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**EXPEDITED CONSIDERATION REQUESTED**

ENTERED  
Office of Chief Counsel  
September 29, 2025  
Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. FD 36844**

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

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**PETITION FOR INTERIM CONDITION OR STAY**

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Christina B. Conlin  
James B. Boles  
Tonya W. Conley  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street  
Omaha, NE 68179

Raymond A. Atkins  
Allison C. Davis  
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*Counsel for Union Pacific Railroad  
Company*

Dated: September 29, 2025

Indemnification and liability allocation provisions are standard when passenger carriers operate over another entity’s property—they mitigate risk and reduce uncertainty by clearly delineating each party’s rights and obligations in the event of an incident. But because the Board’s September 3rd decision<sup>1</sup> ordered immediate access with no interim terms, Union Pacific is now shouldering significant risk by hosting passenger operations with no clear indemnity protections. This is not theoretical: Union Pacific regularly faces claims arising from Metra operations. And just three days after the Board’s decision, a Metra train struck and killed a pedestrian on Union Pacific’s UP-North rail line.<sup>2</sup>

The need for clear governing terms on this issue is immediate. Union Pacific previously explained the critical importance of such provisions in the context of passenger operations<sup>3</sup> and offered interim terms in the event the Board granted Metra’s application.<sup>4</sup> Metra acknowledged the importance of having such provisions in place, and offered its own proposed interim conditions for indemnification and liability, which were touted as maintaining the “status quo” under the now-expired Purchase of Service Agreement (“PSA”).<sup>5</sup> And both Congress and prior agency decisions have recognized the importance of indemnity in the

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<sup>1</sup> Decision, Docket No. FD 36844 (STB served Sept. 3, 2025).

<sup>2</sup> *Pedestrian Struck, Killed by Metra Train in Glencoe*, CHI. SUN TIMES (Sept. 6, 2025) <https://chicago.suntimes.com/news/2025/09/06/pedestrian-fatally-struck-by-metra-train-glencoe>.

<sup>3</sup> Union Pacific Reply Statement and Evidence at 35–36 (filed June 3, 2025).

<sup>4</sup> *Id.* at Ex. B, Sec. 6.

<sup>5</sup> Metra Rebuttal Statement and Evidence at 30, 41–42 (filed June 23, 2025).

context of passenger service operating on freight rail lines. Nevertheless, the Board's September 3rd decision ordered access effective immediately without any governing conditions or compensation.<sup>6</sup> Rather, the Board ordered the parties to attempt to reach agreement.<sup>7</sup>

Despite Union Pacific's willingness to re-adopt the terms and conditions of the PSA for indemnification, liability, and claims administration—a position which Metra itself previously advocated—the parties have been unable to agree to interim terms. In light of the risk and uncertainty that exists due to the Board's order, and the need to resolve these issues promptly, Union Pacific is filing this petition requesting imposition of an interim condition. Alternatively, Union Pacific asks the Board to stay the effective date of the September 3rd decision pending judicial review or until the parties agree to or the Board imposes interim terms and conditions on indemnification and liability allocation. A stay is appropriate because the Board's decision threatens irreparable harm by, among other things, distorting the balance of ongoing commercial negotiations. Further, a stay would not impair commuter service, as Union Pacific has repeatedly explained that it will not exclude Metra from its lines. Union Pacific requests expedited consideration of this petition and that any Metra reply to this petition be filed within five days.

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<sup>6</sup> Decision at 33–34 (STB served Sept. 3, 2025).

<sup>7</sup> *Id.* at 32–33 & n.65.

**I. The Board Should Impose the Indemnity and Liability Allocation Provisions of the PSA as an Interim Condition.**

Union Pacific asks that Metra's operations pursuant to the Board's September 3rd order be conditioned on the indemnification and liability allocation provisions of the PSA as an interim condition.

