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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36844

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

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

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Access to commuter rail service for Chicago-area residents who take millions of trips each year is in jeopardy because, effective July 1, 2025, Union Pacific Railroad Company (“UP”) could terminate the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra’s (“Metra”) use of three UP lines located in the Chicago area (“UP Lines”) to provide a public service that is vital to local residents and the regional economy.

UP has placed Metra’s service at risk by demanding that Metra pay economically unreasonable and monopolistic rates to continue using the UP Lines for its public service. The lines, which are part of the interstate rail network, were built and have been used for passenger service since their inception in the 19th century. The use of these lines for passenger service is built into the Chicago area’s economy and social fabric, and the potential loss of such service would be devastating and far-reaching.

To ensure that its passenger service on the UP Lines continues uninterrupted, Metra is submitting this Application under 49 U.S.C. § 11102 to the

Surface Transportation Board (“Board” or “STB”) to require UP to allow Metra to use these terminal facilities and, if necessary, establish conditions and compensation for that use. Metra requests that the Board proceed expeditiously so that Metra can continue providing a vital service without interruption.

I. INTRODUCTION AND SUMMARY

Metra provides essential regional passenger rail service in Northeast Illinois and Southeast Wisconsin. Its service is integral to the regional economy, including approximately 35 million passenger trips in 2024. In providing its service, Metra is responsible to its fare-paying passengers, the taxpayers who also fund the service, and other public and private-sector stakeholders.

UP and its predecessor have been operating passenger trains for Metra and its predecessor over the UP Lines, utilizing Metra-supplied rolling stock, for five decades under a Purchase of Services Agreement (“PSA”). UP advised Metra in 2019 that it had no duty to continue operating the trains and would cease doing so, but was willing to make its track and property available to Metra for continued passenger service. The courts upheld UP’s position. *Union Pac. R.R. Co. v. Reg’l Transp. Auth.*, No. 19-C7957 (N.D. Ill. Sept. 23, 2021), 2021 WL 4318106, *aff’d*, 74 F.4th 884 (7th Cir. 2023).

Metra has been working with UP since then to accomplish the transition to enable Metra to operate its own trains on the UP Lines. To that end, UP has been transferring and Metra has been hiring former UP personnel for customer service, equipment maintenance, and train crews and service, a process that should be

completed by the end of April 2025. Select engineering/maintenance of way positions are targeted to transfer later in 2025.

Despite their efforts, including the mediation that the Board ordered in FD 36800, *Application of Union Pac. R.R. Co. for Mediation Under 49 U.S.C. § 28502* (STB served Aug. 14, 2024, Oct. 15, 2024, Nov. 12, 2024, and Dec. 12, 2024), Metra and UP have been unable to negotiate a successor trackage rights agreement to allow Metra to operate over the UP Lines. Metra and UP have agreed to a series of short PSA extensions, but there is no assurance that those extensions can or will continue. The most recent PSA extension ends June 30, 2025.

Metra's strong preference has been, and remains, to reach a negotiated solution with UP. UP, however, should not be allowed to dictate terms for the future relationship that produce a windfall for UP for Metra to use the UP Lines at Metra stakeholders' expense. Metra's priorities remain to maintain safe, reliable, and high-quality service for its passengers, while being a good steward of taxpayer dollars.

Metra is submitting this Application to ensure the continued provision of its passenger service on the UP Lines, which UP has recognized is vital to the economic well-being and quality of life for the Chicago region. The UP Lines are fundamental to Metra's regional service, accounting for 39 percent of Metra's total yearly ridership. An efficient, seamless, and timely transition of the service from UP to Metra without interruption is essential to the public interest, and that transition would be jeopardized if UP remained unwilling to grant Metra access to its lines

other than based on unreasonable economic terms that Metra cannot justify or accept.

This Application is an appropriate vehicle for assuring continuity of service without disruption. The circumstances provide compelling justification for the Board to grant terminal trackage rights relief under 49 U.S.C. § 11102(a). First, Metra meets the eligibility criteria as a rail carrier under the Board's jurisdiction for granting terminal trackage rights. Second, the UP Lines over which Metra operates constitute terminal facilities, including mainline tracks for a reasonable distance outside of a terminal. Third, Metra's use of the facilities is practicable and manifestly in the public interest. Fourth, Metra's use of UP's facilities will not impair UP's ability to handle its own business.

In support of this Application, Metra states as follows.

