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

METRA REBUTTAL STATEMENT AND EVIDENCE

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District Court for the Northern District of Illinois, Eastern Division
(C.A. No. 25-cv-02439)

Exhibit D Memorandum of Understanding Financials and Other Topics, effective
April 2, 2024

Memorandum of Understanding Between Commuter Rail Division of
the Regional Transportation Authority and Union Pacific Railroad
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METRA REBUTTAL STATEMENT AND EVIDENCE

UP alters its position on how to properly apply § 11102(a) and maintain the provision of Metra's commuter service to the public in its Reply Statement and Evidence in an important way. UP previously had offered a Catch-22 proposition: compensation had to be decided and paid *before* usage could commence – even though Metra has been using the UP Lines for the past 40 years, already is paying agreed upon interim rates for use of the UP Lines, and discontinuance indisputably would harm the public. UP Reply at 5-6, 8-9. UP's position allowed no room for service to continue after the parties' historical usage agreement expires on June 30, 2025, except on conditions and compensation dictated by UP. In response, Metra explained that UP's interpretation made no practical sense, was contrary to the public interest, and nullified entire parts of the statute, including § 11102(a)'s express requirement for the two sides to mutually establish conditions and compensation *after* the grant of trackage rights or, failing that, for the Board to set them. Metra Opening Statement and Evidence at 43-45.

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Changing approach to address the reality of the situation and the statutory requirements, UP now states that it would “assent” to the Board ordering interim terms and conditions for Metra’s use of the UP Lines, if the Board granted trackage rights. UP Reply Statement at 34-38, Exhibit B. But UP’s proposed Interim Terms and Conditions also come with a catch. UP’s proposal would not maintain the status quo, while the parties seek to negotiate a bilateral agreement on conditions and compensation or the Board performs its statutory function. Instead, UP’s proposed Interim Terms and Conditions would impose many of the same conditions that UP would dictate if the Board did not act all: UP would obtain a 100%-plus increase in its rental compensation beginning Day 1, impose new one-sided liability provisions on Metra, and degrade Metra’s ability to deliver the same high-quality and reliable service its passengers deserve and rightly expect.

Interim relief should not dramatically alter the status quo to disadvantage one party and skew the balance in the other’s favor. To that end, Metra is submitting alternative Interim Conditions and Compensation, attached as **Exhibit A**, which would maintain the status quo on UP’s compensation and ensure Metra’s operational integrity. To address UP’s concerns that its returns are “adequately secured,” the interim compensation is specifically subject to retroactive adjustment in either parties’ favor after final conditions and compensation for Metra’s use of the UP Lines are either agreed or determined by the Board under § 11102(a). Metra’s proposed Interim Conditions and Compensation are demonstrably workable, because for all intents and purposes they already are in use.

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The remainder of this Rebuttal Statement and Evidence addresses UP's response to Metra on the statutory requirements of §§ 10501 and 11102 including, specifically, (I) the Board's jurisdiction to grant Metra trackage rights over (II) the terminal facilities involved and (III) the public interest invested in that use. On jurisdiction, UP's Reply Statement repeats the same arguments included in its earlier MTD (UPRS at 10-11), which already is fully briefed. Because jurisdiction is fundamental, Metra briefly restates the authority and evidence supporting the Board's jurisdiction. UP does not challenge Metra's description and supporting evidence regarding its commuter operations and how they differ from freight operations in terms of defining a terminal area and a reasonable distance outside of a terminal area. *Id.* at 11-22. Metra shows why this fact-specific determination under applicable Board precedent supports the grant of trackage rights for the entirety of the UP Lines. UP also makes an incorrect legal argument that Metra's Application necessitates an additional showing of anticompetitive conduct (*id.* at 23-30), not required under in the statute, which Metra rebuts.¹

On the public interest requirement, UP argues that "Metra asks the Board for something it already has: Access to the UP-North, UP-Northwest, and UP-West." *Id.* at 1. UP also asserts that "Metra has not even alleged that Union Pacific has threatened to exclude Metra from the UP Lines." *Id.* at 31. Neither statement is correct. UP's own filing is unequivocal that "absent an agreement between the

¹ See *Midtec Paper Corp. v. Chicago & North Western Transportation Co.*, 3 I.C.C.2d 171 (1986) ("*Midtec*").

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parties,” and, UP’s view is that currently there is none, “Metra would have no right to operate over the UP Lines until final terms and conditions were set by the Board.” *Id.* at 34. For this purpose, UP previously presented Metra with unilateral “Conditions of Entry” (COE), the day after filing its Reply Statement and Evidence, which purport to govern Metra’s use of the UP Lines, beginning July 1, 2025, absent other relief. Metra previously detailed the legal and public policy infirmities in the COE, which contrary to UP’s assertion, specifically includes the right to exclude Metra from the UP Lines. Metra Reply to MTD at 3-4, 17-21, Exhibit A, § 11.1.²

Three decades ago, while further deregulating the rail industry, Congress expressly provided an exception for qualifying local government authorities to obtain trackage rights under § 11102. The ICCTA Conference Report specifies that “a local transportation authority's request would virtually always satisfy the public interest standard.” H.R. Rep. No. 104-422 (1995) at 184. All of the evidence in this proceeding supports that conclusion. Metra is seeking statutorily available rights to operate its public service over the UP Lines for a compelling reason: so that it can provide that service to the public on transparent, reasonable, and bilateral terms and with the certainty required, as Congress understood, to run a railroad.