The need for such governing provisions is immediate. Metra has been operating on Union Pacific property since the Board's September 3rd order without any clear governing terms. Union Pacific faces enormous risk and uncertainty every day that passes without terms that plainly govern the relationship with Metra. The risk of an incident on Union Pacific's property is not merely speculative. Approximately 13.7 million passenger trips occurred on the UP Lines in 2024 alone and incidents can and do occur.<sup>8</sup> Just three days after the STB's access order, a fatality occurred when a pedestrian was struck by a Metra train on Union Pacific's UP-North rail line.<sup>9</sup>

Congress has recognized the importance of indemnity provisions when the agency is ordering operations over the property of another carrier. *See, e.g.*, 49 U.S.C. § 11123(b)(3)(B) (requiring "complete indemnification against any and all claims"); 49 U.S.C. § 24308(b). And the agency has recognized the importance of having such provisions prior to operations under an agency order. *See, e.g.*, *Dardanelle & Russellville R.R.—Authorized to Operate—Lines of Ark. Midland*

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<sup>8</sup> *See* Metra Application at 5 (filed Mar. 7, 2025); *see also* R.R. Safety Overview Reports, available at <https://data.transportation.gov/stories/s/dsuf-xcni>.

<sup>9</sup> *Supra* at n.2.

*R.R.*, Serv. Ord. No. 1516, 1994 WL 101254, at \*4 (STB served Mar. 28, 1994) (authorization to operate expressly conditioned on agreement to “indemnify [owner] for any liability ... as a result” of that operation and stating operations “may commence only upon consummation of [that] agreement”); *Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24309(a)*—*Springfield Terminal Ry., Bos. & Me. Corp., & Portland Terminal Co.*, 3 S.T.B. 157, 161 (1998) (requiring Amtrak to select “full[ ] indemnity” or “purchase appropriate insurance . . . to cover [owner’s] assumption of liability” “no later than 6 months before service is scheduled to begin”). Union Pacific is facing enormous uncertainty and exposure to these risks every day that Metra operates without any governing indemnity and liability allocation terms in place.

To be clear, Union Pacific is not seeking reconsideration of the Board’s decision. Consistent with the Board’s order, Union Pacific has attempted to seek agreement with Metra. On September 7, 2025, Union Pacific sent Metra an offer proposing that the parties re-adopt on an interim basis the terms and conditions of the PSA solely for purposes of indemnification, liability, and claims administration.<sup>10</sup> It was Union Pacific’s hope that Metra would promptly agree to the proposed interim terms—which, again, are simply readoption of the relevant provisions of the PSA which previously governed the parties’ relationship through June of this year. Metra’s position in federal court urged a preservation of the

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<sup>10</sup> See Exhibit A, Letter from John W. Turner to James M. Derwinski (Sept. 7, 2025).

previously agreed to terms under the PSA on an interim basis.<sup>11</sup> And its position before this agency was likewise for preservation of the “status quo” under the PSA, including for indemnity and insurance.<sup>12</sup>

But Metra rejected Union Pacific’s proposal and offered a counter proposal by letter dated September 11, 2025.<sup>13</sup> Metra’s counterproposal represented a significant and unwarranted departure from industry practice, as Union Pacific explained by letter dated September 19, 2025.<sup>14</sup> Given Metra’s unwillingness to consider the PSA terms as a foundation for an interim agreement, Union Pacific is filing this petition requesting imposition of an interim condition.

The Board’s order has heavily tipped the scales in negotiations over terms and conditions in Metra’s favor, as evidenced by Metra’s backing away from a position that it previously advocated for before this agency and in court. Union Pacific’s request is consistent with other cases where the Board has ordered the parties to operate under previously agreed to terms pending resolution of disputes. *See, e.g., Pet. by the S.e. Pa. Transp. Auth. For Relief Under 49 U.S.C. § 24903*, Docket No. FD 36281, at 2 (STB served Mar. 27, 2019) (ordering the parties to continue under the terms of an agreement for the duration of the proceeding).

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<sup>11</sup> *Commuter Rail Div. of Reg’l Transp. Auth. v. Union Pac. R.R.*, No. 1:25-cv-02439, 2025 WL 1787514, at \*2 (N.D. Ill. June 27, 2025) (Metra asked the court to “preserve the PSA” and the “status quo”).

<sup>12</sup> Metra Rebuttal Statement and Evidence at 41–42.

<sup>13</sup> *See* Exhibit A, Letter from John Milano to John Turner (Sept. 11, 2025).

<sup>14</sup> *See* Exhibit A, Letter from John W. Turner to John Milano (Sept. 19, 2025).

