENT, RAILROAD INDEMNIFIED PARTIES IS DEFINED TO INCLUDE THE FOLLOWING: UNION PACIFIC AND ITS AFFILIATES, SHAREHOLDERS, OFFICERS, EMPLOYEES, SUCCESSORS, ASSIGNS. RAILROAD INDEMNIFIED PARTIES ALSO INCLUDES DESIGNATED AGENTS AND REPRESENTATIVES WHERE, BECAUSE OF THE ABSENCE OF INSURANCE, ABSENCE OF AN INDEMNITY AGREEMENT, OR INADEQUATE INSURANCE OR INDEMNITY PROTECTION, SUCH AGENT'S ACTS OR OMISSIONS WOULD OTHERWISE RESULT IN LIABILITY TO UNION PACIFIC. (COLLECTIVELY, "RAILROAD INDEMNIFIED PARTIES") TO CLARIFY, METRA IS NOT ASSUMING LIABILITY FOR OR AGREEING TO INDEMNIFY, DEFEND, OR SAVE HARMLESS UNION PACIFIC FOR INCIDENTS THAT DO NOT INVOLVE A METRA TRAIN, METRA SERVICES OR EQUIPMENT OR METRA CONTRACTOR SERVICES OR EQUIPMENT.

SECTION 9.2 Metra's Indemnification of Union Pacific Specifically. WITHOUT LIMITING OR MODIFYING THE OBLIGATIONS OF METRA UNDER SECTION 9.1 OF THIS AGREEMENT, METRA AGREES TO INDEMNIFY, DEFEND, AND SAVE HARMLESS RAILROAD INDEMNIFIED PARTIES FROM AND AGAINST ANY LIABILITY: (A) IRRESPECTIVE OF WHETHER THE LIABILITY IS VICARIOUSLY IMPLIED IN LAW, STRICT, OR IS A RESULT OF A RAILROAD INDEMNIFIED PARTY'S OWN NEGLIGENCE; (B) CAUSED AS A RESULT OF A COLLISION OF A VEHICLE OR A PERSON WITH A METRA TRAIN; (C) CAUSED AS A RESULT OF VAGRANTS AND TRESPASSERS USING METRA FACILITIES; (D) INCURRED IN CONNECTION WITH THE USE OR PRESENCE OF A TAXI OR OTHER ARRANGED TRANSPORTATION SERVICE PROVIDING TRANSPORTATION TO OR ADJACENT TO THE AREAS DELINEATED IN SECTION 1.6; (E) CAUSED BY ANY LOCOMOTIVE, PRIVATE RAIL CAR, PASSENGER CAR, OR ANY OTHER PROPERTY OR EQUIPMENT OWNED BY, LEASED TO, USED BY, OR OTHERWISE IN THE CONTROL, CUSTODY, OR POSSESSION OF EITHER METRA OR UNION PACIFIC; (F) ARISING OUT OF, CAUSED BY, OR IN ANY MANNER RESULTING FROM A COLLISION WITH OR DERAILMENT OF A METRA OWNED OR OPERATED PASSENGER TRAIN; OR (G) ARISING FROM, CAUSED BY, OR IN

ANY MANNER RESULTING FROM ANY SPILL, RESPONSE, MITIGATION, CLEANUP, OR DISPOSAL OF FUEL, OIL, OR OTHER POLLUTANT ARISING FROM, RELATED TO, OR IN CONNECTION WITH METRA'S OR ITS CONTRACTORS ACTIVITIES UNDER THIS AGREEMENT.

