

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36844

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

Digest:<sup>1</sup> This decision confirms the imposition of interim liability and indemnification terms, applicable to three Union Pacific Railroad lines used by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra to provide commuter rail service in the Chicago area, until final terms are established or this proceeding is otherwise resolved.

Decided: December 2, 2025

By decision served September 3, 2025, the Board granted an application for terminal trackage rights, filed by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) under 49 U.S.C. § 11102(a) to continue commuter rail service over three rail lines owned by Union Pacific Railroad Company (UP) in the Chicago area (the UP Lines), and directed the parties to undertake negotiations on conditions and compensation for Metra's use of the UP Lines. Commuter Rail Div. of the Reg'l. Transp. Authority—Terminal Trackage Rights—Union Pac. R.R. (Sept. 3 Decision), FD 36844 (STB served Sept. 3, 2025).

On September 29, 2025, UP petitioned the Board to impose an interim condition or, in the alternative, stay the effectiveness of the September 3 Decision, and requested expedited consideration. By decision served September 30, 2025, the Board granted the proposed condition on a temporary basis, pending Metra's ability to file a response, to give certainty to the parties in the event of an anticipated lapse in appropriations later that day that would prevent the Board from acting on the petition during a Federal government shutdown. Commuter Rail Div. of the Reg'l. Transp. Authority—Terminal Trackage Rights—Union Pac. R.R. (Sept. 30 Decision), FD 36844 (STB served Sept. 30, 2025).<sup>2</sup>

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The September 30 Decision specified that Metra could file a response on or before October 6, 2025. However, by decision served in Docket No. EP 751 on October 1, 2025, all deadlines for the submission of pleadings, filings, comments (including environmental comments) and other material due to be submitted during the pendency of the Federal government shutdown that began that day were tolled.

As discussed below, Metra has now filed a response stating that it does not oppose the interim condition imposed in the September 30 Decision. Accordingly, the condition will remain in effect until final terms are established or this proceeding is otherwise resolved.

## BACKGROUND

For decades before July 1, 2025, the operation of Metra trains over the UP Lines was governed by an agreement known as a Purchase of Services Agreement (PSA). Under the PSA, UP itself operated Metra’s passenger trains over the UP Lines for many years. More recently, since 2023 the parties have been working to transition UP’s operation of Metra’s passenger trains to Metra following a court ruling permitting UP to discontinue providing the service; however, they have been unable to agree on successor arrangements, prompting Metra to seek terminal trackage rights under § 11102(a). See, e.g., (Metra Appl. 2-3, 9-10, Mar. 7, 2025); Sept. 3 Decision, FD 36844, slip op. at 1-3.

In its opposition to Metra’s request for terminal trackage rights, UP asked the Board to set interim terms and conditions governing Metra’s operation on the UP Lines that would apply in the event the Board granted Metra’s application. (See UP Reply to Opening 34-35, June 3, 2025.) In its rebuttal in support of the application, Metra objected to the terms and conditions proposed by UP but agreed that interim terms and conditions would be useful. (Metra Rebuttal 29-30, 41-42, June 23, 2025.) Metra asked the Board to impose the terms and conditions established by the PSA, including those governing liability and indemnity. (See id. at 42 (“Metra’s Interim Conditions and Compensation preserve the status quo in all material respects, including . . . liability terms already in effect addressing the risks associated with Metra’s operations (*i.e.*, indemnification and insurance for UP.”)), id. at 44 (“The parties would retain existing procedures for adding trains and the same standard for indemnification and insurance.”).)<sup>3</sup>

In the September 3 Decision granting Metra’s application, the Board declined at that time to set interim terms and conditions. The Board explained that, under § 11102(a), “[t]he rail carriers are responsible for establishing compensation and conditions for the use of terminal facilities” in the first instance, and that it therefore would be inappropriate to prejudice the parties’ interim proposals, which had not been subject to the negotiating process required by the statute. Sept. 3 Decision, FD 36844, slip op. at 32-33. However, the Board stated that it expected Metra to continue to compensate UP for its use of the UP Lines to avoid any interim impairment to UP’s financial interests. Id. at 32. The Board also indicated that, if the parties could not reach agreement on interim terms and conditions governing Metra’s access, the Board

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<sup>3</sup> On June 30, 2025, the eve of the expiration of the last extension of the PSA, Metra petitioned the Board to issue an emergency order or temporary injunction to similarly maintain the “status quo” (*i.e.*, the terms and conditions of the PSA) until the parties reached agreement or the Board set the terms and conditions governing Metra’s operations on the UP Lines. UP opposed the petition, and the Board denied the request because Metra failed to meet the standard for an emergency service order or temporary injunction. Commuter Rail Div. of the Reg’l. Transp. Authority—Terminal Trackage Rights—Union Pac. R.R., FD 36844 (STB served July 1, 2025.)

would set such interim terms and conditions, subject to an accounting and reconciliation when final terms are set. Id. The Board further noted that UP did not anticipate “serious disagreement” from Metra on indemnity for accident liability, id. at 32 n.65 (citing UP Reply to Opening 35, June 3, 2023), but said that “[i]n the event the parties have a material disagreement about appropriate liability and indemnity terms to apply on an interim basis that cannot be resolved through concerted good faith negotiation, they may seek guidance from the Board,” id.