For these reasons, as further shown below, Metra requests that the Board grant its Application, enter interim relief consistent with Metra’s proposed Interim

² On June 11, 2025, Metra filed a motion for a temporary restraining order and/or preliminary injunction in its pending litigation against UP in the U.S. District Court for the Northern District of Illinois to prevent UP from imposing the COE. The Court held a hearing on the motion on June 23, 2025, the same day that this Rebuttal is being submitted.

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Conditions and Compensation, beginning July 1, 2025, and set a prompt deadline for the parties to establish agreed conditions and compensation for Metra's use of the facilities, or report to the Board that they cannot agree, so that the Board may establish them, as provided under § 11102.³

SUMMARY

Metra's Application satisfies the five statutory elements specified in § 11102(a) for obtaining terminal trackage rights for commuter rail use over the three UP Lines:

1. Metra is eligible under § 10501(c)(3)(B) to obtain terminal trackage because Metra is "a local governmental authority" that "meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the [ICC] that were in effect immediately before January 1, 1996," when the ICCTA took effect.
2. The UP Lines constitute "terminal facilities," including "main-line tracks for a reasonable distance outside of a terminal."
3. Metra's use of the UP Lines is "practicable."
4. Metra's use of the UP Lines will not "substantially impair[]" UP's ability to handle its own business.
5. Metra's use of the UP Lines for terminal trackage rights is in the "public interest."

³ All statutory references in this Rebuttal Statement and Evidence are to 49 U.S.C. unless otherwise indicated. Defined terms have the same meaning as in Metra's previous filings. For ease of reference, UP's Reply to Metra's Application is referred to as "UP Reply," its Motion to Dismiss is referred to as "MTD," and its Reply Statement and Evidence is referred to as "UPRS." Metra's Application filed March 7, 2025, Opening Statement and Evidence filed May 5, 2025, and Reply to UP's MTD, filed on June 12, 2025, are incorporated by reference in this Rebuttal Statement and Evidence.

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Metra addresses the (1) jurisdictional, (2) terminal facilities, and (5) public interest elements below in turn. UP does not dispute that Metra's use of the UP Lines is both practicable and would not substantially impair UP's ability to handle its own business under items (3) and (4) above. Accordingly, Metra does not discuss these elements further in this Rebuttal Statement and Evidence.

ARGUMENT

I. The Board has jurisdiction to grant Metra terminal trackage rights

Metra previously showed that it meets the statutory standards and requirements in effect as of December 31, 1995, in accordance with § 10501(c)(3)(B), in its Reply to UP's MTD. The statutory text, underlying statutory context, statutory purpose as expressed in the ICCTA Conference Report, and relevant STB and ICC precedent all establish that the ICC had jurisdiction over Metra's transportation as of December 31, 1995, and, accordingly, has authority to grant Metra terminal trackage rights. §§ 10501(c)(3)(B), 11102(a); H.R. Rep. No. 104-422 (1995) at 167 (addressing § 10501), 184 (addressing § 11102 as well as § 11103).

In its Reply Statement, UP repeats its claim that Metra is ineligible because in UP's view "the *essential character* of Metra's commuter transportation [is] intrastate." UPRS at 10 (emphasis added). As Metra previously demonstrated, there is no support for UP's proposed additional jurisdictional requirement, but even if there were, Metra would satisfy it.

The ICC's 1994 decertification of the Illinois Commerce Commission from regulating intra-Illinois rail transportation caused Metra's "intrastate

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transportation” to be “deemed to be transportation subject to the [ICC’s] jurisdiction” under former § 11501(b)(4)(B). That determination alone causes Metra to “meet[] all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the [ICC] that were in effect immediately before January 1, 1996,” as specified by § 10501(c)(3)(B). Nothing more is required.

The ICC also recognized that Metra’s intrastate operations fell under its jurisdiction in its 1980 order directing Metra to provide service over an intrastate rail segment and its 1995 decision exempting Metra from tariff filing requirements. *Reg’l Transp. Auth. – Directed Service – Chi., Rock Island & Pac. R.R., Debtor (William M Gibbons, Trustee) over Chi. Commuter Line*, 360 I.C.C. 777 (1980); *Commuter Rail Div. of the Reg’l Trans. Auth. of Ne. Ill., d/b/a/ Metra – Exemption – Tariff Filing Requirements*, NOR 41506 (STB served Feb. 24, 1995).

UP’s “essential character” theory also contravenes the statement in the ICCTA Conference Report that § 11102 trackage rights exist to protect local governmental authorities, such as Metra, from dislocation caused by the deregulation of passenger transportation, which includes the removal of former § 10909. H.R. Rep. No. 104-422 (1995) at 167 (addressing § 10501), 184 (addressing § 11102). Section 10909 governed oversight of the discontinuance of intrastate rates, and UP successfully premised its termination of the PSA on the removal of former § 10909. *Union Pac. R.R. v. Reg’l Transp. Auth.*, No. 19-C-7957, 2021 WL 4318106 (N.D. Ill. Sept. 23, 2021), *aff’d*, 74 F.4th 884, 887 (7th Cir. 2023).

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In any event, the UP-N Line's reach across the state line to Kenosha, Wisconsin, makes the Metra system an interstate railroad. *Mass. Bay Commuter R.R. Co., LLC – Pet. for Decl. Order*, FD 34332 (STB served June 5, 2003) (finding a similar commuter railroad to be interstate when only one of its thirteen lines crossed state lines). The Board saw no "interstate" obstacle when addressing Metra's potential eligibility to obtain terminal trackage rights for Chicago Union Station, which is necessarily a single point in a single state. *Commuter Rail Div. of The Reg'l Transp. Auth. & Ne. Ill. Reg'l Commuter R.R. Corp. – Pet. for Decl. Order – Status of Chi. Union Station*, FD 36171 (STB served Aug. 22, 2018).

