

SERVICE DATE – MARCH 13, 2026

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:¹ This decision denies as premature a request by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra to set conditions and compensation for the use of terminal facilities, temporarily stays discovery sought by Metra, and directs the parties to continue negotiations for 60 days (absent a joint request for additional time) followed by the submission of a joint report to the Board.

Decided: March 12, 2026

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. Auth.—Terminal Trackage Rts.—Union Pac. R.R. (Sept. 3 Decision), FD 36844 (STB served Sept. 3, 2025). The September 3 Decision required the parties to file status reports every 60 days (jointly, if possible) stating whether they have reached agreement, require additional time, or are unable to agree. Id. at 33.²

On November 13, 2025, the parties jointly reported that they had exchanged proposals regarding the conditions and compensation for Metra's use of the UP Lines and that, although they had not reached agreement, negotiations continued. (Joint Status Report 1, Nov. 13, 2025.) On December 1, 2025, Metra filed a request for the Board to establish conditions and compensation. As discussed below, the record reflects the view from both parties that negotiations were proceeding productively when Metra filed its request, and that the parties have

¹ 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).

² The September 3 Decision set November 3, 2025 as the due date for the initial status report. In light of a lapse in the Board's appropriations from October 1, 2025, to November 12, 2025, that deadline was changed to November 20, 2025. See Materials Due to Be Submitted During the Fed. Gov't Shutdown, EP 751 (STB served Nov. 13, 2025).

continued to exchange proposals. Accordingly, the Board will deny Metra’s request as premature at this time. However, because the parties have now had six months since the September 3 Decision to conduct their negotiations, the Board will set a 60-day period for the parties to pursue further negotiations (absent a joint request for additional time). As discussed below, the parties must thereafter file a joint report stating whether they have reached agreement (and, if not, containing the details specified below), at which point the Board may commence action to set compensation and conditions, if appropriate. This decision also addresses a motion for protective order filed by UP.³

BACKGROUND

In its December 1, 2025 request, Metra maintains that the Board should establish compensation and conditions because “the parties will not reach agreement on all remaining disputed issues in a way that would remove the need for Board involvement.” (Metra Req. 1-2, Dec. 1, 2025.)

UP replied in opposition to Metra’s request on December 15, 2025. UP maintains that Metra’s request should be denied as premature because “[t]he parties have made progress and continue to do so—reaching common ground on multiple issues and narrowing the gap on others.” (UP Reply 2-3, Dec. 15, 2025.) UP also argues that any dispute about the scope of the trackage rights conferred in the September 3 Decision must be resolved before compensation and conditions can be set, and after an opportunity for the parties to brief the issue. (*Id.* at 5-8.) Finally, UP suggests that the Board should order Board-sponsored mediation to facilitate agreement between the parties. (*Id.* at 2, 10.)

Also on December 15, 2025, UP moved for a protective order under 49 C.F.R. § 1114.21(c)(1) to halt discovery. UP’s motion reprises arguments made in its response to Metra’s request to set compensation and conditions, arguing that discovery is premature and should not commence until the Board issues a decision instituting a proceeding and after having resolved any request by Metra for expanded access to facilities. (UP Mot. 2-4, Dec. 15, 2025.)

On December 18, 2025, Metra filed a response to UP’s reply in opposition to Metra’s request that the Board set compensation and conditions, arguing that UP’s reply made two requests outside the scope of Metra’s filing—(1) a proposed bifurcation to address the scope of specific facilities encompassed by the rights granted in the September 3 Decision and (2) a proposed additional mediation—to which Metra is entitled to respond under 49 C.F.R. § 1104.13. (Metra Surreply 1, Dec. 18, 2025.)⁴ Metra objects that UP proposes to indefinitely

³ Other issues raised by the parties’ recent pleadings will be addressed as needed after receipt of the substantive joint report discussed below.