Union Pacific therefore requests that the Board impose as an interim condition the indemnity, liability allocation, and claims administration provisions of the PSA.<sup>15</sup>

**II. Alternatively, the Board Should Stay The Effectiveness of Its Decision Pending Judicial Review or Until the Parties Agree on Interim Terms.**

As an alternative to the relief requested above, Union Pacific requests that the Board stay the effective date of the September 3rd decision pending judicial review or until the parties agree on interim indemnity and liability allocation terms.<sup>16</sup>

The Board considers the following factors when deciding a request for stay:

(1) whether the party seeking a stay is likely to prevail on the merits, (2) whether the party seeking a stay will be irreparably harmed in the absence of a stay, (3) whether issuance of a stay would substantially harm other parties, and (4) whether issuance of a stay is in the public interest.<sup>17</sup> All four factors are met here.

***Likely to prevail on the merits.*** Union Pacific will challenge multiple aspects of the Board's September 3rd order on appeal, but for purposes of this petition, Union Pacific focuses on the Board's decision to make the access order

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<sup>15</sup> The relevant provisions of the PSA are section 6.02, section 7.09(c), and Article 10.

<sup>16</sup> The portion of this petition seeking the alternative relief of a stay pending judicial review complies with the page limit for stay requests set forth in 49 C.F.R. § 1115.5(c).

<sup>17</sup> See *N. Coast R.R. Auth. & Nw. Pac. R.R. v. Sonoma-Marin Area Rail Transit Dist.*, NOR 42148, at 3 (STB served Oct. 21, 2016).

effective immediately without any governing conditions or compensation, which is both unlawful and not reasoned decision-making. *See* 5 U.S.C. § 706(2).

First, the Board violated § 11102(a) by granting Metra immediate access to the UP Lines without setting any conditions or compensation. The statute is crystal clear that “compensation shall be paid or adequately secured *before* a rail carrier may begin to use the facilities of another rail carrier under this section.”<sup>18</sup> This language—and the statutory language requiring that the Board set compensation “under the principle controlling compensation in condemnation proceedings,” 49 U.S.C. 11102(a)—reflects the fact that the Board’s access order is a Fifth Amendment taking. Therefore, the statute must be read to require compensation no later than when the takings begins—*i.e.*, when Metra begins operating pursuant to the Board’s order.<sup>19</sup>

Other conditions must be set in advance too. Under § 11102(a), the railroads are “responsible for establishing the conditions *and* compensation” if the Board has found that the statutory criteria for an access order are met. If the railroads cannot agree, “the Board may establish conditions *and* compensation”—which must “be paid or adequately secured *before*” trackage rights are exercised. *See id.* (emphasis added). The best reading of the statute thus reflects that conditions and

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<sup>18</sup> 49 U.S.C. § 11102(a) (emphasis added).

<sup>19</sup> *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021); *see also Knick v. Twp. of Scott*, 588 U.S. 180, 190 (2019) (“The Fifth Amendment right to full compensation arises at the time of the taking.”).

compensation are a package deal to be addressed by both the railroads and the Board “before” the trackage rights take effect.

This reading makes sense as a practical matter: some conditions of use must be set either through mutual agreement or agency order because those terms dictate what the host railroad is being compensated for. The process established by § 11102(a) thus requires fixing both conditions and compensation (whether interim or final) before trackage rights take effect.

Despite the statutory language, and the fact that both parties presented interim terms, the Board declined to set any terms, even as it gave Metra an immediate (but undefined) federal right to occupy Union Pacific’s privately owned rail lines. The Board’s promise to do what it is obligated to do by statute (set compensation according to principles of condemnation) is not adequate security. And its suggestion that its ability to order compensation or adequate security was somehow curtailed by a decades-old D.C. Circuit decision was not supported.

Nor is compensation adequately secured “as a practical matter,” as the Board claimed.<sup>20</sup> The Board’s analogy to the offer of financial assistance context is inapt for a variety of reasons, but even if the analogy were apt, the fact remains that the Board did not impose a compensation condition and the Board’s statement that it “expects Metra to continue to compensate UP” is not an order.<sup>21</sup> The fact that Metra testified that it could afford to pay Union Pacific’s requested access fee does

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<sup>20</sup> Decision at 31.

<sup>21</sup> Decision at 32.

not mean that Metra will pay that or anything else because the Board did not order compensation.