II. FACTUAL BACKGROUND

A. PARTIES

1. METRA

Public transportation in the Chicago metropolitan area faced a funding crisis in the early 1970s. The Illinois General Assembly responded by creating, with approval by local voters through a referendum, the Regional Transportation Authority ("RTA") to replace and unify a complicated and patchwork passenger rail network operating in the Chicago metropolitan area to avoid a catastrophic collapse in regional passenger service caused by bankruptcies and economic failure in the United States freight rail industry. Created by statute, the publicly funded and

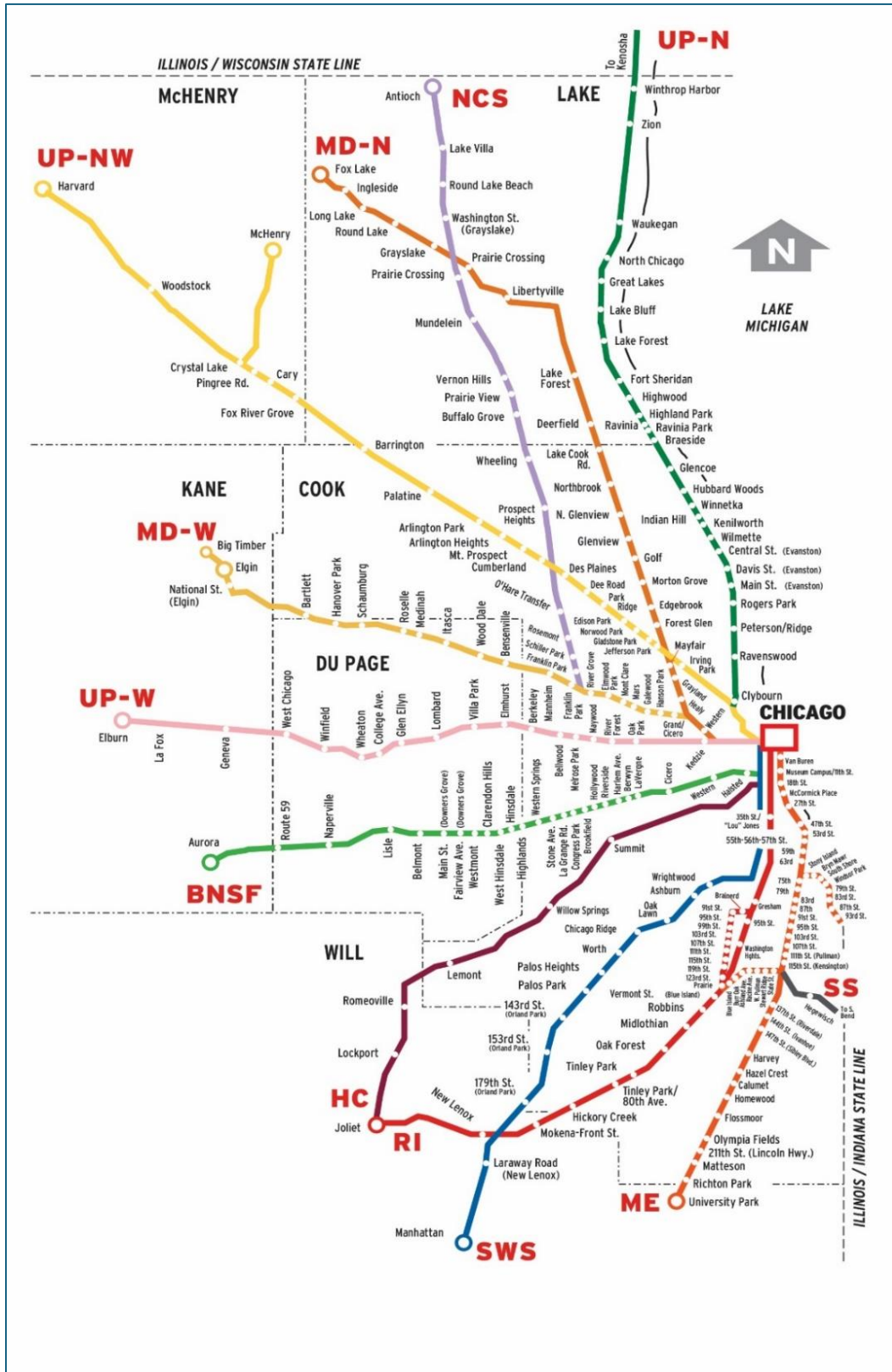
managed passenger rail system remains in place today and has grown and expanded over the past 50 years.

Metra, formally created in 1984, consists of two different governmental entities: the Commuter Rail Division (“CRD”) and the Northeast Illinois Regional Commuter Railroad Corporation (“NIRCRC”). The RTA oversees both entities. “Metra” is technically a service mark owned by CRD. CRD uses the “Metra” service mark to brand its passenger rail services, which NIRCRC and other railroads, including UP and BNSF Railway (“BNSF”), provide under PSAs with CRD.

Metra is an essential part of the Chicago regional economy serving daily commuters who rely on Metra to get to-and-from work and other passengers who use Metra as an alternative to the automobile to move around the greater metropolitan area. Metra is the largest regional passenger rail system by size in the United States and the fourth largest in ridership. Metra provides passenger rail service to more than 100 communities in its service area. In 2024, Metra provided approximately 35 million passenger trips in six counties in northeastern Illinois and one county in southeastern Wisconsin over a service area of 3,700 square miles. 39 percent of Metra’s total yearly ridership is on the UP Lines.