Section 9.3 Metra's Obligation to Defend Union Pacific. Union Pacific shall give written notice to Metra of the receipt or pendency of any claim for which Metra is liable or potentially liable to indemnify and save harmless the Railroad Indemnified Parties pursuant to the terms of this COE ("Specified Claims"). For such Specified Claims, Metra shall, at its own cost and expense and without any cost or expense to the Railroad Indemnified Parties, defend the suit and indemnify and save harmless the Railroad Indemnified Parties against all costs and expenses pursuant to the terms of this COE. Union Pacific will use commercially reasonable efforts to give to Metra information relating to each such claim to the extent reasonably necessary and will cooperate in good faith in the defense of any such claim. Metra agrees that it will not settle any claim in any manner that would impose any expense, penalty, obligation, or limitation on any Railroad Indemnified Party without the impacted Railroad Indemnified Party's prior written consent to the specific and fully disclosed expense, penalty, obligation or limitation.

Section 9.4 Union Pacific's Right to Defend Itself. Notwithstanding anything in this COE to the contrary, Union Pacific has the right, but not the obligation, upon notice to Metra, to defend any claim against a Railroad Indemnified Party, to select counsel to defend any Railroad Indemnified Party against that claim and to control the defense and settlement of that claim as against the Railroad Indemnified Party. If Union Pacific opts to do this, Metra will nonetheless be obligated to protect, indemnify and save harmless each Railroad Indemnified Party from and against all such claims to the extent the Metra is obligated to do so under this COE. Such expenses and settlement shall be fair and reasonable.

Section 9.5 Severability Related to Liability. In addition to any other provision of this COE, in the event that all or any portion of this Section 9 is deemed to be unenforceable for any reason, the parties agree that Metra will still indemnify and hold harmless Union Pacific to the fullest extent allowed by applicable law, and only the portion of any offending language that renders unenforceable any portion of this Section 9 will be stricken.

Section 9.6 Survival of Indemnity Obligation. The obligations outlined in Section 9 shall survive any termination of this COE including, but not limited to, termination by performance, implied-in-fact agreements, course of dealing, or otherwise.

Section 10. MAINTENANCE OF INSURANCE

Section 10.1 Insurance Requirements. Metra shall keep in full force and effect insurance coverage that provides the same insurance coverages in amounts not less than the insurance Metra has in effect as of June 30, 2025 (as illustrated in Exhibit A),

and all policies must include Union Pacific as an additional insured, providing Union Pacific the broadest possible coverage available by operation of law and coverage not limited by Metra's liability under the indemnity requirements. This obligation to maintain insurance coverage applies regardless of (a) any monetary caps on Metra's liability or limitations on Metra's liability to others under any state or federal law; or (b) any immunity from liability provided to Metra under any state or federal law.

Section 10.2 Punitive Insurance. Metra must maintain coverage for punitive damages, unless: (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this COE; or (b) all punitive damages are prohibited by all states in which this COE shall be performed. (collectively Sections 10.1 and 10.2, "Insurance Requirements")

Section 10.3 Survival of Insurance Obligation. The Insurance Requirements shall survive any termination of the COE, including, but not limited to, termination by performance, implied-in-fact agreements, course of dealing, or otherwise.

Section 11. TERMINATION

Section 11.1 Termination. In the event of a breach of the terms of this COE, Union Pacific shall have the right to terminate the COE effective sixty (60) days' after providing written notice to Metra. Metra shall undertake all necessary actions to remedy and cure the identified breach(es) within thirty (30) days of the notice. Under no circumstances shall Metra's opportunity to cure exceed sixty (60) days from the issuance date of the original termination notice. Should Metra fail to remedy and cure the breach(es) within the cure period to the satisfaction of Union Pacific in its sole discretion, the COE will be deemed terminated on the termination date set forth in the notice without need for further action by Union Pacific.

Section 11.2 Modification. This COE shall not be modified, amended, or altered without Union Pacific's written consent.

Section 12. GENERAL TERMS

Section 12.1 Confidentiality. The Receiving Party shall maintain the confidentiality of Confidential Information, except that the Receiving Party may deliver or disclose Confidential Information to: (a) its directors, officers, employees, agents, attorneys, and affiliates to the extent such disclosure reasonably relates to the administration of the transactions contemplated by this COE; (b) its financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section; (c) any federal or state regulatory authority having jurisdiction over the Receiving Party pursuant to legal requirements or a court order; and (d) any other person or entity to whom such delivery or disclosure may be necessary or appropriate: (1) to effect compliance with any Government Requirement applicable to the Receiving Party; (2) to respond to any subpoena or other legal process; (3) in connection with any litigation or dispute to which the Receiving Party is a party; or (4) to enforce or protect the Receiving Party's rights and remedies.

