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Via E-Filing

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

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

Dear Ms. Brown:

Metra writes in reply to the Petition for Interim Condition or Stay, which UP filed on September 29, 2025 (“Petition”), and the Board’s September 30, 2025, decision (“September 30 Decision”), which granted UP’s requested interim indemnity and liability condition and denied UP’s alternative request to stay the Board’s September 3, 2025 decision (“September 3 Decision”) as moot.

Metra appreciates that the Board acted exigently on the eve of a government shutdown to grant “immediate, temporary relief . . . to give certainty to the parties as to the relevant [indemnity and liability] terms and conditions . . . and to ensure that defined terms and conditions are in place” as requested in UP’s Petition. September 30 Decision at 3. The September 30 Decision was consistent in this respect with the September 3 Decision, which invited the parties to seek guidance if they encountered “a material disagreement about appropriate liability and indemnity terms to apply on an interim basis.” September 3 Decision at 32 n.65.

Metra does not oppose and will comply with the Board’s September 30 Decision, while continuing to seek to negotiate final conditions and compensation for Metra’s trackage rights use of UP’s facilities, including indemnity and liability terms. *See id.* at 32–33. For purposes of completeness, we address several additional matters bearing on UP’s Petition here.

First, the September 3 Decision required the parties to engage in “concerted good faith negotiation” regarding appropriate liability and indemnity terms to apply on an interim basis. *Id.* at 32 n.65. UP’s Petition attaches some of the parties’

correspondence related to this issue but does not acknowledge that UP declined or disregarded five separate requests from Metra to engage in bilateral negotiations on this issue during September 2025. Metra would have preferred to have had the opportunity to meet and negotiate with UP as the STB requested before the parties sought guidance from the Board.

Second, UP's Petition asserts that Metra's counterproposal responding to UP's request to revert to the expired PSA's indemnity and liability terms was "a significant and unwarranted departure from established industry practice and the parties' prior agreements." Petition at 5 n.14. This statement is inaccurate. During this proceeding, Metra initially proposed continuing with interim conditions like those contained in the PSA, as an alternative to UP's proposed Interim Terms and Conditions, which were non-negotiated and overwhelmingly one-sided. After the Board declined to adopt either of the parties' interim proposals, UP changed course, proposing to selectively revert to the PSA's indemnity and liability provisions. Metra declined UP's proposal because the PSA terms do not reflect current operating realities now that Metra directly operates commuter rail services rather than UP operating them on behalf of Metra. Instead, Metra proposed industry-standard terms that correspond with agreements that Metra maintains with other similarly situated rail carriers.

In addition, for purposes of clarity, the PSA's indemnity and liability provision on its face limited Metra's indemnification to losses "arising out of the presence of, act of, or omission to act of any of the Metra's authorized representatives occurring while any such authorized representative is on lands or properties of Union Pacific which are related to contract services." PSA excerpt included with Metra Rebuttal Statement and Evidence, Exhibit A at §4.1. That is, Metra indemnified UP under the PSA only for losses arising out of Metra's presence on the UP Lines relating to the commuter rail services UP then was providing. The PSA's billing mechanisms, however, expanded Metra's exposure by also making Metra responsible for claims administration and liability costs associated with UP's operations in its then-role as the commuter service provider.

Metra does not oppose the Board's September 30 Decision and will comply with the ordered indemnity and liability terms until final conditions for Metra's use of are established. However, Metra is now operating the commuter service under trackage rights and should not – and cannot as a steward of taxpayer dollars – accept responsibility for UP's acts and omissions related to UP's own operations and unrelated to Metra, although that result is precisely what UP previously has sought and continues to seek. *See* UP Reply Statement and Evidence, Exhibit B at § 6. In establishing trackage rights terms and conditions, the Board has determined that fault-based allocation should apply. *E.g., New England Cent. R.R.—Trackage Rights Order—Pan Am S. LLC*, FD 35842 (STB served Oct. 31, 2017) at 35-36 (cited in

Ms. Cynthia Brown
November 13, 2025
Page 3

UP's Petition at 10). It is equitable and fault-based indemnity and liability language that Metra is seeking to negotiate with UP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter A. Pfohl", written over the printed name.

Peter A. Pfohl

Robert D. Rosenberg

*Attorneys for the Commuter Rail Division of the
Regional Transportation Authority d/b/a Metra*

CERTIFICATE OF SERVICE

I hereby certify this 13th day of November 2025, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by more expeditious means to all parties of record.

/s/ Peter A. Pfohl