UP has not raised a significant issue as to Metra's jurisdictional eligibility for terminal trackage rights. The element should be resolved in Metra's favor.

II. Terminal trackage rights are available for the UP Lines as a whole

Metra's Application and Opening Statement explained how terminal trackage rights over the UP Lines in their entirety are available to Metra under any of three definitions of the terminal area that might apply.

Under the first definition, the UP Lines and Metra's system as a whole form an integrated and unified terminal, particularly because the relatively short commuter trains remain intact when shuttling between the downtown Ogilvie Transportation Center ("OTC") origin and various destinations without any car switching and because of the resulting short transit and dwell times, especially as contrasted with those of the freight operations in the area.

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Under the second definition, the UP Lines fit well within the CTCO terminal area, which functions as its own terminal for multiple passenger and freight rail carriers, including UP and Metra. The enormous volume of rail traffic that funnels into and through the Chicago region with a high number of grade crossings and rail-over-rail crossing diamonds requires that operations on the rail lines be coordinated and function as a unified and integrated terminal to minimize congestion and avoid gridlock that would result from uncoordinated separate and independent operation of the lines and carriers.

Under the third definition, the terminal is the downtown freight switching terminal. This terminal area encompasses only a portion of the UP Lines, but the remaining portions are located within a “reasonable distance” of the terminal area, considering the transit times that the Metra trains achieve through their efficient operations.

Consideration of the different terminal approaches based on the specific facts is appropriate and necessary. The STB and ICC have avoided a simple bright line test and repeatedly stressed that the terms are to be construed liberally as applied to the particular facts and circumstances. “In other words, a ‘terminal area’ is defined by the scope and nature of its functions, rather than, for example, distance limits, and the assessment of related issues may be fact-specific.” *Reciprocal Switching for Inadequate Serv.*, EP 711 (Sub-No. 2) (STB served Apr. 30, 2024)

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(“*Reciprocal Switching*”), at 70-71.⁴ “The questions of what is a terminal area and what is switching are factual ones requiring consideration of all the circumstances surrounding a particular case.” *Midtec*, 3 I.C.C.2d at 179. “[S]ince our power to make the terminal facilities of one carrier available to another is remedial in nature, the term should be construed liberally.” *Id.* (citation omitted). UP does not challenge any of Metra’s factual assertions regarding the defined scope of the “Chicago Terminal” as recognized and agreed to by regional freight and passenger operators, including UP, in the CTCO Operating Protocols Agreement that the Chicago Terminal “extends further out to the Terminal’s primary feeder routes into and out of Chicago employed by line-haul carriers to the first road crew change or outer boundary.” Nor does UP dispute that the size reflects what is needed to maintain fluidity so that the Chicago Terminal District and other facilities in the area function adequately (Cork/Godfrey at ¶¶ 49-55). UP also does not dispute any of Metra’s factual assertions regarding passenger operations, how they differ from

⁴ UP notes that *Reciprocal Switching* is on appeal, that it has no direct application to the instant case, and it “was only intended to provide guidance reflective of existing precedent.” UPRS at 15. The referenced railroad appeal does not implicate the definition of terminal area. The railroad comments in the proceeding agreed that terminal area had a flexible meaning. “Commenters recognize the merit of a flexible, functional approach [for defining terminal area]. (See ... AAR Comments 27 (acknowledging that distance is a poor indicator of whether a switch will be operationally feasible or can be integrated into existing operations); CN Comments 8-9 (noting agency’s ‘long history’ of assessing terminal area issues on a case-by-case basis in light of the many types of factors that are considered).)” *Reciprocal Switching* at 71 n.39. UP endorsed the AAR filings (UP comments filed Nov. 7, 2023, at 1).

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the freight operations in the area, or the need for and function of the CTCO, but UP reaches an opposite conclusion.

Instead, UP argues that terminal trackage rights represent “extraordinary relief” that requires that the statutory provisions and requirements of § 11102(a), and the definitions of “terminal facilities” and “reasonable distance” (but apparently not “public interest”) be “strictly construed.” UPRS at 6-9. UP’s position is that: terminal trackage rights are an “intrusive” and “extraordinary remedy” (*id.* at 11); the terms “terminal,” “terminal area,” and “reasonable distance” can only have a single, fixed meaning and cannot vary by context or application (*id.* at 13-15); the relevant terminal for Metra can only be the downtown Chicago terminal used and developed for freight purposes (*id.* at 15-20); and Metra’s terminal trackage rights cannot extend outside the terminal for a “reasonable distance” because Metra has other lines that reach the terminal area (*id.* at 20-22). UP’s bottom line is that to the extent Metra is eligible for terminal trackage rights, they can extend from OTC only for the first 9.3 miles of the UP-N Line, the first 18.2 miles of the UP-NW Lines, and the first 14.4 miles of the UP-W Line. *Id.* at 19.

UP is mistaken on all counts. UP is proposing exactly the type of bright line approach that the STB has avoided. Terminal trackage rights are remedial, and the term is to be construed liberally, not strictly. What constitutes a “terminal area” and a “reasonable distance” are to be determined on a fact-specific basis. UP’s position, without any support from any expert or factual witnesses, and in the face of unrefuted expert and factual witness testimony and supporting exhibits to the

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contrary, that there can be only one terminal in the area and it is only the downtown freight district, is the opposite of a fact-specific analysis. UP's approach ignores the facts (which UP does not challenge) that differentiate Metra's commuter operations and cause the UP Lines and Metra's system to form their own terminal and be part of a larger terminal. Even if the freight district were selected as the relevant terminal, Metra's unchallenged factual evidence regarding its operations shows that the entirety of the UP Lines falls within a reasonable distance of the terminal.