Section 12.2 Force Majeure Events. Notwithstanding anything to the contrary, each Party shall be temporarily excused from the performance of any of its obligations under the COE, except obligations involving indemnification, maintenance of insurance, or the payment of money to the other Party, during the time when such nonperformance is caused by a Force Majeure Event. In all cases, the Party asserting a Force Majeure Event as the basis for temporary excuse from performance must, as soon as practicable after learning of the conditions related to the Force Majeure Event, provide written notice of the Force Majeure Event to the other Party. The notice must explain the nature of the Force Majeure Event, what obligations it affects, the date the Force Majeure Event arose, and an estimate of how long the Force Majeure Event shall interfere with the noticing Party's ability to perform its obligations. The Party claiming an excuse from performance must promptly resume full performance of its obligations upon recovery from or cessation of the Force Majeure Event.

Section 12.3 Governing Law. The COE shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of law rules. Nothing herein constitutes a waiver of principles of legal preemption or preclusion that may apply to Union Pacific because of its status as an interstate rail carrier regulated by the federal government.

Section 12.4 Venue. To the fullest extent permitted by law, any dispute arising under or in connection with this COE or related to any subject matter which is the subject of this COE shall be subject to the sole and exclusive jurisdiction of the United States District Court for the Northern District of Illinois, or, if such court lacks subject matter jurisdiction, then the Circuit Court of Cook County, Illinois. The choice of venue is intended by the passenger agency and railroad to be mandatory and not permissive. Metra and Union Pacific each hereby irrevocably consents to the jurisdiction of the United States District Court for the Northern District of Illinois in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court(s) and that any such dispute which is brought in such court(s) has been brought in an inconvenient forum.

Section 12.5 Waiver of Jury Trial. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

Section 12.6 Metra Is Bound by These Terms and Conditions Upon Entry. Upon the first Metra train accessing Union Pacific's Rail Lines on July 1, 2025, at or after 00:01 AM CT, Metra shall be bound by these terms and conditions of entry. Upon any request by Metra for track authorization or occupancy to operate its trains on Union Pacific's Rail Lines—for example, by contacting Union Pacific's Harriman Dispatching

Center, Lake Street Tower operator, or Union Pacific's Crew Management for train or crew operations—Metra shall be bound by these terms and conditions of entry.

Exhibit A – INSURANCE POLICY AND REQUIREMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/19/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 2003 Tower Drive Monroe LA 71201		CONTACT NAME: Lisa Cleveland PHONE (A/C No. Ext): 318-537-8390 FAX (A/C No): E-MAIL ADDRESS: lisa_cleveland@ajg.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: XL Catlin Insurance Company UK Limited	
		INSURER B: MSIG Specialty Insurance USA Inc.	34886
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1104350600 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:			PC0863424	7/15/2024	7/15/2025	EACH OCCURRENCE \$ 7,500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ \$
A B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY ☒ Excess Auto			PC0863424 HNO100026201	7/15/2024 12/15/2023	7/15/2025 12/15/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N If yes, describe under DESCRIPTION OF OPERATIONS below						☐ PER ☐ OTH- STATUTE ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

\$28,000,000 in excess of \$295,000,000
 Bermuda - PC0861224 Chubb Bermuda \$28,000,000

 \$57,500,000 in excess of \$237,500,000
 London Lloyds
 PC0855024 QBE Casualty Syndicate 1886 \$7,500,000
 PC0855124 Magna Carta Puni Wrap \$7,500,000
 PC0855224 Ascot Syndicate 1414 Lloyds \$10,000,000
 See Attached...

