

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36800

APPLICATION OF UNION PACIFIC RAILROAD COMPANY
FOR MEDIATION UNDER 49 U.S.C. § 28502

APPLICATION FOR MEDIATION

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CRAIG V. RICHARDSON
JAMES B. BOLES
JOSEPHINE JORDAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

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APPLICATION FOR MEDIATION

Pursuant to 49 U.S.C. § 28502, Union Pacific Railroad Company (“Union Pacific”) is filing this application for mediation regarding use of its trackage by, and provision of its related services to, the Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra (“Metra”) for purposes of commuter rail passenger transportation.

Union Pacific currently provides certain commuter passenger services to Metra as an independent contractor under a purchase-of-service agreement (“PSA”). The PSA took effect in 2010 and has been amended over the years. The parties have agreed to extend the PSA’s term on numerous occasions; it is currently set to expire on September 30, 2024. The PSA requires Union Pacific to operate commuter trains owned by Metra on three rail lines—the North Line, the Northwest Line, and the West Line—all of which serve the Ogilvie Transportation Center in downtown Chicago. The North Line runs to Kenosha, Wisconsin; the Northwest Line runs to Harvard, Illinois; and the West Line runs to Elburn, Illinois. Union Pacific owns the three lines.

In August 2019, Union Pacific advised Metra that it was willing to enter into a new arrangement for making its trackage and other property available for continued commuter rail service. Union Pacific proposed that it would continue to own the tracks, bridges, signal systems, and property used for Metra’s commuter passenger service and provide certain limited services, including line maintenance and dispatching, while Metra would take responsibility for

operating its commuter trains, maintaining its locomotive and car fleet, maintaining certain leased yard facilities, and performing administrative and customer service functions.

Discussions between the parties intensified in late 2021, after a federal district court ruled that Union Pacific has no obligation to provide commuter passenger services to Metra in the absence of an agreement (that is, after the PSA expires). *See Union Pac. R.R. v. Regional Transp. Auth.*, 2021 WL 4318106 (N.D. Ill. Sept. 23, 2021), *aff'd*, 74 F.4th 884 (7th Cir. 2023).

Union Pacific and Metra have made meaningful progress towards implementing a new arrangement. On June 3, 2024, Metra assumed responsibility for maintaining its locomotive and car fleet and associated administrative functions. The parties amended the PSA to reflect this transfer of responsibility. The parties are currently working on plans to transfer responsibility for ticketing and train operations, and certain engineering and other services from Union Pacific to Metra.

However, despite engaging in good faith negotiations over many years, Metra and Union Pacific have been unable to make progress on two fundamental issues: the fee Metra will pay for access to Union Pacific's tracks and other property used for commuter rail service, and the fees and costs Metra will pay for engineering maintenance services that Union Pacific will continue to provide—primarily maintaining main lines used by Metra's commuter trains. Since 2019, Union Pacific and Metra have exchanged multiple offers and engaged in multiple-in person discussions regarding the financial terms of the arrangement, but they have been unable to reach agreement.

Union Pacific strongly desires to reach an agreement with Metra. As part of the Rail Safety Improvement Act of 2008, Congress established a mediation process to help rail carriers such as Union Pacific, and public transportation authorities such as Metra, reach agreement

under circumstances like those present here. The process is codified at 49 U.S.C. § 28502. Under § 28502, “[i]f, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation,” and “[t]he Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations.”

Section 28502 applies here because Union Pacific and Metra are, respectively, a rail carrier and a public transportation authority that have been unable to agree on the terms of Metra’s use of Union Pacific’s trackage and related services for purposes of commuter rail passenger transportation despite having engaged in many years of negotiations. Union Pacific believes that, with the help of a Board-appointed mediator, the parties may succeed in reaching an agreement. Accordingly, Union Pacific hereby applies for mediation regarding the terms of Metra’s use of trackage of, and related services provided by, Union Pacific for purposes of commuter rail passenger transportation.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
JOSEPHINE JORDAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

July 31, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2024, I caused a copy of the foregoing document to be served by express overnight delivery on:

Thomas Andreoli
General Counsel
Commuter Rail Division of the
Regional Transportation Authority, d/b/a Metra
547 W. Jackson Blvd., FL 15
Chicago, IL 60661

/s/ Michael L. Rosenthal