A. The Board's power to grant trackage rights is remedial⁵

The ICC long ago explained that "since our power to make the terminal facilities of one carrier available to another is remedial in nature, the term should be construed liberally." *Midtec*, 3 I.C.C.2d at 179 (quoting *CSX Corp.-Control-Chessie and Seaboard C.L.I.*, 363 I.C.C. 518, 585 (1980) ("*CSX/Chessie*"). There is nothing liberal in UP's proposed construction.

UP leans on *W. Fuels Serv. Corp. v. BNSF Ry.*, NOR 41987 (STB served July 28, 1997) ("*Western Fuels*"), for its position that terminal trackage rights are an "intrusive" and "extraordinary remedy" involving a taking. UPRS at 8, 11. UP ignores several key facts about that case. First, the Board denied BNSF's motion to

⁵ UP intersperses its argument that the Board's authority under § 11102(a) must be "strictly construed" in different ways across multiple sections of its Reply Statement. See UPRS at §§ I and III. To align with the statutory language, Metra addresses those arguments here, as applied specifically to the "terminal facilities" criteria of the statute and the Board's remedial authority. UP's efforts to nullify entire parts of § 11102(a) though its proposed construction is addressed above in the Introduction and below (Section III) in connection with the public interest element.

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dismiss. Second, the Board’s analysis noted the potential availability of rate case relief. “To a significant degree, Western’s complaint can be read as based essentially only on the right . . . to rate relief.” *Western Fuels* at 7. Here, UP has made clear that its “negotiated” rate demand is unilateral and that it will not publish a common carrier rate, because it has no common carrier duty to provide passenger service. See Letter from UP’s counsel dated May 23, 2025, Metra’s Reply to MTD, Exhibit D. *Western Fuels* may suggest a reluctance to award terminal trackage rights when some other remedy is available, but it does not contradict that § 11102(a) is a remedial provision available to be applied by the Board where the statutory criteria are met.

UP references a 1988 Executive Order regarding compensation and a recent fact sheet regarding government takings without compensation.⁶ Metra is not seeking to take without just compensation, however. *Cf. Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (cited in the White House Fact Sheet with respect to takings). Metra expects and intends to compensate UP for the use of its lines – as it already does. Using the capitalized earnings framework of the SSW Compensation formula, Metra’s expert calculates that just compensation at between \$6.7 and \$16.9 million annually. See attached Verified Statement of Robert D. Mulholland of

⁶ UPRS at 7 & n.3, citing Exec. Order No. 12630, 53 Fed. Reg. 8859, 8860 (1988), and White House, Fact Sheet: President Donald J. Trump Directs Repeal of Regulations That Are Unlawful Under 10 Recent Supreme Court Decisions (Apr. 9, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donaldj-trump-directs-repeal-of-regulations-that-are-unlawful-under-10-recent-supremecourt-decisions/>.

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L.E. Peabody & Associates, Inc. (“Mulholland VS”), at 23-28 and Attachment No. 2.

UP is demanding multiples more, plus additional compensation for stations, platforms, and yards, which includes facilities that Metra has already paid for through its capital investment of public funds in the UP Lines. In its Interim Conditions and Compensation, Metra has proposed interim compensation annualized at approximately \$22 million, *i.e.*, the same amount previously agreed between the parties to apply during negotiation (with retroactive adjustments effective to July 1, 2025, to reflect the final compensation determined).

UP’s reference to previous eminent domain litigation also is misplaced. *Union Pac. R.R. v. Chi. Transit Auth.*, 647 F.3d 675, 683 (7th Cir. 2011) (UPRS at 8, n.7). In that case, the Chicago Transit Authority (“CTA”) sought to use state law condemnation law to replace agreed contractual terms governing CTA’s use of UP’s right of way for its rapid transit service with a permanent easement, and the Seventh Circuit held that the use of state law to condemn railroad property in a way that affects rail transportation, “by regulation and not by agreement,” was preempted by the ICCTA. *Id.* at 682. In contrast, Metra’s Application for Terminal Trackage Rights case proceeds directly *under* ICCTA provisions expressly made available by Congress for the purpose of obtaining trackage rights. There is no preemption issue presented.

UP references *Mo.-Kan.-Tex. R.R. v. Kan. City Terminal Ry.*, 104 I.C.C. 203 (1925), as addressing terminal facilities of both passenger and freight traffic. UPRS at 14. UP makes no mention, however, of the decision’s extensive discussion

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addressing how the statutory provision (§ 3(4) at the time) is to be given an expansive and flexible application:

On original briefs and on exceptions respondent and the allied interveners insist that the terminal facilities constitute a unified and integral whole, not divisible or separable for the purposes of this proceeding, the use of no part of which can be separately condemned, and that section 3(4) does not authorize such acquisition of a right to use portions of the facilities separate and apart from the unified whole. To this view as a matter of law we are unable to accede. Seeking only a right to a physical use as a tenant – a use embracing only such portions of the terminals as would be necessary in the conduct of its business – petitioner’s interest in and relations to the terminal facilities would be unlike those of the proprietary lines. In our judgment *section 3(4) does not contemplate and should not receive such a restricted interpretation as would virtually defeat its practical aim and purpose where extensive terminals are concerned. The provisions should have a practical and workable application to practical situations.* As a tenant line, seeking a right of user by condemnation for the purposes of a practicably separable physical use, there would appear to be no just ground upon which petitioner should, as a condition to any relief, be required to acquire and pay for a right to make use of portions of the terminals which it would not desire or need and upon which it would impose no additional burdens. The actual uses of different portions made by the different proprietary lines, and such separate physical use as has been and is now made by petitioner, disclosed by the record, indicate that *the integrity of the terminals otherwise would suffer no impairment by the appropriated use*; but in so far as the contrary might appear it could and should, of course, be taken into account by appropriate allowance in the adjustment of compensation.