CERTIFICATE HOLDER Union Pacific Railroad Company 1400 Douglas St Mail Stop 0730 Omaha NE 68179 United States	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Arthur J. Gallagher Risk Management Services, LLC		NAMED INSURED Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra 547 West Jackson Boulevard 15th Floor Chicago IL 60661
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM.
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

PC0855324 Ascot Bermuda Puni Wrap \$10,000,000

Europe - PC0854824 Munich Re \$12,500,000
 Bermuda - LSMAEC157246A / PC0854724 Liberty SM Bermuda \$15,000,000
 Bermuda - PC0854924 Chubb Bermuda Insurance Ltd. \$12,500,000

\$77,500,000 in excess of \$160,000,000
 London - PC0849024 Lloyds
 Apollo \$12,500,000
 Canopus \$7,500,000
 Aspen \$5,000,000
 Axa XL \$5,000,000
 Inigo \$5,000,000
 Map \$5,000,000
 MCPD210512/PC0849124 Magna Carta Puni Wrap \$40,000,000

London - PC0850524 Argo Re \$10,000,000
 London - PC0849324 Markel \$5,000,000
 London - PC0863724 Arcadian \$2,500,000
 Bermuda - PC0850524 (shared with Argo) Helix \$15,000,000
 Bermuda - PC0863624 Sompo \$5,000,000

\$25,000,000 in excess of \$135,000,000
 Bermuda - XLUMB-602521/PC0863524 Axa XL \$25,000,000

\$35,000,000 in excess of \$100,000,000
 London - PC0849524 Lloyd's
 CV Starr \$10,000,000
 Hamilton Re \$7,000,000
 AWAC London \$5,000,000
 PC0849624 Magna Carta Puni Wrap \$17,000,000
 AWAC Bermuda Puni Wrap \$5,000,000

London - PC0848924 Markel \$5,000,000
 London - PC0864324 Arcadian \$5,000,000
 London - PC0849724 Argo \$3,000,000

\$85,000,000/\$170,000,000 in excess of \$15,000,000
 Metra is included in RTA's layer of \$85M x \$15M
 Per RTA Schematic
 \$7,500,000/\$15,000,000 in excess of \$7,500,000 SIR - (except Auto \$3,000,000; GL/Premises Non Rail Meetings \$1,000,000; Family Fun Days \$1,000,000; Special Trains \$1,000,000)

Primary: Lloyd's Synd 1225 AEGIS Managing AgncBermuda - PC0863424 \$7,500,000

Certificate holder is included as Additional insured on General liability and Excess Auto Liability policy as required by written contract. Both are covered under policy #PC0863424 XL Catlin Insurance Company UK Limited with FELA coverage and Employee Liability.

Certificate holder is included as Additional Insured on the General Liability, Automobile and Employers Liability policies, when required by written contract.

A Waiver of Subrogation is provided in favor of the additional insureds as required by written contract and applies with respect to General Liability, Automobile and Employers Liability.

Exhibit B

Representative Calculations of Compensation Under the
Capitalized Earnings Framework of the *SSW* Compensation Formula

Metra Interest Rental Calculation, Capitalized Earnings Framework -- 2024 Annual Data