Second, ordering a commuter railroad to operate over a freight rail line without any governing terms is also not reasoned decision-making. Both parties proposed interim terms, yet the Board's decision declined to impose any of them on the view that there is a "statutorily-required negotiating process." But if the Board wanted to allow a negotiation process before addressing either interim or final terms, that process would need to occur *before* access is permitted. Given the parties' competing proposals, the Board could have delayed the effectiveness of its order until the parties could agree on interim terms. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 48 (1983) ("an agency must cogently explain why it has exercised its discretion in a given manner").

Union Pacific explained the importance of having interim terms, including especially indemnity and liability provisions, as a prerequisite to Metra operating on the UP Lines pursuant to an STB order, a point which Metra never disputed. And as explained above, both Congress and this agency have recognized the importance of having indemnity provisions in place *before* operations begin, especially in the passenger context. The Board's decision to make its order effective immediately with no terms at all is particularly problematic given that Metra was continuing to operate on the UP Lines following expiration of the PSA. There was simply no reason the Board's order had to take effect on September 3rd.

Finally, the Board’s refusal to impose interim terms because the parties’ competing proposals were “not easily reconcilable” was an abdication of the Board’s role as an adjudicator. The Board routinely addresses issues relating to interim terms and compensation on a case-by-case basis, weighing competing proposals and making a decision. *See, e.g., New England Cent. R.R.—Trackage Rights Order—Pan Am S. LLC*, Docket No. FD 35842 (STB served Oct. 31, 2017). The very nature of an adjudication like this involves competing proposals. The Board’s decision not to impose interim terms on that basis was arbitrary and capricious.

***Irreparable harm.*** The Board’s decision to force Union Pacific to host commuter rail service on its lines without any governing terms is irreparably harming Union Pacific by, among other things, heavily tipping the scales in negotiations over terms and conditions in Metra’s favor. Metra has no incentive to expeditiously negotiate interim terms that protect Union Pacific from harm arising from risks associated with passenger service operations. Indeed, despite offering the PSA’s terms—terms which Metra previously advocated for—Metra has refused Union Pacific’s most recent proposal. Union Pacific cannot “effectively negotiate” with Metra “free from the influence” of the Board’s failure to order interim terms as a condition to Metra’s exercise of trackage rights. *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 425 (8th Cir. 1996). There is “no way to measure and compensate [Union Pacific] for its loss of leverage” in negotiations with Metra. *Brady v. Nat’l Football League*, 640 F.3d 785, 793 (8th Cir. 2011).

***No substantial harm to other parties.*** Metra will suffer no harm from a stay because commuter trains will continue operating over the UP Lines. During the period that the Board's order is stayed, Metra may continue operating as it did without interruption after expiration of the PSA.

***Public interest.*** Metra operating passenger service over the UP Lines without clear terms, especially for indemnity and liability, is not in the public interest. Indemnification and liability allocation provisions are standard when passenger carriers operate over another entity's property—they mitigate risk and reduce uncertainty by clearly delineating each party's rights and obligations in the event of an incident. The operation of commuter trains on the UP Lines pursuant to the Board's order without clear terms to govern indemnification is unprecedented and creates enormous uncertainty and instability. Moreover, the public interest would not be harmed by a stay, given that commuter operations would continue as they have uninterrupted since expiration of the PSA.

## **CONCLUSION**

For the reasons explained herein, the Board should impose an interim indemnity and liability term or, in the alternative, stay the effectiveness of the September 3rd order pending judicial review.

Christina B. Conlin  
James B. Boles  
Tonya W. Conley  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street  
Omaha, NE 68179

Respectfully submitted,

/s/ Raymond A. Atkins

Raymond A. Atkins  
Allison C. Davis  
Tobias Loss-Eaton  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, DC 20005  
(202) 736-8000

*Counsel for Union Pacific Railroad  
Company*

Dated: September 29, 2025

## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 29th day of September 2025, the foregoing  
Petition For Interim Condition Or Stay was served by first-class mail or more  
expeditious means on all parties of record in this proceeding.

/s/ *Raymond A. Atkins*

Raymond A. Atkins

## **Exhibit A**



**BUILDING AMERICA®**

September 7, 2025

James M. Derwinski  
CEO/Executive Director  
Metra  
547 W. Jackson Blvd., 13th Floor  
Chicago, IL 60661

***Re: Cover Page Indemnification and Liability Letter Agreement***

Dear Mr. Derwinski,

In light of the Surface Transportation Board's (STB) September 3, 2025, decision, it is urgent that the parties reach an interim agreement regarding indemnification, liability, and claims administration. While the STB has encouraged the parties to undertake a concerted, good faith effort to reach an agreement on all terms and compensation, this decision did not address the immediate need to establish ongoing terms for indemnification and liability.