Metra operates one of the most complex commuter rail systems in North America. The complexity stems in part from its operational interface with the extensive freight and intercity passenger rail network that converges on Chicago. Metra’s rail system consists of 243 stations over 11 lines totaling approximately 500 route miles and 1,200 miles of track. The following Map 1 depicts Metra’s rail lines:

Map 1



2. UP

UP is a Class I interstate rail carrier, providing common carrier freight transportation subject to the Board's jurisdiction under 49 U.S.C. § 10501. UP provides service in 23 states and over 32,000 miles of rail lines in the United States and has conducted passenger rail service in Illinois and Wisconsin on (1) the UP-North or UP-N line, (2) the UP-Northwest or UP-NW line, and (3) the UP-West or UP-W line, as reflected on Map 1 since it merged with the Chicago and North Western Railway Company ("CNW") in 1995.

B. UP LINES THAT SERVE METRA

Metra's Application relates to the three UP Lines. Each line originates from Metra's Ogilvie Transportation Center ("OTC") located in downtown Chicago, two blocks from National Railroad Passenger Corporation's ("Amtrak") Chicago Union Station ("CUS"), which serves other Metra lines. From OTC, the UP-N line runs to Kenosha, Wisconsin (MP 51.6); the UP-NW line runs to Harvard, Illinois (MP 62.8), with a branch to McHenry, Illinois (MP 58.2 to MP 65.8); and the UP-W line runs to Elburn, Illinois (MP 43.5). There are 28 passenger stations on the UP-N, 23 on the UP-NW, and 19 on the UP-W.

The three lines have been used for passenger service since their inception over 170 years ago. The UP-W line began as the Galena & Chicago Union in 1848. It was the first railroad in Chicago and the first to provide passenger service. What became the UP-N line was incorporated in February 1851 by the Illinois legislature as the Illinois Parallel Railroad Company and empowered to lay tracks north from

Chicago along the shore of Lake Michigan to Waukegan and then to the Wisconsin state line. The line was soon renamed the Chicago & Milwaukee Railroad. In February 1851, the same month the UP-N line was chartered, the State of Illinois authorized the Illinois & Wisconsin Railroad to lay tracks on what became today's UP-NW line between McHenry County and a point on the Galena & Chicago Union Railroad. The line opened with passenger train service in 1854. All three lines were eventually acquired by CNW, which merged into UP in 1995. *Union Pac. Corp., Union Pac. R.R. Co. & Mo. Pac. R.R. Co. – Control – Chi. & N. W. Transp. Co. and Chi. & N. W. Ry. Co.*, FD 32133 (ICC served Mar. 7, 1995).

C. PSA AND RELATED AGREEMENTS

CNW and its predecessors originally provided passenger service directly to the public. CNW, along with much of the railroad industry, later experienced financial difficulties, especially in the 1970s, prompting the creation of the RTA to preserve regional passenger rail service. In 1975, the RTA entered into a PSA with CNW and later acquired CNW's rolling stock to preserve passenger rail on the UP-N, UP-NW, and UP-W lines.

In April 1995, CNW was merged into UP, and UP assumed operations for the UP-N, UP-NW and UP-W lines. The PSA subsequently was amended and extended until January 1, 1999, to account for UP's merger with CNW and assumption of CNW's existing transportation services obligations. The UP-Metra PSA was restated most recently in 2010.

The PSA governs the physical operation of the Metra trains, roadway, track, facility maintenance of way activities, and certain equipment maintenance services. Metra and UP have entered into related agreements to govern other aspects of the relationship. In particular, Metra and UP have entered into Fixed Facility Agreements (“FFAs”) to govern Metra’s capital investment in the lines. The FFAs provide a legal framework for Metra to invest public-sector capital funds into UP’s private system, *i.e.*, to spend federal, state, and other grant funds on capital projects that in part also benefit UP’s for-profit freight operations.

The original FFAs date from 1981. From 1978-1981, RTA and Metra had “project contracts” with terms similar to the FFAs that invested specific grants into the rail system. The 1981 FFA governs right-of-way construction projects, and the 1983 FFA governs station projects. Both FFAs have been amended multiple times to accommodate funding of individual projects. Under the FFAs, Metra has invested approximately \$1.25 billion in capital improvements and expansions as of December 31, 2024, to sustain the right-of-way and related commuter facilities on UP’s system. Metra also pays UP for miscellaneous maintenance and other expenses and services, such as dispatching and snow removal, on a cost or cost-plus basis, again based on Metra’s proportionate PSA usage.

D. UP’S DECISION TO TERMINATE THE PSA AND AFTERMATH

In 2019, UP notified Metra that it would discontinue providing the PSA service, and the courts upheld UP’s decision. *Union Pacific v. Metra*, 74 F.4th 884 (7th Cir. 2023). Metra and UP have been engaged in negotiating successor

arrangements for Metra to operate the passenger rail trains over the UP Lines since that time.