	<u>Item</u>	<u>Source</u>	<u>Book Value</u> <u>Methodology</u>	<u>Cost of Capital</u> <u>Methodology</u>	<u>Enterprise Value</u> <u>Methodology</u>
	(1)	(2)	(3)	(4)	(5)
Multiplier (System)	1. UP Enterprise Value	Varies, See Notes	xxx	xxx	\$162,514,000,000 8/
	2. UP Road Property Ratio	UP 10-K 1/	xxx	xxx	70.7%
	3. UP Net Road Property Value	Varies, See Notes	\$45,328,088,000 5/	xxx	\$114,900,985,956 9/
	4. UP System Freight Net Revenue	UP R-1: Sch 210, L 15, Col (d)	\$9,439,386,000	xxx	\$9,439,386,000
	5. UP Earnings Multiplier	Varies, See Notes	4.80 6/	7.53 7/	12.17 6/
Est. Earnings (UP Metra Lines)	6. UP System Freight Net Revenue	UP R-1: Sch 210, L 15, Col (d)	\$9,439,386,000	\$9,439,386,000	\$9,439,386,000
	7. UP System Freight GTMs	UP R-1: Sch 755, L 104, Col (b)	914,556,079,000	914,556,079,000	914,556,079,000
	8. UP System Net Revenue per GTM	Line 6 ÷ Line 7	\$0.01032	\$0.01032	\$0.01032
	9. UP GTM, 3 Metra UP Segments	UP CGS Report	3,217,521,494	3,217,521,494	3,217,521,494
	10. UP Earnings, 3 Metra UP Segments	Line 8 x Line 9	\$33,204,822	\$33,204,822	\$33,204,822
	11. Metra Earnings, 3 Metra UP Segments	Assumed 2/	\$0	\$0	\$0
	12. Total Earnings, 3 Metra UP Segments	Line 10 + Line 11	\$33,204,822	\$33,204,822	\$33,204,822
Req. Return	13. Calculated Value, 3 Metra UP Segments	Line 5 x Line 12 3/	\$159,383,145	\$250,032,308	\$404,102,682
	14. Pre-Tax Cost of Capital	2024 AAR Est. for RR Industry	13.28%	13.28%	13.28%
	15. Annual Required Return	Line 13 x Line 14	\$21,166,082	\$33,204,291	\$53,664,836
Interest Rental	16. Usage Passenger (Car-miles)	Metra Data	14,915,130	14,915,130	14,915,130
	17. Usage Freight (Car-miles)	Estimated 4/	32,561,284	32,561,284	32,561,284
	18. Usage Passenger & Freight (Car-miles)	Line 16 + Line 17	47,476,414	47,476,414	47,476,414
	19. Annual Required Return per Car-mile	Line 15 ÷ Line 18	\$0.45	\$0.70	\$1.13
	20. Usage, Metra's Apportionment	Line 16 x Line 19	\$6,711,809	\$10,440,591	\$16,854,097

1/ UP 10-K: Net Book Value of (Land + Road Property) ÷ Net Book Value of Total Assets

2/ Metra's operating expenses exceed its operating revenues, resulting in negative net revenues. Rather than attributing negative earnings to Metra traffic, Metra traffic is assumed to generate no earnings in this analysis.

3/ These values do not reflect adjustments for capital investments made by Metra.

4/ Applied 2021 ratios of Car Miles-to-GTM and Car Miles-to-Train Miles to the UP 2024 CGS Report GTM and Train Miles respectively, then averaged.

5/ UP R-1: Schedule 330, Line 30, Column (h) - Schedule 335, Line 30, Column (g)

6/ Line 3 ÷ Line 4

7/ 1 ÷ Line 14

8/ Equity Market Cap + Fair Value of Debt - Cash & Equivalents - Short-term Investments, as of 12/31/2024

9/ Line 1 x Line 2

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

Exhibit C

Excerpts from the Transcript of the Deposition of David H. Hughes,
Union Pacific Assistant Vice President of Joint Facilities and Interline

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 FD 36844
4 COMMUTER RAIL DIVISION OF THE
5 REGIONAL TRANSPORTATION AUTHORITY
6 D/B/A METRA
7 - TERMINAL TRACKAGE RIGHTS -
8 UNION PACIFIC RAILROAD COMPANY
9 **REDACTED, PUBLIC VERSION**
10 HIGHLY CONFIDENTIAL
11
12 DEPOSITION OF DAVID HUGHES, taken
13 before Cynthia Craig, Registered Professional
14 Reporter and General Notary Public within and
15 for the State of Nebraska, beginning at
16 8:03 a.m., on April 25, 2025, at Union Pacific
17 Railroad Office, 1400 Douglas Street, STOP 1580,
18 Omaha, Nebraska.
19
20
21
22
23
24
25

