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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 36844

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

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**METRA REQUEST FOR THE BOARD TO ESTABLISH CONDITIONS  
AND COMPENATION FOR USE OF TERMINAL FACILITIES,  
AND PROPOSED PROCEDURAL SCHEDULE**

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Dated: December 1, 2025

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Metra advises the Board that, despite concerted and ongoing efforts, the parties have been and are unable to reach agreement on the conditions and compensation for Metra's use of UP's terminal facilities pursuant to the Board's decision, served September 3, 2025 ("September 3 Decision"). Accordingly, Metra requests that the Board establish the conditions of use and compensation and submits a proposed procedural schedule for the Board's consideration to govern the process for resolving the remaining disputed issues, as described below.

**I.  
The Parties are Unable to Reach Agreement**

As directed in the September 3 Decision, and reflected in the Parties' Joint Status Report filed on November 13, 2025, Metra and UP have been negotiating the conditions and compensation for Metra's use of UP's terminal facilities. The parties have exchanged drafts of a comprehensive Trackage Rights Agreement to govern Metra's use of the UP Lines and have exchanged multiple offers on compensation and other terms. The parties have made progress and reached common ground on

some elements. For example, Metra anticipates that it will be able to reach agreement with UP on issues including the effective date; maintenance fee; train schedules and special trains and service change requests; dispatching protocol; a joint services committee for ongoing coordination of operational, maintenance, and capital project matters; dispute resolution; and audits. While the parties continue to confer, it is clear at this point that the parties will not reach agreement on all remaining disputed issues in a way that would remove the need for Board involvement.

## II.

### **Board Establishment of Conditions of Use and Compensation is Required**

The Board's September 3 Decision enables either party to request the Board to establish compensation and/or conditions of use. September 3 Decision at 33. *See also id.* at 31 ("the Board pledges that, if UP and Metra cannot reach agreement respecting compensation terms, it will set appropriate terms under condemnation principles with retroactive effect."); *id.* at 32 ("If the parties cannot reach agreement, and the Board is required to set interim terms and conditions governing Metra's access, there will be an accounting and reconciliation when final terms are set. UP will be reimbursed retroactively (from July 1, 2025) if the interim amount paid by Metra is less than the final amount set."). Metra requests the Board to so establish the conditions of use and compensation.

Compensation and the remaining disputed issues are too important and too material for Metra, the public it serves, and the taxpayers that provide critical funding for its transportation service to be left unresolved indefinitely. Both UP and

Metra have continued to operate cooperatively and safely on the UP Lines since the parties' Purchase of Service Agreement ("PSA") expired on June 30, 2025. The Board has acted, as needed, when issues have arisen, *e.g.*, *Commuter Rail Div. of the Reg'l. Transp. Authority—Terminal Trackage Rights—Union Pac. R.R.*, FD 36844 (STB served Sept. 30, 2025) (ordering the indemnity, liability allocation, and claims administration provisions of the PSA as an interim condition).

UP has asserted on review that "hosting passenger service on a freight-rail network is too important, complex, and potentially dangerous to undertake without clear terms governing dispatching, maintenance, liability, indemnity, and many other topics." *Union Pacific R.R. Co. v. STB* (8th Cir., No. 25-2919), Union Pacific Mot. for Stay Pending Appeal dated Sept. 29, 2025, at 5. Metra agrees that Board involvement, as requested here, to establish the conditions and compensation for Metra's ongoing use of the UP Lines is necessary and appropriate.

At the same time, Metra wishes to make clear that it intends to remain engaged in negotiations with UP during this second phase of the proceeding and will continue to work with UP toward narrowing the issues for final resolution by the Board.

### **III. Major Disputed Issues to be Resolved.**

The major remaining issues in dispute for the Board to resolve in establishing the compensation and conditions of use include the following:

- A. Scope of the trackage rights;
- B. Length of the term;

- C. Trackage rights fee under the *SSW Compensation* formula, how the fee is adjusted over time, and treatment of Metra's capital contributions;
- D. Performance standards; and
- E. Liability, indemnification, and claims handling.

The disputed issues identified above are not the only remaining unresolved issues, but they are the most consequential and bear on the other areas of disagreement.

#### **IV. Proposed Procedural Schedule**

Metra proposes a procedural schedule that allows for a short period of discovery to address necessary elements for the calculation of the trackage rights fee under *SSW Compensation*. Metra proposes simultaneous opening and reply evidentiary filings where each party will address both calculation of the trackage rights fee under *SSW Compensation* and conditions of use for the terminal trackage rights.

Under Metra's proposed schedule, to facilitate the simultaneous opening filings the parties will exchange, on or before February 16, 2026 (two weeks prior to filing Opening Evidence), their then-current proposed draft language for the Trackage Rights Agreement, with the exception/redaction of the confidential elements of the proposed trackage rights fee (*i.e.*, interest rental and maintenance and operation expenses). As part of its evidentiary filings, each party will submit its

proposed Trackage Rights Agreement, together with justification for (1) its preferred terms resolving disputed issues and (2) the compensation elements.

Similar procedures were utilized in *New England Cent. R.R. – Trackage Rights Order – Pan Am S. LLC*, FD 35842 (STB served Oct. 31, 2017). Use of the parties' proposed Trackage Rights Agreement form(s) to establish conditions of use and compensation, will allow the parties to continue their negotiations – with the possibility that the scope of the dispute will be narrowed – while protecting confidential compensation terms addressed in those negotiations. This approach will also facilitate the Board's consideration and resolution of the matter, by enabling the Board to leave in place terms and conditions on which the parties have agreed, while resolving disputed issues that remain.

Metra proposes the following procedural dates:

December 1, 2025 (Day 0)	Metra filing Discovery period begins on elements needed to calculate the trackage rights fee under <i>SSW Compensation</i>
December 22, 2025 (Day 21, a Monday)	UP Responds to Metra's December 1 Filing
December __, 2025 (Day x)	Board adopts Procedural Schedule
January 30, 2026 (Day 60)	Close of Discovery
February 16, 2026 (Day 77)	Parties exchange then-current proposed Trackage Rights Agreements, including agreed upon terms and conditions (not to be filed with the Board)
March 2, 2026 (Day 91)	Parties submit simultaneous Opening Evidence, including calculation of the trackage rights fee under <i>SSW Compensation</i> , and submission and justification of preferred Trackage Rights Agreement terms and conditions
April 6, 2026 (Day 126)	Parties submit simultaneous Reply Evidence
June 1, 2026 (Day 182, a Monday)	Board Decision

Metra informed UP that it was filing this request, and discussed the possibility of a joint request, which UP declined.

## **VI. Conclusion**

For these reasons, Metra requests that the Board adopt the above-proposed procedural schedule and establish the conditions and compensation for Metra's use

of UP's terminal facilities pursuant to 49 U.S.C. § 11102(a).

Respectively submitted,

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Metra*

Dated: December 1, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of December, 2025, a copy of the foregoing has been served by first-class U.S. Mail, or more expeditious means, on counsel for all parties of record.

*/s/ Peter A. Pfohl*