⁴ Metra also argues that UP’s reply referenced settlement materials in violation of the parties’ confidentiality agreement and misstated related facts. (Metra Surreply 1, Dec. 18, 2025.) On December 29, 2025, UP filed a letter disputing Metra’s claim and describing the reasons for UP’s position that the disclosures in question did not violate the parties’ confidentiality agreement. (UP Surreply 1-2, Dec. 29, 2025.) The Board finds that UP should be permitted to

postpone establishing conditions and compensation and argues that UP's requests to bifurcate and mediate are unsupported and contrary to the public interest. (Id. at 1-4.)⁵

Metra responded to UP's motion for a protective order on December 29, 2025, arguing that the cases cited by UP do not support its motion, and that UP's request for bifurcation would not limit or alter the scope of the discovery requests Metra has propounded. (Metra Reply 1-2, Dec. 29, 2025.)

On January 2, 2026, the parties filed their second status report, stating that since their November 13, 2025 status report, "they have exchanged proposals regarding the conditions and compensation for use of the facilities, but have not reached agreement." (Joint Status Report 1, Jan. 2, 2026.) On March 3, 2026, the parties jointly reported that they have continued to exchange proposals but have not yet reached agreement. (Joint Status Report 1, Mar. 3, 2026 (also advising that the parties met for UP to outline its most recent proposal, to which Metra plans to respond during the week of March 9).)

DISCUSSION AND CONCLUSIONS

Metra's Request for the Board to Set Conditions and Compensation. Metra has requested that the Board set conditions and compensation for use of the UP Lines under 49 U.S.C. § 11102(a). Section 11102(a) states in pertinent part:

"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."

Consistent with this provision, the September 3 Decision required the parties to undertake negotiations in a concerted, good faith effort to reach agreement on conditions and compensation for Metra's use of the UP Lines, and to submit regular status reports. Sept. 3 Decision, FD 36844, slip op. at 33. Because Metra's and UP's filings reflect that productive negotiations have been ongoing and, in the Board's view, do not demonstrate that the parties are at an impasse, the Board finds that Metra's request to set conditions and compensation is premature.

In its December 1, 2025 filing, Metra states that the parties have made progress and reached common ground on several issues but claims that "it is clear at this point that the parties

respond to Metra's contention and finds UP's explanation reasonable; in any event, this decision neither considers nor relies upon the information that Metra contends was improperly disclosed.

⁵ The Board will accept Metra's December 18, 2025 filing into the record. As a general matter, the Board's regulations do not permit "replies to replies," 49 C.F.R. § 1104.13(c), and the Board does not favor such filings. See, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). Here, however, UP's reply includes two requests beyond the scope of Metra's initial filing; Metra's response to those arguments is therefore a response in the first instance to a new argument and will be accepted under these circumstances.

will not reach agreement on all remaining disputed issues in a way that would remove the need for Board involvement.” (Metra Request 1-2, Dec. 1, 2025.) Metra describes what it views as “the major remaining issues in dispute for the Board to resolve” but also states that “it intends to remain engaged in negotiations with UP . . . and will continue to work with UP toward narrowing the issues for final resolution by the Board.” (Id. at 3-4.)

UP objects to Metra’s request as premature. UP maintains that the parties have made progress and continue to do so. (UP Reply 2-3, Dec. 15, 2025 (stating that, in the short time between Metra’s December 1 request and UP’s December 15 response, the parties met twice “to continue their negotiations on the very topics which Metra claims the Board must resolve, and are scheduled to meet again on December 16”); see also id. at 10 (stating that, “[w]ith regard to the access fee, the parties have closed the gap between them and continue to exchange proposals. [UP] is reviewing Metra’s December 9 redline . . . and plans to respond shortly.”).) UP contends that the parties should finish their effort to reach mutual agreement before initiating a proceeding on conditions and compensation. (Id. at 4.) Doing so, UP contends, “is consistent with the statutory recognition that the Board may only set conditions and compensation ‘if the rail carriers cannot agree,’ 49 U.S.C. § 11102(a); the Board’s long-standing preference for the private resolution of disputes whenever possible; and judicial economy.” (Id.)