1 (Whereupon, the following proceedings were
2 had, to-wit:)

3 DAVID HUGHES,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PERGOLIZZI:

8 Q. Okay. Good morning. Please estate
9 your name for the record.

10 A. Sure. My name is David Hughes.

11 Q. Okay. And Mr. Hughes, who is your
12 current employer?

13 A. Union Pacific.

14 Q. All right. And have you ever been
15 deposed before?

16 A. Yes.

17 Q. Okay. How many times?

18 A. Several.

19 Q. Okay.

20 A. I -- I -- multiple times over the last
21 20 years.

22 Q. And so you have a basic understanding
23 of the process?

24 A. Yes.

25 Q. Okay. And just to go over a couple of

1 region.

2 Do you see that?

3 A. I do, sir.

4 Q. And you're familiar with -- you have
5 knowledge of those issues?

6 A. Yes, sir.

7 Q. And should have asked you, but you're
8 current title is?

9 A. Sure. I'm the AVP of joint facilities
10 and interline.

11 Q. Okay. And how long have you been in
12 that position?

13 A. I've had this AVP role for a little
14 over a year.

15 Q. Okay.

16 A. I've been responsible for joint
17 facilities since 2012.

18 Q. Okay. And can you just give me a
19 general description of the duties that you've
20 had relating to joint facilities in that time
21 frame, 2012 to the present?

22 A. Joint facilities generally deals with
23 the agreements between ourselves and other
24 railroads, merger condition agreements,
25 agreements with other government agencies,

1 A. I know that -- I know that during
2 Covid, and there's been a lot of discussion
3 about the fact that Metra is in trouble because
4 they couldn't -- they couldn't recover all of
5 their passengers that they had prior to Covid.
6 That's what I'm familiar with.



16 Q. Metra is not looking to condemn your
17 line; you understand that, right?

18 A. I think that trackage right is a
19 condemnation, sir.

20 Q. They're not looking to take the
21 property away from UP, are they?

22 A. Yes, sir, I think they are taking our
23 rights.

24 Q. Aren't they just using -- aren't they
25 just looking to use the property the way they

1 have for over 50 years?

2 A. I think they are looking to obtains
3 rights that they do not currently have, sir.

4 Q. And what rights do they not currently
5 have that they would get trackage rights from
6 your understanding?

7 A. They would get trackage rights.

8 Q. And don't they have access rights
9 under the --

10 A. They have operating rights.

11 Q. Okay.

12 A. Those operating rights have a term and
13 conditions.

14 Q. And it would be terms and conditions
15 to the access under the term of the trackage,
16 right?

17 A. Agreed.

18 Q. Okay. UP would be compensated for the
19 use of the line, right?

20 A. Yes.

Exhibit D

Letter from Union Pacific Counsel dated May 23, 2025



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

RATKINS@SIDLEY.COM
+1 202 736 8889

May 23, 2025

By email

Paul W. Hughes
McDermott Will & Emery LLP
500 North Capitol Street NW
Washington, DC 20001
(202) 756-8000
phughes@mwe.com

Re: *Continuation of commuter rail service during pendency of litigation*

Dear Paul:

Thank you for your letter dated May 22, 2025, in which you raise several questions regarding Mr. Vena's letter to Mr. Derwinski. As I wrote previously, Union Pacific has conveyed to Metra a proposal for a reasonable, market-rate agreement. Metra should come to the table so the parties can reach a mutually acceptable resolution that serves the interests of both railroads and their respective customers. It will be more productive if those discussions take place directly between the parties, and not between outside lawyers. As such, any questions about the letter should be directed to Liisa Stark, Union Pacific's party-led negotiator. I can, however, confirm that no rates provided by Union Pacific, now or in the future, are pursuant to 49 U.S.C. § 11101, as Union Pacific does not have a common carrier obligation to provide commuter rail service.

Sincerely,

Raymond A. Atkins, Ph.D