Id. at 229 (emphasis added).

The dissent of Commissioner Eastman similarly stressed that the provision should be viewed expansively to protect the public interest:

The commission was created because the business of the carriers is affected with a public interest, and to guard that interest. This being so, *we should resolve doubts against an interpretation of the law which conflicts with the public interest, or, stating the proposition affirmatively, we should resolve doubts in favor of our jurisdiction to*

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right wrongs which injuriously affect the public interest. If we are wrong, the courts will correct us, but at least we shall have given the interpretation which we believe coincides with the public interest a fighting chance for life.

. . . .

In Smith v. Interstate Com. Comm., 245 U. S. 33, 45, the Supreme Court said:

“The outlook of the Commission and its powers must be greater than the interest of the railroads or that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided.” And they must necessarily be expressed in generalities. A precise specification of the powers might work a limitation and all not enumerated be asserted to be withheld.

Id. at 233-34 (emphasis added).

UP also cites the plurality in *United States v. Santos*, 553 U.S. 507, 522 (2008), for the proposition that the Board cannot “giv[e] the same [term], in the same statutory provision, different meanings in different factual contexts,” and concludes that terminal facility must be given the same meaning in every case. UPRS 13. UP ignores that *Santos* addressed a criminal statute, which needs to be specific to avoid constitutional infirmity under the void-for-vagueness doctrine. Section 11102(a) is a remedial provision for an administrative agency. Even *Loper Bright* acknowledges that such provisions endow agencies with flexibility and discretion as to their interpretation and application. “That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has.” *Loper Bright Enters. v.*

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Raimondo, 603 U.S. 369, 404 (2024). “In fashioning remedies, the Commission’s discretion is at its ‘zenith.’” *XO Energy MA, LP v. FERC*, 77 F.4th 710, 716 (D.C. Cir. 2023).

B. The terminal area and reasonable distance are to be determined on a fact-specific basis

UP takes no issue with and offers no evidence contrary to Metra’s factual description of how the UP Lines and Metra’s system as a whole function as terminals of their own and also within the larger CTCO terminal or with how Metra’s commuter operations differ from freight operations.

UP’s position is that, as a matter of law, there can be only one terminal, which is in UP’s view the downtown freight switching district, and that reasonable distance cannot extend beyond 15 miles (although UP subsequently also argues that the correct number of miles should be zero). UP claims that Metra errs in applying the substantive discretionary standard to defining what constitutes terminal facilities and a reasonable distance. UPRS at 12-13, n13. UP also claims that Metra errs by employing different standards for a terminal area and a reasonable distance depending on whether freight and passenger operations are involved. UPRS at 13-15, citing *Mo.-Kan.-Tex.*, *supra*. UP’s first claim ignores precedent. The second misstates Metra’s position.

First, abundant precedent establishes that terminal area and reasonable distance are determined not by bright line rule but based on the facts and circumstances involved. “The questions of what is a terminal area and what is switching are factual ones requiring consideration of all the circumstances

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surrounding a particular case.” *Midtec*, 3 I.C.C.2d at 179. “In other words, a ‘terminal area’ is defined by the scope and nature of its functions, rather than, for example, distance limits, and the assessment of related issues may be fact-specific.” *Reciprocal Switching* at 70-71. The regulatory definition “is not intended to exclude from consideration all areas across the network that have some portion of main-line track, if that track is used for local movements that are incidental to a line-haul move and other requirements for a terminal area are met.” *See, e.g., Midtec*, 3 I.C.C.2d at 179-80.” *Id.* at 72 n.42. “We have found that [§ 11102] is highly remedial and that the words ‘terminal facilities’ should be liberally, not narrowly, construed.” *City of Milwaukee v. Chi. & N. W. Ry.*, 283 I.C.C. 311, 314 (1951) (citations omitted).

Reasonable distance is also to be determined on a fact-specific basis, not merely based on whether it exceeds a set number of miles:

Whether the distance necessary to be traversed over the line “entitled to the enjoyment of terminal facilities” is a *reasonable distance* is a question to be determined *in the light of the facts in each case. It would be manifestly harsh and unsound to attempt to prescribe a definite limitation as to distance because that condition must depend primarily upon the extent of the terminal area to be served and the complexity of access to it.*

Chi. & Alton R.R. v. Toledo, Peoria & W. Ry., 146 I.C.C. 171, 179 (1928) (“*Chicago & Alton*”) (emphasis added).

Second, Metra’s position is not one rule applies for all freight situations and another rule for all passenger operations. Metra’s point is that each determination is to be made based on the specific facts resented and that relevant facts should not be ignored. In Metra’s case, the undisputed, relevant facts are that Metra’s

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passenger operations on the UP Lines and other lines are integrated, self-contained, efficient, and fast in terms of transit and dwell times compared to freight operations. Metra's operations present little burden on UP's system and UP acknowledges that Metra's use, if trackage rights were granted, would be practicable and would not substantially impair its ability to handle its own business.

