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Office of Proceedings
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Public Record

Via E-filing

July 22, 2020

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 36420, Commuter Rail Division of the Regional Transportation Authority, d/b/a METRA

Dear Ms. Brown:

I am writing in connection with referenced matter.

As explained in Union Pacific's motion to hold proceedings in abeyance, which was filed earlier today, Union Pacific is presently litigating the precise issue raised in Metra's petition for declaratory order in the U.S. District Court for the Northern District of Illinois. Union Pacific has apprised the Court of Metra's activity at the Surface Transportation Board, and I am enclosing a copy of its submission, so the Board has a complete record.

In light of Union Pacific's pending motion before the Board and the active litigation in federal district court, Union Pacific is not planning to respond to Metra's petitions in this matter unless the Board denies its motion to hold proceedings in abeyance, at which point, it would respond within 20 days. If the Board has a different expectation, please let me know.

Thank you for your assistance.

Sincerely,

/s/ Michael L. Rosenthal

Michael L. Rosenthal
*Counsel for Union Pacific
Railroad Company*

Enclosure

cc: Parties of Record

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Plaintiff,	)	
	)	No. 1:19-cv-07957
v.	)	
	)	Honorable Jorge L. Alonso
THE REGIONAL TRANSPORTATION	)	
AUTHORITY AND ITS COMMUTER RAIL	)	Magistrate Judge Gabriel A. Fuentes
DIVISION, d/b/a METRA,	)	
	)	
Defendant.	)	

**UNION PACIFIC’S MOTION FOR LEAVE TO FILE NOTICE OF
RELATED FILINGS WITH THE SURFACE TRANSPORTATION BOARD**

Union Pacific Railroad Company requests leave to file this notice of related filings made by the parties this week with the Surface Transportation Board (“STB”) so that the Court has complete information in its consideration of Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra’s Motion to Dismiss or Stay Union Pacific’s Complaint ECF 26. In support of this motion, Union Pacific states as follows:

1. Union Pacific is providing notice to the Court of three filings related to this case made at the STB this week. The first is Metra’s Verified Petition for a Declaratory Order, which asks the STB for a ruling on exactly the same question pending before this Court, *i.e.*, whether Union Pacific has a common carrier obligation that would require it to operate commuter rail service in the Chicago area after expiration of its contract with Metra, which is known as the PSA. (Attached as Exhibit 1)

2. The second is Metra’s Verified Petition for a Preliminary Injunction, which asks the STB to enjoin Union Pacific from ceasing commuter passenger service while the STB considers Metra’s Petition for Declaratory Order—without regard to whether or how this Court

rules in this action. (Attached as Exhibit 2). Metra's injunctive petition is based in part on Union Pacific's recent request as part of the parties' ongoing negotiations to begin exiting some services provided under the PSA, which could not be considered as subject to the alleged common carrier obligation, *e.g.*, personal injury claims handling. The parties repeatedly have advised this Court that those ongoing negotiations are being conducted "with the goal of avoiding any disruption to commuter service." *See, e.g.*, ECF 42.

3. The third is Union Pacific's Motion to Hold Proceedings in Abeyance filed with the STB today. (Attached as Exhibit 3). Union Pacific's motion asks the STB to suspend proceedings on Metra's newly-filed action before the agency, including both the declaratory and injunctive petitions, while this Court determines whether to retain jurisdiction over Union Pacific's complaint and rule on the common carrier question.

4. Metra itself has acknowledged this Court's jurisdiction over the common carrier question but previously asked this Court to dismiss or stay Union Pacific's Complaint based on the primary jurisdiction doctrine. ECF 26. Briefing of that motion will be completed tomorrow, July 23. ECF 53. It would have been completed already but for Metra's request last month for additional time based on other federal cases involving its counsel, the COVID-19 pandemic and the "substantial effort" required to prepare its reply. ECF 51.

5. Union Pacific demonstrated in its opposition to Metra's motion that the primary jurisdiction doctrine does not apply to the common carrier question raised in the Complaint, because the parties' dispute involves strictly legal matters within the conventional experience of federal judges, not policy or technical considerations within the special competence of the STB. ECF 48. Union Pacific also identified a technical defect in the relief Metra was requesting,

because Metra's did not actually ask this Court to refer the matter to the STB nor did it identify a then-pending STB proceeding that could address the parties' dispute.

6. Metra now has sought to address the second defect by late-filing its declaratory and injunctive petitions with the STB on the eve of filing its reply brief without notice to or leave from this Court. Metra's belated attempt to remedy that defect—and end run a ruling by this Court on its own motion—does nothing to address the fundamental point that the primary jurisdiction doctrine simply does not apply and this Court should exercise its jurisdiction to determine whether Union Pacific has a common carrier obligation to operate commuter service after expiration of the PSA.

7. Discovery is set to close in this case on August 21, and the parties jointly have advised the court that resolution of the common carrier question will require limited fact discovery and no expert evidence. ECF. 42-43.

Accordingly, Union Pacific requests this Court grant leave to file the attached filings made before the STB, proceed to rule on Metra's motion based upon the primary jurisdiction doctrine, which should be denied, and after the close of discovery enter a briefing schedule for dispositive motions on the substance of Union Pacific's Complaint.

Dated: July 22, 2020

Respectfully submitted,

/s/ Patricia Brown Holmes

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CERTIFICATE OF SERVICE

I, undersigned counsel, certify that on July 22, 2020, I filed a copy of the foregoing document electronically using the Court's CM/ECF system, which will generate notice of this filing to all counsel of record.

/s/ Patricia Brown Holmes