The parties have made substantial progress. As of June 3, 2024, 375 equipment maintenance and storehouse personnel were transferred from UP to Metra. As of September 16, 2024, 34 station and ticket services personnel were transferred from UP to Metra. As of April 16, 2025, approximately 360 train crew personnel and support functions (e.g., yardmasters, stationmasters, and clerks) are expected to have transferred from UP to Metra. As of April 30, 2025, nearly all UP employees dedicated to the passenger service will have transferred to Metra. UP will retain personnel who maintain and dispatch the lines that are used for both freight and passenger traffic, and UP will continue to provide crew-calling, snow removal, and other services for Metra on at least a temporary basis.

During the transition, Metra and UP have been able to agree on short-term extensions of the PSA (usually 30 to 90 days), but there is no certainty that those extensions or the PSA will continue past June 30, 2025. The parties have been unable to reach agreement regarding an appropriate “interest rental” or access fee for the lines, as UP acknowledged in its Application for Mediation. UP Application for Mediation, FD 36800 (filed July 31, 2024). Because the two sides are at an impasse and Metra cannot accede to UP’s unilateral and unreasonable economic terms, Metra is seeking to establish its terminal trackage rights to use the UP Lines through this Application.

III.
**THE REQUESTED TERMINAL TRACKAGE RIGHTS SATISFY
THE CRITERIA OF 49 U.S.C. § 11102 AND SHOULD BE GRANTED**

The Board is authorized under 49 U.S.C. § 11102(a) to grant terminal trackage rights as follows:

The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.¹

Metra satisfies each element for the grant of trackage rights: (a) Metra is a rail carrier eligible to obtain terminal trackage rights under the Board's jurisdiction; (b) the UP Lines constitute terminal facilities, including mainline tracks for a reasonable distance outside of a terminal; (c) Metra's use of the facilities

¹ The provision further states:

The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

As noted below, Metra is not asking the Board to establish compensation at this time, but reserves the right to do so, if UP ceases providing service and Metra and UP are unable to resolve the compensation level.

is practicable and in the public interest; and (d) Metra's use of the facilities will not impair UP's ability to handle its own business.

A. METRA IS ELIGIBLE FOR TERMINAL TRACKAGE RIGHTS UNDER 49 U.S.C. § 11102

Metra was established as “a unit of local government, body politic, political subdivision and municipal corporation,” 70 ILCS 365/1.04, and is thus a “local governmental authority” under 49 U.S.C. 5302(10). Accordingly, Metra's eligibility for terminal trackage rights rests on 49 U.S.C. § 10501(c)(3)(B):

The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996.

The provision was added by ICCTA. ICCTA took effect January 1, 1996 (*id.* at § 2), and the last portion of the quoted statutory language references the pre-ICCTA jurisdiction of the ICC.

The provision was one of several changes ICCTA made to the regulation of passenger transportation. First, ICCTA deleted former Sections 10908 and 10909 that required regulatory review and approval before a railroad could discontinue passenger service. UP premised its discontinuation of passenger rail service over the UP Lines on the removal of those provisions, and its decision was upheld on that basis. *Union Pac. v. Metra*, 74 F.4th at 887.

Second, ICCTA generally eliminated the Board's jurisdiction over "public transportation" provided by a "local governmental authority." 49 U.S.C. § 10501(c)(1) and (2). "This provision adopted by the Conference changes the statement of agency jurisdiction to reflect curtailment of regulatory jurisdiction in areas such as passenger transportation." H. Rept. No. 104-422, at 167 (1995) (ICCTA Conference Report) (addressing § 10501). "As noted in connection with section 10501, local government authorities are to be excluded from economic regulation (rates, fares, entry, and exit) under the amended statute." *Id.* at 184 (addressing § 11102).

Despite the general deregulation of passenger traffic, § 10501(c)(3)(B) was included in ICCTA to allow passenger and freight local transportation authorities to obtain terminal trackage rights under § 11102, as well as switch connections under § 11103. "Thus local transportation authorities satisfying the requirements of section 10501 could invoke the remedies of this section [11102] and section 11103 with respect to both freight and passenger transportation uses of railroad facilities." H. Rept. No. 104-422 at 184; *Commuter Rail Serv. Continuation Subsidies & Discontinuance Notices*, EP 564 (STB served June 12, 1997), at 2 n.4. Metra meets those pre-ICCTA eligibility requirements for terminal trackage rights.

Under former § 10501(a), the Interstate Commerce Commission ("ICC") had "jurisdiction over transportation – (1) by rail carrier that is – (A) only by railroad" and (2) "to the extent such jurisdiction is not limited by subsection (b) of this section or the extent the transportation is in the United States and is between a place in –

(A) a State and a place in another State.” Accordingly, Metra’s interstate transportation across the state line between Illinois and Wisconsin (Kenosha) is eligible for trackage rights.²

In contrast, former § 10501(b) denied the ICC jurisdiction over intrastate transportation, subject to carve-out:

(b) The *Commission does not have jurisdiction* under subsection (a) of this section over –

(1) the transportation of passengers or property, or the receipt, delivery, storage, or handling of property,