In contrast, UP's position, unsupported by any record evidence, is that there is a bright line rule dictated by the existence of the downtown freight terminal, no other terminal area can be considered, and the reasonable distance is zero, because Metra can reach the terminal, or at least part of it, otherwise. UP's approach is the antithesis of a fact-specific approach considering the circumstances of this particular case. UP seeks to impose and exploit entry barriers, which agencies are to ameliorate under Executive Order 14267, *Reducing Anti-Competitive Regulatory Barriers*, 90 Fed Reg. 15629 (Apr. 15, 2025) (directing agency heads to review and rescind regulations that "create unnecessary barriers to entry for new market participants," "limit competition," "and "otherwise impose anti-competitive restraints or distortions on the operation of the free market.").

The error in UP's approach is confirmed by decisions holding that the tenant's use of the track, not the use by the host/landlord, governs whether the track is eligible for terminal trackage rights. "The key is the use to be made of the track." *Florida East Coast Ry. v. United States*, 256 F. Supp. 986, 989 (M.D. Fla. 1966), *aff'd* 386 U.S. 8 (1967). *Accord City of Milwaukee v. Chicago & N. W. Ry.*, 283

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I.C.C. 311, 314-15 (1951) (finding provision to be “highly remedial and that the words ‘terminal facilities’ should be liberally, not narrowly construed,” and that host’s use of right-of-way for main-line tracks did not deprive ICC of authority to grant terminal trackage rights). UP ignores this principle. Because eligibility depends on the tenant’s use, not that of the host/landlord, and because those uses may differ, a bright line test that ignores the factual circumstances, and focuses instead solely on the host/landlord’s use of the track, and whether it has been made part of a formal terminal district, cannot be the appropriate approach for determining if trackage rights are available.

C. The Chicago freight terminal district is not the only relevant terminal area

UP errs in contending (UPRS at 15-20) that the freight terminal district reflected in maps mostly issued by the Chicago Switching Committee of the Illinois Freight Association, which appears to have ceased existing in the early 1970s (<https://www.govinfo.gov/content/pkg/GOVPUB-RR-83b4e3a4481db1f6b790f1e02ec9c204/pdf/GOVPUB-RR-83b4e3a4481db1f6b790f1e02ec9c204.pdf>), comprised exclusively of freight railroads who negotiated freight switching rates among each other for pulling and delivering commodities, constitutes the only relevant terminal area. *See* UPRS, Verified Statement of John W. Turner and Mark Bristol, Exhibit A.

While UP’s witnesses Turner and Bristol reference these “various historical maps” and state that they are a “reasonable reflection of the Chicago terminal,” UP offers no evidence to verify the continued validity or significance of the decades old

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maps; any agreements between freight carriers referencing or using the maps; any freight switching tariffs referencing the maps, or anything else about how or what role the maps may play in any existing switching agreements between and among Chicago freight railroads. The omission is likely because the maps and the “terminal district” reflected on them are outdated, and not relevant or used by freight railroads today in their inter-switching arrangements. Metra’s discovery requests (RFP No 4) asked UP to produce all current maps identifying the geographic scope or confines of the freight, passenger, and/or commuter terminal(s) in the Chicago metropolitan region. UP produced no current versions of any such “terminal district” maps, presumably because none exist.

UP’s lack of evidence is in stark contrast to the undisputed evidence verifying and validating the existing broader terminal definition agreed to by all regional freight and passenger operators, including UP, reflected in the CTCO Operating Protocols Agreement.

UP errs in claiming that that “[a]ll that needs to be determined is what portions of the UP Lines constitute terminal facilities within [the Chicago freight] terminal.” *Id.* at 15. Those statements embody the sort of bright line, non-fact-specific analysis that the precedents have avoided. Even assuming *arguendo* that UP’s approach might have some applicability if Metra were a freight carrier or

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shipper, and Metra is not, the particular facts and circumstances should be taken into account and not shunted aside.

The ICC long ago cautioned against the sort of narrow definition of terminal area that UP espouses:

The Niagara Junction contends that we do not have jurisdiction to grant the prayer in this proceeding because the Niagara Junction's tracks now used by the Erie, and for which an order requiring their use is sought, are not "terminal facilities" within the meaning of that term as used in section 3(5) of the act. The Niagara Junction contends that the description "terminal facilities" as there used means the "end of a division or line of a railroad, with the switches, station sheds and other appliances pertaining thereto" and does not embrace the facilities of a carrier whose tracks and operations are entirely within a city's limits and which does not handle any traffic in line haul. It does not explain what it means by "end of a division . . . of a railroad" but it is assumed that it means the end of a branch or part of a railroad as distinguished from its main line, and not "a division" as that term is ordinarily used in railroad parlance to designate divisions of a line or railroad into operating districts. *If its definition were accepted as sound, all large urban centers that are on a main line of a railroad but not at the end thereof would be excluded from the purview of section 3(5). Such interpretation of the statute is too narrow and is not in accord with the ordinary meaning of the words used therein or the clear intent thereof.*

Use by Erie of Niagara Junction Railway Company Terminals, 269 I.C.C. 493, 497 (1947) (emphasis added).