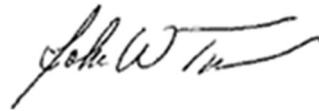
As reflected in the attached letter agreement, Union Pacific proposes that the parties agree to readopt the terms and conditions of the Purchase of Service Agreement (PSA) dated January 28, 2010, and as amended through June 30, 2025, solely for these purposes. Union Pacific further proposes that this letter agreement be retroactive to July 1, 2025, and continue through July 1, 2026. Retroactively applying these provisions will provide the necessary framework for continuous indemnification, liability management, and claims administration, offering clarity and stability amid ongoing disputes.

This letter agreement would override Section 9 provisions in the Condition of Entry (COE) that Union Pacific issued on June 4, 2025. We recognize that Metra disputes the COE's validity, and we do not ask Metra to make any concessions on that point in connection with this letter agreement.

Both Union Pacific and Metra will benefit from a clear and structured approach to managing claims and liabilities. It is in both parties' interest to mitigate uncertainty and address these issues amicably and promptly.

Please confirm by noon on Monday, September 8, 2025, whether Metra agrees to readopt the indemnification, liability, and claim provisions of the PSA. If you require further clarification or wish to discuss this proposal in detail, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Turner". The signature is fluid and cursive, with a long horizontal stroke at the end.

John W. Turner  
Senior Vice President Northern Region  
Union Pacific Railroad

September 7, 2025

James M. Derwinski  
CEO/Executive Director  
Metra  
547 W. Jackson Blvd., 13th Floor  
Chicago, IL 60661

**Re:     *Letter Agreement Indemnification, Liability, and Claims Administration***

Dear Mr. Derwinski,

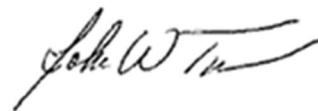
Union Pacific and Metra hereby agree to apply the terms and conditions of the Purchase of Service Agreement (“PSA”) dated January 28, 2010, as amended through June 30, 2025, solely for the indemnification, liability, and claims administration (“Indemnification and Liability Letter Agreement”).

Further, Union Pacific and Metra agree that the Indemnification and Liability Letter Agreement will be effective from July 1, 2025, through July 1, 2026, unless otherwise agreed by the parties.

To the extent Section 9 of the Condition of Entry (COE) that Union Pacific issued on June 4, 2025, is valid and binding—which Metra disputes and does not concede—this Indemnification and Liability Letter Agreement amends and supersedes Section 9 of the COE.

IN WITNESS WHEREOF, Union Pacific and Metra have executed this Indemnification and Liability Letter Agreement as of the day and year first hereinabove written.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Turner", with a stylized flourish at the end.

John W. Turner  
Senior Vice President Northern Region  
Union Pacific Railroad

ACKNOWLEDGED & AGREED  
METRA

By: \_\_\_\_\_  
James M. Derwinski, CEO/Executive Director



September 11, 2025

John Turner  
Senior Vice President Northern Region  
Union Pacific Railroad Company  
1400 Douglas Street, Stop 1580  
Omaha, Nebraska 68179-1580

Dear Mr. Turner:

Metra appreciates your September 7, 2025 letter and offer to work in good faith to address indemnification and liability issues associated with Metra's use of Union Pacific's lines. Metra believes the parties can work collaboratively on these issues and is providing the attached alternative interim proposal for your review.

Metra believes the attached proposal is more consistent with the current operational realities on the lines than looking back to the expired PSA. In our experience, the attached also more closely reflects industry standard indemnity, liability, and claims administration protocols in the trackage rights context. The insurance requirements under Metra's proposal are the same as existed under the expired PSA. For clarity, that coverage remains in place.

Your letter describes the indemnification and liability points as an "immediate need." We are available to work with you expeditiously to reach an interim agreement until a final agreement governing Metra's trackage rights can be reached between the two sides or established by the STB, as ordered in the agency's September 3, 2025, decision.

To avoid delay, Metra recommends that the discussions toward an interim agreement take place within a smaller group of Metra's and Union Pacific's respective risk management professionals.

