

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36420

COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY  
D/B/A METRA—PETITION FOR DECLARATORY ORDER

Decided: August 5, 2020

On July 21, 2020, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) filed a petition for declaratory order and a petition for preliminary injunction arising out of the upcoming expiration of a 2010 Purchase of Service Agreement (PSA), under which Union Pacific Railroad Company (UP) operates three of Metra’s commuter rail lines in the Chicago region. (See Pet. for Prelim. Inj. 2-7.) According to Metra, the PSA is currently set to expire on August 31, 2020. (Id. at 6-7.) Metra states that the parties have attempted to negotiate the terms of a new arrangement since last summer but that on June 30, 2020, UP advised Metra that UP would begin to phase out various specific services provided under the PSA on July 31, 2020. (Id. at 6-8, Ex. B (June 30 letter).)<sup>1</sup> Metra requests that the Board issue a declaratory order finding that UP has a “continuing common carrier obligation to provide commuter rail passenger service” on the subject UP lines and that the Board has the jurisdiction and authority to require UP to fulfill that obligation. (Pet. for Declaratory Order 2.) Metra also requests that the Board issue a preliminary injunction ordering UP to “continue to operate, and provide the services associated with the operation of, the three lines known as UP North, UP West, and UP Northwest until the Board issues a decision on the question presented in Metra’s Petition for a Declaratory Order.” (Pet. for Prelim. Inj. 18.)

On July 22, 2020, UP filed a motion to hold the proceeding in abeyance pending a decision on Metra’s motion to dismiss or stay a related case UP filed in December 2019 in federal district court.<sup>2</sup> UP states that the district court case involves the same issues that Metra has brought before the Board, and that the district court has jurisdiction to grant Metra preliminary injunctive relief if such relief were warranted. (UP Mot. 1-2.) UP also notes that briefing on Metra’s motion in the district court was scheduled to be completed on July 23, 2020. (Id. at 1.) Metra responded to UP’s motion for abeyance on July 24, 2020, arguing that the

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<sup>1</sup> Metra states that “material changes” will begin on August 31, 2020, when UP ceases law and claims services; the revenue accounting services UP intends to terminate on July 31, 2020, are already handled by Metra. (Pet. for Prelim. Inj. 8 n.4.)

<sup>2</sup> Union Pac. R.R. v. Commuter Rail Div. of the Reg’l Transp. Auth., No. 1:19-cv-07957 (N.D. Ill. filed Dec. 5, 2019). In that proceeding, Metra has asked the district court to refer the issues to the Board under the doctrine of primary jurisdiction. (Metra Reply 4.)

dispute over UP's common carrier obligation presents a question of law that is more properly before the Board and that the motion ignores UP's June 30 notice to Metra. (Metra Reply 2.)

In these circumstances, UP's motion to hold the proceeding in abeyance will be granted. Metra does not dispute that the federal district court has concurrent jurisdiction to resolve the common carrier question, and litigation on the same question Metra has now raised here has been pending in district court for over seven months.<sup>3</sup> UP notes, and Metra does not dispute, that briefing on Metra's motion to stay or dismiss that proceeding under the doctrine of primary jurisdiction would be complete in July, (UP Mot. 1), meaning that Metra's motion is now ripe for decision by the district court.

UP also states that it is not planning to respond to Metra's petitions in this matter unless the Board denies its motion to hold proceedings in abeyance. (UP Ltr. 1.) Should the district court refer the issues to the Board, a procedural schedule would be set to expeditiously obtain UP's replies to Metra's petitions. Further, should the issues be referred, and in light of UP's statement that it "has consistently maintained throughout this process that it is committed to uninterrupted service for Chicago-area commuters," (UP Mot. 2), the Board may expect UP to maintain the status quo while the Board obtained the necessary briefing and decided the issues. The parties are directed to promptly inform the Board of any decision by the district court.

It is ordered:

1. This proceeding is held in abeyance pending further Board order.
2. The parties are directed to promptly notify the Board of any decision by the district court.
3. This decision is effective on its date of service.

By the Board, Allison C. Davis, Director, Office of Proceedings.

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<sup>3</sup> Metra states that it sought relief at the Board once UP notified it that UP would begin to phase out certain support services associated with the three lines on August 31, 2020. (Metra Reply 4.)