UP criticizes Metra's presentation of the Chicago MSA as a relevant terminal. *Id.* at 15-16. That is not Metra's position. Metra presented the map of the MSA to show that the UP Lines and the Metra system, as a whole, are located within a commercially cohesive area, which is one of the typical characteristics of a terminal area. *E.g.*, 49 C.F.R. § 1145.1; *Golden Cat v. St. Louis S.W. Ry.*, NOR 41550 (STB served Apr. 25, 1996), at 7. Since the United States defines an MSA as

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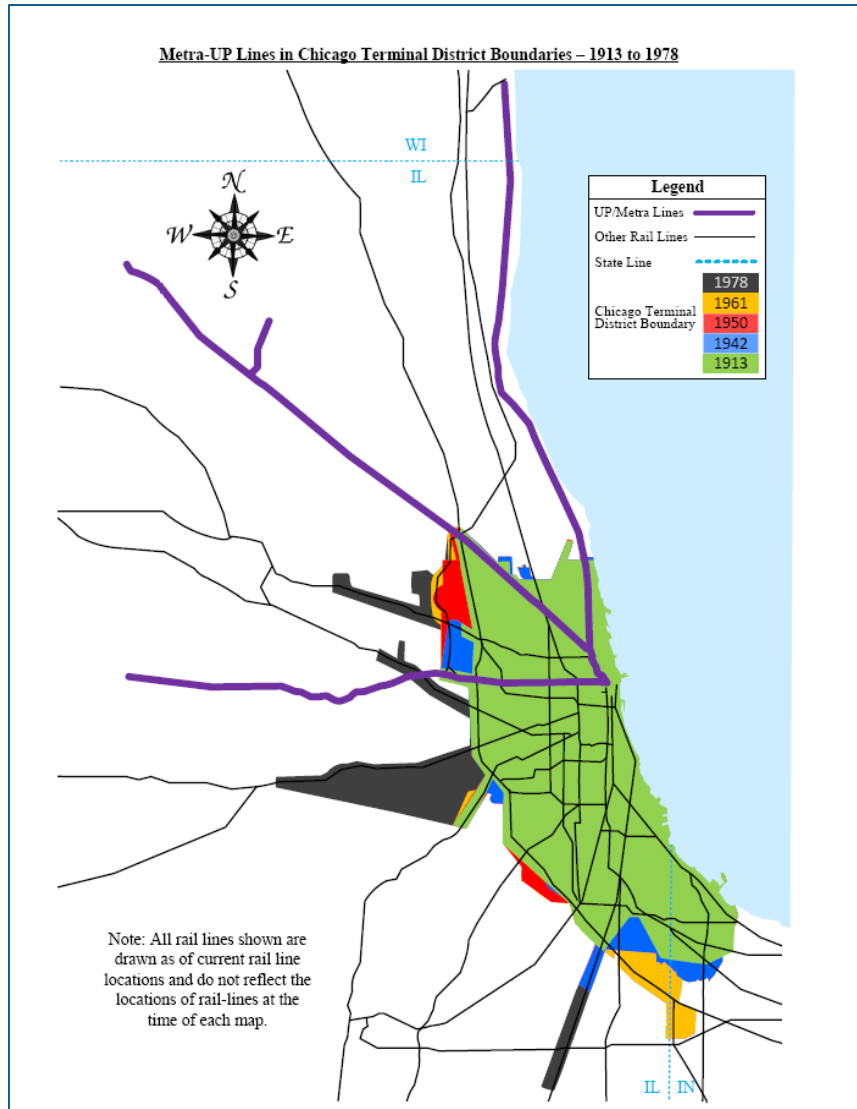
an area “having a high degree of social and economic integration with the core as measured through commuting ties,” <https://www.census.gov/programs-surveys/metro-micro/about/glossary.html>, Metra’s use of the MSA for that purpose is not only appropriate, but compelling as to that aspect of the terminal definition.

UP also criticizes Metra for suggesting that terminal area could be a dynamic concept. “Presumably, Metra’s ‘terminal area’ grows coextensively with its operations. Nothing in the statute’s century-long history supports that view.” UPRS at 14. Metra did not make the imputed claim and, as the evidence shows, the footprint of the UP Lines has been generally stable.⁷ Nonetheless, the concept of a dynamic terminal area is hardly as extreme as UP implies.

UP included various maps of the terminal district between 1913 and 1978 with its Reply Statement and asserts that “[t]hese maps are remarkably consistent over multiple decades.” UPRS at 17-18. Robert Mulholland of L.E. Peabody & Associates, Inc., Metra’s expert witness, has compiled UP’s individual maps into a single map that shows the expansion by year:

⁷ Metra opened on the Peterson-Ridge station on the UP-N Line on May 20, 2024. It became the first station in from Rogers Park and thus within UP’s definition of the terminal district. The UP-W Line was extended from Geneva to Elburn in 2006. The overall Metra system has shrunk in at least one respect. Until 1982, the Milwaukee District North Line ran to Walworth, Wisconsin. See <https://www.chicagorailfan.com/tt7milwn.html>.

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Mulholland VS at 29-32 and Exhibit No. 3.

As UP suggests (UPRS at 18), the expansions (again, only through the 1970s, when they ceased being issued) have not affected the UP Lines, apart from a modest extension on the UP-W Line. The lack of direct impact is unsurprising. The expansions were presumably made by freight railroads for handling carload traffic. *Id.* at 31. The UP-N and UP-NW Lines handle primarily passenger traffic. The UP-W Line includes freight traffic, but most of that traffic is intermodal. Each major

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railroad in Chicago has multiple local intermodal yards. Intermodal traffic in Chicago can be transferred by truck using a “rubber wheel” interchange. Other traffic is offloaded in Chicago for ultimately delivery by truck and is not interchanged at all. *Id.* at 33 and Exhibit No. 3.