Metra also received Union Pacific's September 10, 2025 letter and attachments. We are reviewing the attachments and look forward to engaging with UP on a concerted, good faith basis to reach agreement on terms and compensation for Metra's use of your lines. We also are reviewing the letter to determine whether any other response is appropriate.

We look forward to hearing your thoughts on our proposal and cooperatively working through this matter. Thank you.

Sincerely,  
*John A. Milano*  
John Milano

**INTERIM LIABILITY AGREEMENT  
BETWEEN  
THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION  
AUTHORITY  
AND  
UNION PACIFIC RAILROAD COMPANY**

This INTERIM LIABILITY AGREEMENT (this "Interim Liability Agreement") regarding indemnification, liability, and claims administration is entered into as of this 1st day of July 2025 ("Effective Date") by and between the COMMUTER RAIL DIVISION of the Regional Transportation Authority, an Illinois local government entity ("Metra") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"). Metra and UPRR may be individually referred to as a "Party," and jointly referred to as the "Parties."

1. Definitions. The Parties agree that for the purposes of this Interim Liability Agreement:

- (a) The term "Employee(s)" of a Party shall mean all officers, agents, employees and contractors of that Party.
- (b) "Equipment" shall mean trains, locomotives, rail cars (including lading), intermodal units, cabooses, vehicles and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.
- (c) "Rail Lines" shall mean all of the track structure, including mainlines together with cross-overs, connections, switches, siding, and passing tracks of UPRR, including necessary right-of-way and all appurtenances, signals, communications, and facilities of UPRR, and related property and facilities necessary to effectuate the terminal trackage rights under 49 U.S.C. § 11102(a) granted by the Surface Transportation Board ("STB") in *Commuter Rail Division of the Regional Transportation Authority D/B/A Metra – Terminal Trackage Rights – Union Pacific Railroad Company*, FD 36844 (STB served Sept. 3, 2025) ("STB Decision").

2. Liability and Indemnification. Except as otherwise specified, between Metra and UPRR, each Party shall assume and bear all cost and expense for which it is responsible under this Interim Liability Agreement. Such Party shall forever indemnify and save harmless the other, its Employees, successors and assigns, its parent corporations and affiliated companies, from and against all loss, damage, or injury (or death) to persons or property, including all cost, expense, liability and claims of whatever kind or nature for which it is responsible under this Interim Liability Agreement (each, a "Claim"), and shall pay, satisfy and discharge all judgments that may be rendered by reason of and all costs, charges and expenses incident to their responsibility ("Loss and/or Damage") where such Claim arises from, relates to, or is in connection with a Party's operations and activities on the Rail Lines, or related to its acts or omission, or the acts or omission of its Employees, vendors, invitees, delegates, or representatives, on the Rail Lines. The

responsibility undertaken is without respect to fault, failure, negligence, misconduct, malfeasance or misfeasance of either Party.

- (a) Whenever any Loss and/or Damage is related to the acts, inaction, or omission of only one Party, or relates to the Equipment, operations or activities of only one Party, such Party shall assume and bear all responsibility for all cost and expense.
  - (b) Whenever any Loss and/or Damage is related to the acts, inaction, or omission of both Parties, or relates to the Equipment, operations or activities of both Metra and UPRR, excluding maintenance activities, each Party shall separately assume and bear all responsibility for all cost and expense for loss of and damage to the Equipment operated by each of them and for injury to and death of each of its Employees. All cost and expense for injury to and death of any other person or persons and for loss of, damage to, and destruction of all other property so occurring shall be borne by the parties equally.
  - (c) Whenever any Loss and/or Damage is unrelated to the Equipment, operations or activities of either party, or otherwise relates to or arises from maintenance activities, each Party shall separately assume and bear all responsibility for all cost and expense for injury to and death of each of its Employees. All cost and expense for injury to and death of any other person or persons and for loss of, damage to, and destruction of all other property so occurring shall be the sole responsibility of UPRR.
  - (d) Pursuant to preexisting agreements, UPRR has authorized third parties to operate over portions of the Rail Lines, as described in the STB Decision. Whenever any Loss and/or Damage occurs with the Equipment or operations of such third parties, UPRR shall assume and bear all responsibility for all cost and expense in connection therewith.
3. Claims. Each Party shall be responsible for handling and administering Claims for which such Party shall be liable for, as described in Section 2 of this Interim Liability Agreement. Each Party shall have the sole right to settle, or cause to be settled for it, all Claims for Loss and/or Damage for which such Party shall be solely liable under Section 2, and the sole right to defend or cause to be defend all actions or suits for the recovery of any such Loss and/or Damage for which such Party shall be solely liable under the provisions of Section 2
4. Third Party Beneficiary. The provisions of this Interim Liability Agreement, shall apply only as between the Parties and are solely for their benefit. Nothing contained in this Interim Liability Agreement shall be construed as to confer upon any other party the rights of a third-party beneficiary.
5. Maintenance of Insurance. Metra has and will continue to maintain in full force and effect insurance coverage of the same type, character and coverage for its operations under this Interim Liability Agreement as it did as of June 30, 2025. Metra has provided