On September 29, 2025, UP petitioned the Board to enter as an interim condition the indemnity, liability allocation, and claims administration provisions of the PSA. (UP Pet. 6, Sept. 29, 2025.) As an alternative to the relief requested in the proposed interim condition, UP requested that the Board stay the effectiveness of the September 3 Decision pending judicial review or until the parties agree on, or the Board imposed, interim indemnity and liability allocation terms. (Id. at 2, 6.) According to the petition, UP attempted to seek agreement with Metra on an interim condition pertaining to liability and indemnity but Metra rejected UP’s proposal to re-adopt terms from the PSA on a temporary basis while the parties continued efforts to negotiate final terms and conditions. (Id. at 4-5; see also id. at Ex. A, Letter from John Milano to John Turner (Sept. 11, 2025).) UP represents that it is now willing to re-adopt the terms and conditions stated in the PSA regarding indemnification, liability, and claims administration on an interim basis, and asserts that its proposal is consistent with the position Metra itself previously advocated. (Id. at 2.)

The September 30 Decision granted UP’s petition for an interim condition on a temporary basis, pending an opportunity for the Board to consider any response Metra might elect to file. Sept. 30 Decision, FD 36844, slip op. at 3.<sup>4</sup> On November 13, 2025, following the Board’s issuance that day of public notice that all agency functions had resumed,<sup>5</sup> Metra filed its response.<sup>6</sup>

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11102(a) the Board is authorized to set the conditions and compensation for use of the facilities if the rail carriers cannot agree. Despite attempts at negotiating since the Board’s September 3 Decision, UP and Metra have been unable to date to agree on conditions and compensation for Metra’s use of the UP Lines. On September 29, 2025,

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<sup>4</sup> UP’s alternative request for a stay was denied as moot. Id. at 3, 4.

<sup>5</sup> See Materials Due to Be Submitted During the Federal Government Shutdown, EP 751 (STB served Nov. 13, 2025) and related Public Advisory stating that the Board had resumed all agency functions and that filings previously due between October 1, 2025, and November 12, 2025, were now due no later than November 20, 2025, unless otherwise ordered by the Board.

<sup>6</sup> On November 13, 2025, the parties also reported that they had exchanged proposals regarding the conditions and compensation for Metra’s use of the UP Lines but had not reached agreement. (Joint Status Report 1, Nov. 13, 2025 (stating that negotiations continued).) On December 1, 2025, Metra filed a request for the Board to establish conditions and compensation, and a proposed procedural schedule, while stating that it “will continue to work with UP toward narrowing the issues for final resolution by the Board.” (Metra Request 3, Dec. 1, 2025.) The Board will address the requests in Metra’s December 1, 2025 filing in a subsequent decision.

UP filed a petition seeking an interim condition imposing the indemnification, liability, and claims administration provisions from the PSA as it existed on June 30, 2025, which the Board granted, on a preliminary basis pending Metra's response, on September 30, 2025. See Sept. 30 Decision, FD 36844, slip op. at 2-3 (describing background and reasons for granting the petition, and explaining that the condition would remain in effect until the Board had an opportunity to consider any response filed by Metra).

In its response, Metra states that it does not oppose the September 30 Decision and will comply with the ordered indemnity and liability terms until final terms are established. (Metra Reply 2, Nov. 13, 2025.) For purposes of "completeness" and "clarity," the response also addresses various points referenced in UP's petition. (*Id.* at 1-2.)<sup>7</sup> However, Metra does not contend that its assertions merit reconsideration of the September 30 Decision. Rather, Metra expressly states that it accepts, and will comply with, the interim condition ordered by the Board. (*Id.*)

The Board has considered Metra's response and finds that the interim condition imposed in the September 30 Decision remains appropriate. Metra states that it does not oppose the Board's September 30 Decision. As noted above, Metra also previously acknowledged that interim terms would be useful. And, although Metra's response includes various points to provide further context, Metra does not assert that these points warrant rejection or modification of the interim condition proposed by UP and ordered by the Board. Accordingly, the indemnification, liability, and claims administration provisions from the PSA will remain in effect until final terms are established by the Board or the parties, or this proceeding is otherwise resolved.<sup>8</sup>

It is ordered:

1. The indemnity, liability allocation, and claims administration provisions of the PSA as it existed on June 30, 2025, are imposed as an interim condition in this proceeding until final terms are established or this proceeding is otherwise resolved.
2. UP's alternative request to stay the September 3 Decision, which was denied as moot in the September 30 Decision, is reconfirmed as denied as moot.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

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<sup>7</sup> Specifically, Metra asserts that UP failed to mention that UP "declined or disregarded five separate requests from Metra to engage in bilateral negotiations on this issue" during September 2025; explains its rationale for its counterproposal to UP's request to revert to the expired PSA's indemnity and liability terms; and clarifies Metra's position on the proper scope of liability and indemnification terms now that Metra is operating the commuter rail service. (*Id.*)

<sup>8</sup> UP's alternative request to stay the September 3 Decision continues to be moot.