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By E-Filing

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

Re: *Commuter Rail Division of the Regional Transportation Authority
d/b/a Metra—Terminal Trackage Rights—Union Pacific Railroad
Company, Docket No. FD 36844*

Dear Ms. Brown:

On behalf of Union Pacific Railroad Company, I write to respond to Metra's allegation that, by providing an almost-totally redacted copy of Metra's November 21 letter, Union Pacific "misused confidential communications."¹ Contrary to these assertions, Union Pacific's use of the Metra letter was appropriate and necessary to correct Metra's mischaracterizations of the parties' negotiations.²

First, these disclosures did not violate the parties' confidentiality agreement, dated August 12, 2025. Consistent with the parties' course of dealing, the agreement bars disclosures about substance, not process. Metra itself has repeatedly made, or acquiesced to, comparable disclosures, including in filings before this agency.³ This course of dealing reflects the parties' understanding that, while disclosing the *substance* of their negotiations is forbidden, disclosing facts about the negotiation process is not.

¹ See Metra December 18 Sur-reply 1–2.

² Metra claims it was entitled to file its sur-reply to address bifurcation and mediation, yet it used that sur-reply to claim a violation of the parties' confidentiality agreement. To the extent Metra's filing is accepted, Union Pacific seeks permission to file this limited response.

³ See, e.g., Metra November 13 Reply 1–2; Metra December 1 Request to Establish Conditions and Compensation 1–2. Metra also raised no objections to communications included in Union Pacific's September 29 petition for stay.

Context reenforces that understanding. The Board's September 3 order directed the parties to negotiate and to submit status reports on their negotiations' progress. The Board ordered the parties to file "joint status report[s], if possible, or separate reports," thus contemplating potential disagreement about the status of negotiations that would need to be disclosed in those reports.⁴ If the parties truly could not even "refer to" process-related settlement communications, complying with the Board's instructions would be impossible.

Second, Metra opened the door to these targeted disclosures by contradicting its own statements about the status of negotiations. In the November 21 letter, Metra expanded upon the counteroffer Metra proposed a week earlier, promised clean and red-lined versions of a draft agreement, and reiterated its "goal ... to *reach agreement* with [Union Pacific] or to identify any remaining disputed issue(s) *by the end of December*."⁵ But just a week later—and with no intervening developments—Metra asked the Board to open a terms-and-compensation proceeding, asserting that "the parties have been and are unable to reach agreement."⁶

These statements cannot be reconciled. (Metra's half-hearted attempt to do so depends on the Board being unable to tell the difference between December 1 and "the end of December."⁷) And Union Pacific's only option to demonstrate Metra's misstatements to the Board was to use Metra's own words. After all, when one party to a negotiation says "we're at an impasse," it is natural to take that representation at face value. Not so when that same party said the opposite just days before. Having told the Board one thing while telling Union Pacific something else, Metra cannot now complain that Union Pacific has laid bare the contradiction.

Union Pacific also redacted everything of substance in the November 21 letter, revealing only Metra's own statements about process—which belie its statements to the Board on the same topic. And Union Pacific has not filed an unredacted copy with the Board. Union Pacific thus disclosed Metra's communications only to the extent necessary to correct the record.

⁴ See Decision 33–34 (served Sept. 3, 2025).

⁵ Ex. A to Union Pacific December 15 Reply (emphasis added).

⁶ Metra December 1 Request to Establish Conditions and Compensation 1; *see also* Intervenor Metra's Motion to Hold Proceedings in Abeyance 1, *Union Pacific R.R. v. STB*, No. 25-2919 (8th Cir. filed Dec. 5, 2025) (claiming the parties were "at an impasse").

⁷ See Metra December 18 Reply 2.

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In short, Union Pacific's limited disclosures comply with the confidentiality agreement, are consistent with the Board's September 3 order, and are necessary to correct Metra's mischaracterizations.

Regards,

/s/ Raymond A. Atkins

Raymond A. Atkins, Ph.D.

cc: Parties of Record