² Former § 10102(22) (current 10102(5)) defined “rail carrier” as “a person providing railroad transportation for compensation,” which is what Metra did (and does). Former § 10102(28) (current § 10102(9)) defined “transportation” to include “(A) a locomotive, car, . . . or equipment of any kind related to the *movement of passengers* or property, or both, regardless of ownership or an agreement concerning use; and (B) *services related to that movement*, including . . . delivery, . . . , handling and interchange of *passengers* and property” (emphasis added). Under the PSA, Metra provides transportation to the commuters, and UP provides the service to Metra, not the service to the commuters. *E.g.*, *Union Pac. v. Metra*, 74 F.4th at 885; *Commuter Rail Div. of the Reg’l Transp. Auth. of Ne. Ill., d/b/a Metra – Exempt. – Tariff Filing Requirements*, NOR 41056 (ICC served Feb. 24, 1995) (noting end of Illinois Commerce Committee certification, and granting Metra exemption from tariff filing requirements for services Metra provides utilizing the PSA), (STB served Mar. 29, 1996) (following motion for reopening and reconsideration, discontinuing proceeding on grounds that ICCTA eliminated the filing requirement).

In one case, the ICC had found that Metra was not a carrier for purposes of a rail line lease, but the D.C. Circuit remanded in *United Transp. Union – Ill. Legislative Bd. v. ICC*, 52 F.3d 1074 (D.C. Cir. 1995). On remand, the Board stated that “the issue of whether Metra was a carrier under the prior law may have been a close question,” but found no need to resolve the issue at the time as the remand was essentially moot as the matter was beyond the Board’s post-ICCTA jurisdiction. *Norfolk and W. Ry. Co. – Petition for Declaratory Order – Lease of Line in Cook & Will Cntys., IL, to Commuter Rail Div. of the Reg’l Transp. Auth. of Ne. Ill.*, FD 32279 (STB served Feb. 3, 1999) (citing, *inter alia*, the NOR 41056 decision served Mar. 29, 1996).

entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this subtitle;

(emphasis added). Former § 11501(b)(4)(B) does “otherwise provide” and gave the ICC jurisdiction over intrastate transportation where a state did not exercise jurisdiction:

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.

Former § 11501(b) provided a standard procedure for state authorities such as the Illinois Commerce Commission to be certified to regulate intrastate rates, which would displace ICC regulation. The Illinois Commerce Commission was certified by the ICC to regulate intrastate rates on January 14, 1983, and recertified on August 15, 1989, but then requested to be uncertified on September 27, 1994, and the ICC assumed jurisdiction over Illinois intrastate transportation on December 12, 1994. *State Intrastate Rail Auth. – P.L. 96-448*, 367 I.C.C. 149 (1983); *Intrastate Rail Auth. – Ill.*, EP 388 (Sub-No. 7) (ICC decided Aug. 15, 1989); *Intrastate Rail Rate Auth. – Ill.*, EP 388 (Sub-No. 7) (ICC served Dec. 12, 1994). Thus, the ICC had had jurisdiction over Illinois intrastate rail transportation immediately before ICCTA took effect.

Another potential carve-out from the ICC’s pre-ICCTA jurisdiction to be considered is former § 10504(b), which provided that:

(b) The Interstate Commerce Commission does not have jurisdiction under this subtitle over mass transportation provided by a local governmental authority³ if –

(1) the Commission would have jurisdiction but for this section; and

(2) the fares of the local governmental authority, or its authority to apply to the Commission for changes in those fares, is subject to the approval or disapproval of the chief executive officer of the State in which the transportation is provided.

As explained above, the ICC would have had jurisdiction over Metra’s transportation by virtue of former § 11501(a) (interstate) and former § 11501(b)(4)(B) (intrastate), thus satisfying 10504(b)(1). Metra’s fares also were not subject to the approval or disapproval of the chief executive officer (*i.e.*, the governor) of Illinois, thus negating application of former § 10504(b)(2). Since former § 10504(b) is stated in the conjunctive, the exclusion from ICC jurisdiction would not apply to negate ICC regulation of Metra’s intrastate transportation at the time of ICCTA.

The above demonstrates Metra’s statutory eligibility under the Board’s jurisdiction for the grant of terminal trackage rights. Insofar as further questions remained regarding Metra’s jurisdictional status for purposes of obtaining terminal

³ Former § 5302(6) defined “local government authority” to include “a political subdivision of a State” and “an authority of at least one State,” which encompasses Metra and RTA. Former § 5302(7) defined “mass transportation” to mean “transportation by a conveyance that provides regular and continuing general or special transportation to the public,” and thus includes the transportation provided by Metra on the UP Lines. Similar definitions now appear at § 5302(10) and (14), although the later refers to “public transportation,” not “mass transportation.”

trackage rights, it bears noting that Metra's services take place over UP rail lines, which are incontestably part of the interstate rail network, as distinguished from those in, for example, *Napa Valley Wine Train., Inc. – Pet. for Declaratory Order*, 7 I.C.C.2d 954 (1991).