UPRR with certificates of insurance for such coverage. UPRR will reimburse to Metra its allocated share of any punitive insurance coverage.

6. Term. The term shall commence on July 1, 2025, and expire when the Parties (a) voluntarily enter into a new trackage rights agreement; (b) new terms are established by the STB; or (c) 30 days after a Party provides written notice to the other Party in advance of its intent to terminate the Interim Liability Agreement.

7. Governing Law. This Interim Liability Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and to the extent applicable, the governing rules and principles of the STB.

8. Entire Agreement. Any exhibits, appendices, schedules, and attachments are incorporated into and made a part of this Interim Liability Agreement. This Interim Liability Agreement contains the entire agreement of the Parties with respect to the subject matter addressed and supersedes all prior agreements or oral understandings between the Parties with respect to such subject matter.

9. Counterparts. This Interim Liability Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. Amendments. This Interim Liability Agreement shall not be modified, amended, or altered without the written consent of both Parties.

11. Authority to Execute. Each person who signs this Interim Liability Agreement represents and warrants that he or she has the full and complete power and authority to execute this Agreement on behalf of the Party for which he or she signs and to bind such Party to this Agreement.

12. Severability. If any part of this Interim Liability Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Interim Liability Agreement, and the remaining parts of this Interim Liability Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

**IN WITNESS WHEREOF**, the Parties have executed this Interim Liability Agreement as of the Effective Date.

[Signature Page to Follow]

**UNION PACIFIC RAILROAD  
COMPANY**

**COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION  
AUTHORITY**

By: \_\_\_\_\_  
John W. Turner  
SVP, Northern Region

By: \_\_\_\_\_  
James M. Derwinski  
CEO/Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**BUILDING AMERICA®**

September 19, 2025

Mr. John Milano  
Executive Director Administration  
Metra  
547 W. Jackson Blvd., 13th Floor  
Chicago, IL 60661

**RE: Interim Indemnification and Liability Agreement**

Dear Mr. Milano:

Thank you for your September 11 letter regarding Union Pacific's proposed letter agreement to readopt on an interim basis the PSA terms on indemnification, liability, and claims administration. We have reviewed your counterproposal carefully.

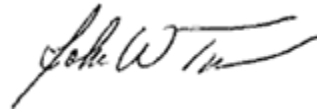
Your proposal represents a significant and unwarranted departure from established industry practice and from the parties' prior agreements. We disagree with your assertion that the proposed terms reflect industry-standard indemnity and liability provisions. Your letter does not provide support for that position. Several elements of your proposal differ from the many passenger access agreements Union Pacific has negotiated. They also differ from agreements Metra itself has entered into with other entities. For example, the provisions you propose for claims arising from MOW activities depart sharply from other known passenger access agreements. This is a significant concern.

More fundamentally, Union Pacific is entitled to full indemnification from Metra, and your proposal fails to recognize that basic principle. We are compelled by the STB order to host the Metra passenger service, which carries well-known risks. In comparable situations, we routinely secure full indemnification from Amtrak for hosting its passenger trains. Here, in recognition of Metra's prior position and in an effort to move forward, we are willing to fall back to the PSA terms—but only on an interim basis to ensure something is in place immediately.

It is especially troubling that Metra is now attempting to walk back from its prior positions. In federal court, Metra argued for carrying forward the PSA terms. Before the STB, Metra urged continuation of the status quo. These positions were clear, consistent, and emphatic. Yet now, after obtaining access through an STB order that imposed no terms, Metra seeks to abandon the very provisions it previously relied upon. This reversal is not justified by any operational change since the May handoff.