The Board has considered the parties’ filings regarding the status of negotiations and concludes that Metra’s request for the Board to set terms is premature at this time. Metra’s December 18, 2025 surreply does not refute UP’s assertion that negotiations have continued productively since December 1. Although Metra asserts that UP does not dispute that “essential issues are at an impasse,” (Metra Surreply 3, Dec. 18, 2025), that assertion appears to be incorrect: UP maintains that progress has been and continues to be made, and that the parties continue to negotiate on “the very topics which Metra claims the Board must resolve.” (UP Reply 3, Dec. 15, 2025.) Moreover, Metra’s claim that an impasse has been reached is conclusory.⁶ Given that both the statutory scheme and the Board’s policy favor negotiated solutions, the Board therefore disagrees with Metra’s contention that “the process for Board resolution, consistent with the statutory framework, should begin now.” (Metra Surreply 3, Dec. 18, 2025.)

Metra’s apparent view that the Board must immediately commence a proceeding to set compensation and conditions at the request of one party is at odds with the statutory text. Section 11102(a) states that “[t]he rail carriers are responsible for establishing the conditions and compensation for use of the facilities.” 49 U.S.C. § 11102(a). Additionally, § 11102(a) states

⁶ Metra’s request says only that “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.” (Metra Req. 2, Dec. 1, 2025). This statement does not warrant a determination that the parties are at an impasse. Nor do the conclusory statements in Metra’s surreply provide a basis for such a conclusion. The January 2, 2026 status report simply states that Metra’s perspective as to the status of negotiations “is discussed” in its December 1 filing. (Joint Status Report 1, Jan. 2, 2026.) And the March 3, 2026 status report indicates that Metra is currently reviewing UP’s most recent proposal and plans to respond shortly. (Joint Status Report 1, Mar. 3, 2026.)

that, “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. Id. Collectively, these provisions indicate that the timing of a decision to initiate Board action to set compensation and conditions resides with the Board and cannot be unilaterally determined by a party. Under § 11102(a), Metra and UP are responsible for establishing compensation and conditions in the first instance. On the record presented—which, as discussed above, reflects that productive negotiations have been ongoing and does not substantiate Metra’s claim of an “impasse”—the Board finds that the carriers have not concluded that primary responsibility. Accordingly, and given the Board’s strong preference for a negotiated resolution of disputes, the Board will deny Metra’s request to commence a compensation and conditions phase at this time and directs an additional period for the parties to continue their negotiations.

However, the Board will set a timetable for this negotiating period because, as Metra correctly notes, negotiations should not indefinitely delay the commencement of the conditions and compensation phase where the parties cannot agree and at least one party seeks Board resolution. (Metra Surreply 1, Dec. 18, 2025.) The Board therefore will set a 60-day negotiating period, which will expire on May 12, 2026 (absent a joint request for additional time).

The parties must thereafter submit a joint report within 10 days after the negotiating period (or any jointly-requested extension) expires. The joint report must:

- (a) Identify the issues on which the parties have reached agreement; and
- (b) Identify with specificity any remaining issues that must be resolved (including, without limitation, any disputes pertaining to specific facilities encompassed by the September 3 Decision and to valuation methodologies). This section of the report shall also include a brief description of the nature of the disagreement and the parties’ respective positions.
- (c) Each party must also state whether—and if so, why—it believes mediation would be useful to resolve any remaining disputes, and if it does not believe that mediation would be useful, the reason(s) for that belief.⁷

UP’s Motion for a Protective Order. As noted above, on December 15, 2025, UP moved for a protective order to halt discovery. UP argues that the discovery Metra has served on UP is premature and should not commence until the Board issues a decision instituting a compensation and conditions proceeding. (UP Mot. 3-4, Dec. 15, 2025.)⁸ Metra filed an opposing response on December 29, 2025, arguing that the case authority cited by UP does not support its motion. (Metra Reply 1, Dec. 29, 2025.) Metra also states that it needs the cost data sought in its pending discovery requests to apply the Capitalized Earnings analysis under the SSW Compensation framework Metra supports, and that UP’s other trackage rights agreements will help establish

⁷ In view of the detailed joint report required by this decision, the parties’ obligation under the September 3 Decision to file regular status reports is suspended until further notice.