The UP Lines also operate in close proximity to Amtrak, which crosses the UP-NW mainline track at Mayfair. The UP Lines all originate/terminate at the OTC, located within short walking distance (just over 300 feet) from Amtrak's CUS, and the CUS and OTC are physically connected. This nexus establishes a further jurisdictional basis for the Board to consider Metra's Application.⁴

B. THE UP LINES CONSTITUTE TERMINAL FACILITIES, INCLUDING MAINLINE TRACKS FOR A REASONABLE DISTANCE OUTSIDE OF A TERMINAL

Under 49 U.S.C. § 11102(a), terminal trackage rights are available to cover “terminal facilities, including main-line tracks for a reasonable distance outside of a terminal.” The geographic scope of terminal facilities has not been construed (to Metra's knowledge) under § 11102 or its predecessors for purposes of determining what constitutes a terminal for commuter traffic. The STB and predecessor ICC also

⁴ *Cal. High-Speed Rail Auth. – Construction Exemption – In Merced, Madera & Fresno Cntys., Cal.*, FD 35724 (STB served Apr. 18, 2013) (denying authority's motion to dismiss for lack of jurisdiction), and (STB served June 13, 2013) (granting exemption for construction); *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., Llc – Petition for Exemption – Passenger Rail Line Between Dall. & Hous., Tex.*, FD 36025 (STB served July 16, 2020) (reopening and finding that proposed high-speed rail in Texas operating on dedicated lines that now had a voluntary coordination and joint reservation and ticketing arrangement with Amtrak is subject to the Board's jurisdiction). Metra has no formal joint ticketing arrangement with Amtrak, but little imagination is required to think that some passengers use the UP Lines to get to and from Amtrak.

have not established a definitive rule as to what is a “reasonable distance” with precision. *Rio Grande Indus., et al. – Purchase & Related Trackage Rights – Soo Line R.R. Co. Line Between Kan. City, Mo. & Chi., Ill.*, FD 31505 (ICC served Nov. 15, 1989), at 9-10.⁵

For 150 years, Chicago has remained the nation’s busiest rail hub. The Chicago area functions effectively as one major terminal, handling not only passenger traffic from Metra, Amtrak, and the Northern Indiana Commuter Transportation District (“NICTD”), but also freight traffic from all the Class I railroads, plus numerous smaller, regional, and switching railroads. Roughly one-third of the nation’s freight moves to, from, or through Chicago. The Chicago rail system, however, originally was designed to handle passengers, and many of the lines do not facilitate the movement of freight through the area. *E.g., Can. Nat’l Ry. – Control – EJ&E W. Co.*, FD 35087, STB Final Environmental Impact Statement (Dec. 5, 2008) (“FEIS”), at 1-4.

Metra’s entire system, including the three UP Lines, functions as and constitutes a unified terminal. Metra’s eleven lines form and function as a “hub and spoke system” emanating from the downtown area with five major stations (OTC, CUS, Millennium, LaSalle, and Van Buren). The lines together serve the greater area and provide a means to travel to and from downtown Chicago and throughout

⁵ The ICC determined that the 60-mile segment between Joliet, IL, and Kensington/Markham IL (in downtown Chicago) constituted a terminal. *Rio Grande Indus., et al. – Purchase & Trackage Rights – Chi., Mo. & W. Ry. Line between St. Louis, Mo. & Chi., Ill.*, 5 I.C.C.2d 952, 953 983 (1989) (“*RGI/CMW*”). Metra uses that line as part of its Heritage Corridor, shown on Map 1 as “HC.”

the region. The lines also interconnect with Amtrak, NICTD, and other transportation providers, including the airports.

Representatives of Metra, UP, BNSF, CSX Transportation Company, Norfolk Southern Railway Company, Canadian National Railway Company, Canadian Pacific Kansas City Limited, Belt Railway of Chicago (“BRC”), Indiana Harbor Belt Railroad Company (“IHB”), and Amtrak – together with the Illinois Department of Transportation, the RTA, and the Chicago Transit Authority – are a part of the Chicago Transportation Coordination Office (“CTCO”), which monitors, coordinates, plans, engages in maintenance of way coordination, and helps direct freight and passenger traffic flows through the unified freight/passenger district to ensure coordinated and efficient operations. CTCO created the Chicago Integrated Rail Operations Center, a high-tech, 24/7 command center where the collective passenger and freight railroads continually monitor real-time information of all rail operations in the region, fed from sensors placed across the lines.

The Chicago Operating Rules Association, comprised of the region’s freight and passenger operators (including Metra, NICTA, and Amtrak), meets regularly and publishes an operating guide and rules designed to help crews operate safely and efficiently across the system. Through these organizations, passenger and freight railroads collectively review plans, implement changes, reroute traffic as needed, and ensure resources and procedures are in place for safe and efficient operations across the unified system, based on the unique conditions and challenges of the collective operations.