Union Pacific remains willing to continue discussions if Metra is prepared to consider the PSA terms as the foundation for an interim arrangement. That approach is consistent with the STB order compelling access, Metra's prior advocacy, and the practical need for certainty while negotiations continue. Please let me know whether Metra is willing to consider the PSA terms as a foundation for an interim agreement by September 26, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Turner". The signature is fluid and cursive, with a long horizontal stroke at the end.

John W. Turner  
Senior Vice President Northern Region  
Union Pacific Railroad



September 22, 2025

John W. Turner  
Senior Vice President Northern Region  
Union Pacific Railroad  
1400 Douglas Street  
Omaha, Nebraska 68179

Re: Interim Indemnification and Liability Agreement

Dear John:

Thank you for your September 19, 2025, letter regarding Metra's proposed Interim Liability Agreement. We appreciate your taking the time to express UP's concerns about that proposal. This response addresses those concerns.

To begin, we remain surprised by UP's change in position regarding the utility of the expired PSA's provisions for any purpose. UP strongly opposed Metra's prior request to maintain the status quo between the parties based on the PSA pending establishment of new final post-PSA agreement. UP specifically has described the PSA in public filings as "no longer tenable" and "no longer appropriate." In announcing its plans last May to unilaterally impose conditions on Metra for its use of the UP Lines once the PSA had expired, UP's CEO stated that, "While we would rather have an agreement in place with Metra, after nearly six years, it is time to move forward." We disagree that reverting to the PSA on a select basis now is the right choice for both sides.

Similarly, it is important to recognize that Metra's prior request to maintain the status quo was made as an alternative to the Interim Terms and Conditions that UP proposed in the STB proceeding on June 3, 2025, and the non-negotiated Condition of Entry document UP announced the next day. In Metra's view, both documents, including the indemnification and liability terms, were one-sided, unreasonable, and contrary to objective industry standards. The STB rejected UP's proposed Interim Terms and Conditions, along with Metra's proposed Interim Conditions and Compensation (which were based on the PSA), in favor of the statutory process requiring the two sides to reach agreement or have the final conditions and compensation for Metra's use set by the agency. The STB described UP's non-negotiated COE as a "contract of adhesion," which is enough said on that point.

We also disagree with your opinion that Metra's proposed Interim Liability Agreement departs in any respect from industry practice. On the contrary, the proposal is modeled directly on an existing Trackage Rights Agreement that governs Metra's use of another Class 1 rail carrier's line, where a PSA previously governed. We have provided UP with a copy of that contract. Under its proposed Interim Liability Agreement, Metra would be fully

responsible and would indemnify UP for claims arising out of Metra's operations on the UP Lines. The proposal would not require Metra to take responsibility for claims arising separately from UP's operations, which is as it should be. We appreciate that UP is interested in minimizing its costs and maximizing its revenues associated with Metra's use of the UP Lines, but making Metra responsible for claims in which it has no part and over which it has no control is inappropriate.

You had indicated in your September 7, 2025, letter that establishing interim terms and conditions for indemnification and liability was an "immediate need," and we responded promptly with a proposal that is consistent with the current operational realities on the lines and objectively feasible. To avoid further delay, we again recommend that discussions toward an interim agreement to meet the need you identified take place within a small and focused group of our respective risk management teams.

We look forward to working with you to negotiate these interim terms and conditions on a bilateral basis and believe this exercise can serve as a model for the two sides to reach agreement on the overarching conditions and compensation for Metra's trackage rights on the UP Lines. To our understanding, UP has not raised any issues with the insurance coverage Metra has obtained for both sides' benefit related to our operations on the UP Lines, and we take that accord as a positive sign.

Going forward, we also suggest that the parties put greater emphasis on bilateral negotiations, rather than correspondence, when issues arise, which we believe is more consistent with the STB's directive for the parties to undertake a "concerted, good faith effort to reach agreement on terms and compensation for Metra's use of the UP Lines." There also is no need to set arbitrary deadlines for Metra's responses to your requests. We expect that UP will respond to our requests related to these negotiations on a timely basis and are committed to continuing to do the same.

We look forward to hearing from you and convening this small group discussion as soon as mutually convenient. Thank you.

Regards,

A handwritten signature in cursive script that reads "John Milano".

John Milano

Deputy Executive Director – Administration