⁸ UP also maintains that discovery should commence only after any request by Metra for access “to additional facility(ies)” is resolved. (Id. at 4.)

standard provisions for (among other issues) liability, indemnification, and claims handling. (*Id.* at 2.) Metra maintains that “UP does not dispute that the parties have reached an impasse on these compensation and liability issues.” (*Id.*) However, as discussed above, the record does not substantiate that claim.

Accordingly, based on the record before the Board—which reflects that negotiations have been proceeding productively and the parties are narrowing the issues—discovery is premature and may ultimately prove unnecessary. The Board will grant UP’s motion for a protective order on a temporary basis, and UP will not be required to respond to Metra’s discovery at this time.

While the Board is delaying the start of discovery, the Board clarifies that UP’s assertion that “[d]iscovery should not commence until the Board issues a decision instituting a proceeding,” (UP Mot. 4), is incorrect. None of the “agency precedent” cited by UP, (*see* UP Mot. 2-3), involved a matter in which access to terminal facilities had been granted, in the same docket and in the same ongoing matter, under § 11102. In the two cases in which a proceeding was “formally initiated,” (*see id.*), there was no pending proceeding in which to entertain a request for discovery;⁹ in the third case, both parties supported reopening a proceeding to revise conditions previously set by agency order.¹⁰

By contrast, here there is an open, pending proceeding in which to entertain a request to set compensation and conditions and to conduct related discovery. As described above, the Board in this decision is setting deadlines for the parties to complete the negotiation process under § 11102(a) and submit a joint report identifying with specificity any remaining disputed issues for the Board to resolve. Should the parties not reach agreement by the time the joint report is due, at that point, as a general matter, discovery on those issues would become relevant and accordingly may commence.¹¹

Finally, the Board will defer ruling on the remaining issues raised by the parties’ recent filings and address them, as warranted, following its receipt and consideration of the parties’ joint report, as specified above.¹²

⁹ *See, e.g., Norfolk S. Ry.—Pet. to Set Trackage Rights Comp.—Norfolk & Portsmouth Belt Line R.R.*, FD 36223, slip op. at 2 (STB served Mar. 29, 2019); *New England Cent. R.R.—Trackage Rights Order—Pan Am S. LLC*, FD 35842, slip op. at 1-2, 6-7 (STB served Dec. 23, 2014).

¹⁰ *Atchison, Topeka & Santa Fe Ry.—Operating Rights—S. Pac. Transp. Co.*, FD 22218, slip op. at 1 (STB served May 15, 2023).

¹¹ As noted below, the Board will defer ruling on UP’s request to bifurcate proceedings relating to any scope-of-facilities issues that remain in dispute. Accordingly, Metra will be prohibited from pursuing discovery on any such issues absent further Board order.

¹² Those issues include: (1) setting a procedural schedule for the Board’s consideration of compensation and conditions issues; (2) UP’s request to bifurcate any scope-of-facilities issues; and (3) UP’s proposal for Board-ordered mediation.

It is ordered:

1. Metra's December 1, 2025 request for the Board to establish conditions and compensation for use of terminal facilities is denied.
2. The parties are directed to continue negotiations under 49 U.S.C. § 11102(a) until May 12, 2026 (absent a joint request for additional time), and to submit a joint report containing the information specified above by May 22, 2026 (or 10 days after the expiration of any extended negotiating period).
3. UP's motion for a protective order is granted to the extent described above.
4. Discovery on unresolved issues identified in the parties' joint report may commence on the date of the submission of the joint report, as described above.
5. This decision is effective on the date of service.

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