The downtown area is part of this larger unified terminal and also part of a large freight terminal district that extends as far as Indiana. The freight terminal is depicted on maps of the Chicago Switching District of the Illinois Freight Association⁶ and referenced in the tariffs of BRC and IHB.⁷

While Metra's major downtown and other stations are located within the freight terminal area, and Metra shares lines with the freight carriers (or, more accurately, the freight carriers use lines originally developed for passenger use), the freight terminal reflects separate operations and considerations. In determining whether track is used for terminal facilities, "the key is the use to be made of the track," and the tenant's use of facilities as terminal track is determinative, whereas the landlord's "use[]" of "portions of the tracks" outside the terminal district "as main-line track is irrelevant." *Fla. E. Coast Ry. Co. v. U.S.*, 256 F. Supp. 986, 989 (M.D. Fla. 1996), *aff'd*, 368 U.S. 8 (1967).

The UP Lines on which Metra's service is operated function individually and collectively as a single, unified terminal within the larger unified terminal district. *See RGI/CMW* (finding the 60-mile freight line used by Metra's HC to be a terminal). The same Metra trains, composed of the same locomotive(s) and usually between seven and nine passenger cars, move intact between OTC and the endpoint

⁶ *E.g.*, <https://www.jonroma.net/media/rail/maps/misc/switching/Chicago%20Switching%20Committee.%20Official%20map.%20Chicago%20Terminal%20District.%201950s.pdf>.

⁷ *See* <https://beltrailway.com/customers/8002.pdf> and <https://www.ihbrr.com/resources/docs/tariffs/IHB%208000-T.pdf>. Both reference the Chicago Switching District as specified in ICC WTL (Western Trunk Lines) 8020, which is not readily locatable.

and then often back.⁸ There is rarely any need for car switching, *i.e.*, passengers get on and off at individual stations, but once a train commences, individual cars are not set out or picked up in the normal course.

The same train crew also generally remains with the train between origin and destination. Those personnel typically make multiple trips on a daily shift. When a train is in service, no meaningful difference exists among switch, local, and line-haul crews and services for purposes of any given trip.⁹ Those operations will be preserved after Metra assumes operational control via access over UP's lines, especially as UP's commuter service employees largely already have or shortly will become Metra employees and Metra already provides the rolling stock and other passenger services.

Transit times on the UP Lines are short. The schedule for a trip between OTC and the most distant endpoint generally does exceed two hours. In contrast, movements within the freight switching district could exceed 50 miles and take many times longer. For example, the FEIS observed that a CN freight train at O-Hare (within the freight switching district) might require more than 24 hours to

⁸ Every train does not serve every station on a particular UP Line. Some trains skip stations, and not all trains on a particular line move to (from) the ultimate endpoint. For example, on the UP-N line, there are 35 weekday inbound trains, but only 10 originate from Kenosha.

⁹ There are locomotive and car maintenance and staging yards for the commuter operation, but once a train sets out to serve one station on a line it continues intact, in the normal course of business, crewed by the same personnel, until it reaches the end of the route.

travel about 30 miles to near Blue Island, Illinois, within the freight switching district. FEIS at 1-4.

UP internally also treats its Chicago commuter operations as a single entity internally separate from the rest of its system. UP's map of railroad service units and region has a separate entry for Commuter Operations. *See* https://www.up.com/cs/groups/public/@uprr/@corprel/documents/up_pdf_nativedocs/pdf_service_unit_map.pdf. Its Special System Operations Rules, <https://www.up.com/ert/ssi.pdf>, specify separate "Commuter Train Operations." *Id.* at 192-200 (pdf numeration).

Construing the UP Lines as a single terminal, or as part of the larger terminal, is appropriate so that § 11102 can accomplish its intended purpose. "[T]he term 'terminal facilities' should be interpreted broadly because the purpose of the section [11102] is highly remedial." *RGI/CMW*, 5 I.C.C.2d at 979-80 (addressing the preservation of existing service, and citing *S. Pac. Transp. Co. v. ICC*, 736 F.2d 708, 723 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985)). Construing terminal facilities narrowly to exclude any portion of the UP Lines would defeat the remedial purpose of § 11102, as commuters and other passengers would not be able to utilize the full length of the lines that have supported passenger traffic since their inception.

C. METRA'S USE OF UP'S TERMINAL FACILITIES IS PRACTICABLE AND IN THE PUBLIC INTEREST

Metra's use of the UP Lines for passenger traffic is plainly practicable as the lines have been used for passenger traffic since their inception. The transfer of

operational responsibility from UP to Metra, and Metra's use of trackage rights to operate the service, as opposed to use of UP's provision of services under the PSA, will not reduce that practicability. UP will continue to maintain and dispatch the lines that are used for both freight and passenger service, and Metra's trains will transport the same rolling stock over the same routes using essentially the same operating personnel, who will have been transferred from UP to Metra.

Metra's use of the facilities also is manifestly in the public interest. UP repeatedly has acknowledged that Metra's transportation service is important to the economic well-being and quality of life in the communities located along the three lines. The Conference Report for the ICC Termination Act of 1995 states that "[i]t is the Conference's intent that, subject to the foregoing limitations and the operational and compensation requirements stated in this section [and discussed elsewhere in this Application], *a local transportation authority's request would virtually always satisfy the public interest standard.*" H Rept. No. 104-422, at 184 (emphasis added).¹⁰ Metra's Application thus satisfies the practicable and public interest requirements for trackage rights under 49 U.S.C. § 11102.

¹⁰ The Conference Report language serves to override an interpretation of "public interest" that would require some showing of anticompetitive conduct to obtain terminal trackage rights, such as under *Midtec Paper Corp. v. Chi. & N. W. Transp. Co.*, 1 I.C.C.2d 362 (1985), *as superseded*, 3 I.C.C. 171 (1986), *aff'd sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988). In *RGI/CMW*, the ICC limited the *Midtec* standard to the entry of a new carrier to provide competition, and distinguished a situation, like here, involving the continuation of existing service, especially an essential one. 5 I.C.C.2d at 980 n.30.

D. METRA'S USE OF UP'S TERMINAL FACILITIES WILL NOT IMPAIR UP'S ABILITY TO HANDLE ITS OWN BUSINESS

Metra's use of UP's terminal facilities will not result in operational change and will not impair UP's ability to handle its own business.

Metra already serves passengers using the three lines and has been for 40 years under the PSA and its predecessors. Following termination of the PSA, commuter trains will continue to use the same lines using the same Metra-supplied rolling stock. The personnel operating the trains, maintaining the equipment, and providing passenger services will include the same experienced personnel who have operated the service for UP. The difference is that they now will be Metra employees. The employees will continue to be represented by the same unions. The mainline tracks will continue to be maintained by UP personnel, and UP will continue to dispatch the freight and passenger trains sharing the lines.

In contrast, denying Metra trackage rights could be disruptive to UP's operations. Metra historically has worked with UP to cover joint and fixed costs associated with Metra's proportionate usage of the lines through capital contributions under the FFAs as well as maintenance and other expense payments under the PSA. Without Metra's presence on the lines, UP would be deprived of Metra's contributions and the associated economies and efficiencies. Metra already has invested more than \$1 billion in the UP Lines under FFAs for capital expenditures to ensure adequate capacity so that Metra's passenger operations do not interfere with UP's freight operations. One example is the "third main" on the UP-W line that UP asserted was needed to relieve congestion. *E.g.*,

<https://www.illinois.gov/news/press-release.12374.html> and

[https://www.geneva.il.us/DocumentCenter/View/4218/Union-Pacific-Third-Rail-](https://www.geneva.il.us/DocumentCenter/View/4218/Union-Pacific-Third-Rail-Fact-Sheet?bidId=)

[Fact-Sheet?bidId=](#). If Metra's traffic were removed, UP's cost burden would be increased, and operation of the lines would become more costly and less efficient, because they would be handling less traffic.

The impact would be particularly pronounced on those segments where Metra accounts for more than half of the volume as measured in car-miles or ton-miles. Metra's use is proportionally greater than UP's particularly on the UP-N line, which has had and continues to have the greatest need for capital expenditures to rehabilitate and/or replace bridges. Those expenditures have been allocated between Metra and UP based on usage, and UP's cost burden would increase without Metra's contribution.

Grant of the trackage rights is accordingly necessary to maintain the existing level of efficiency, avoid impairment of the operation of the lines, and preserve the status quo.

IV. COMPENSATION

While the compensation issue is central to the parties' dispute, Metra is not asking the Board to set compensation at this time. Section 11102 contemplates a sequence where access is first sought and granted, the parties seek to establish conditions and compensation on their own, and the Board steps in only if the parties are unable to agree on conditions and compensation. There is no requirement that compensation be decided before trackage rights usage may commence. *S. Pac.*

Transp. Co. v. I.C.C., 736 F.2d at 723-24; *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, 1 S.T.B. 233, 449 & n.215 (1996).

**V.
PROPOSED PROCEDURAL SCHEDULE**

Under 49 U.S.C. § 11102(d), the Board is to complete any proceeding under § 11102(a) or (b) “within 180 days after the filing of the request for relief.”

Metra requests that the Board conduct this proceeding under the modified procedures set forth in 49 C.F.R. § 1112, as “it appears that substantially all material issues of fact can be resolved through submission of written statements, and efficient disposition of the proceeding can be accomplished without oral testimony.” Metra expects that the parties will be able to agree on many of the basic facts, even if they disagree as to their importance and interpretation.

Metra proposes the following procedural schedule:

Day 1	Filing of Metra’s Application
Day N	Board adopts procedure schedule
Day N +30	Metra and UP engage in discovery
Day N +60	Metra Opening Statement and Evidence Due
Day N+90	UP Reply and Reply Evidence Due
Day N+120	Metra Rebuttal and Rebuttal Evidence Due
Day 180	Board Decision

**VI.
CONCLUSION**

For these reasons, Metra requests that its Application for Terminal Trackage Rights be accepted, that the Board commence a proceeding under the Board's modified procedures, that the proposed procedural schedule be adopted, and that the Application be granted.

Respectfully submitted,

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Dated: March 7, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2025, a copy of the foregoing Application for Terminal Trackage Rights has been served by first-class U.S. Mail, or more expeditious means, on counsel for Union Pacific Railroad Company.

/s/ Peter A. Pfohl