The last formal expansion of the freight terminal district was, according to UP, in 1978, and the lack of subsequent changes is conspicuous as there were four expansions in the previous 46 years. Again, the likely reason why the maps have not been updated is because such maps serve no useful purpose today in the day-to-day operations and agreements amongst railroads for switching, coordinating, and sharing facilities and operations in the Chicago region. Mergers provide another plausible explanation, along with the shift to intermodal traffic. Mergers reduce the number of carriers, and the surviving carrier likely serves more locations in an area like Chicago than either predecessor did individually. The enhanced reach of each carrier reduces the need to work through a committee structure, and the reduced number of surviving carriers facilitates bilateral accommodations, such as reciprocal switching and trackage rights outside of the terminal district. Carriers also often gain access to additional locations through mergers because of reciprocal switching or access rights to alleviate 2:1 locations, or as part of the bargaining that occurs to attract support or dilute opposition from other carriers. These arrangements also reduce the need to go through the switching district procedures. Chicago has been very much affected by, and often at the center of, the mergers

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going back at least 40 years. UP/CNW, BN/SF, UP/SP, Conrail/CSX/NS, CN/IC, and CN/EJ&E all have left their footprints on Chicago.

UP is incorrect to contend that the scope of Metra's terminal trackage rights for passenger rail should be solely controlled by what type of agreement or arrangement the railroads chose to enter into or modify 50 years ago and prior to that time, *i.e.*, a formal terminal switching agreement by a committee that has long ceased to exist instead of current bilateral agreements or a coordinated operating agreement such as that for the CTCO. The freight railroads' core business is moving freight, not passengers. Because Metra's cars on the UP Lines are not and cannot be switched on to other lines, there is no basis to include them in any discussions of the expansion of the terminal district. Insisting that the UP Line be located within a "freight district" that appears to no longer practically exist to be eligible for terminal trackage rights is simply a means for stacking the deck in UP's favor.

D. The portions of the UP Lines outside of the Chicago freight terminal are located within a reasonable distance

Metra has shown and supported that, if the freight switching district were determined to be the relevant terminal, then those portions of the UP Lines that are located outside of the district are still located within a "reasonable distance" and thus appropriate for the grant of terminal trackage rights under § 11102. Metra's analysis rested on the operating characteristics of commuter trains, particularly that they can cover their entire one-way route of movement, perhaps more than once, in the time typically required to perform a freight switching movement inside the district. This analysis reflects the fact-specific determination required for

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determining what constitutes a reasonable distance, as well as the confines of the terminal area.

UP does not take issue with Metra's description of its operations and how they differ from freight operations, but UP still reaches the opposite conclusion. UP's position is that the reasonable distance is zero. The basis for UP's position is that "Metra has multiple [other] lines that it uses to reach the Chicago terminal. Thus, none of the trackage outside the terminal is 'necessary for access to the terminal.'" UPRS at 20 (citing *CSX/Chessie*, 363 I.C.C. at 585).

UP's position is unreasonable. Metra uses each of its lines to achieve desirable efficiencies and economies, just as UP and every other railroad does. Metra has a hub and spoke design, like most commuter railroad systems. The fact that some other Metra line also may reach the downtown core via some other route is of no value to a commuter who wishes to use the UP Lines to travel to or from a location outside the terminal district.⁸

UP asserts that "Metra does not explain why it should matter—that its trains are shorter and operate more quickly than freight trains." UPRS at 21. Metra did explain why it matters though – because a Metra train can traverse its entire route, even twice or more, in the same or less time than a freight train needs to complete a

⁸ UP criticizes Metra's treatment of the 60-mile line in *Rio Grande Industries, Inc.—Purchase and Trackage Rights—Chicago, Missouri and Western Railway Line Between St. Louis, MO and Chicago, IL* ("RGI/CMW"), 5 I.C.C.2d 952 (1989). UPRS at 22. Metra did not state that the entire 60 miles was outside of the terminal area. Metra's point was, and remains, that the terminal trackage rights extended 60 miles, which is close to the length of the three UP Lines.

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switch move, even staying entirely inside the terminal district. The difference, which UP does not challenge, bears directly on the “intrusion” and burden on the host caused by the terminal trackage rights, as well as the benefit or use that the tenant receives. Time and speed are alternate measures of the extent to which the tenant occupies and uses the track of the landlord/host. A train that is faster and shorter typically consumes less track capacity than a freight train. UP may not like or agree with Metra’s explanation, but it is incorrect to claim no explanation was provided.

UP also asserts that “there is no basis to interpret the phrase ‘reasonable distance’ differently in the context of passenger operations than for freight operations.” *Id.* at 21 (footnote omitted). But UP’s treatment does exactly that. A freight carrier would reasonably expect to obtain terminal trackage rights for at least 12-15 miles outside the terminal, but UP would deny Metra access for any distance outside the terminal on the grounds that Metra has other lines that reach the terminal district. While this is a fact-specific determination, of sorts, its purpose and effect are to treat commuter cars unreasonably relative to freight cars. Metra’s position is not that reasonable distance should be calculated differently because passenger trains carry passengers, but because passenger trains are faster and shorter, and material factual differences should not be ignored.

III. Metra’s Application meets the public interest standard

The remaining requirement is to show that the terminal trackage rights requested by Metra serve the public interest. The ICCTA Conference Report

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specifies that “a local transportation authority's request would virtually always satisfy the public interest standard.” H.R. Rep. No. 104-422 (1995) at 184. In its Opening Statement, Metra included unrefuted evidence demonstrating the devastating consequences for the economic and social well-being of Chicago and the surrounding region from the loss of Metra’s service to commuters and other riders who make tens of thousands of trips daily on the UP Lines. Metra Opening Statement and Evidence, Derwinski VS. Metra also explained why the anticompetitive showing under *Midtec* did not apply, because Metra seeks terminal trackage rights not to introduce new competition, but to preserve the existing service that UP has discontinued.

In its Reply Statement, UP asserts that: the anticompetitive conduct showing under *Midtec* is compulsory (UPRS at 23-25); UP has provided an allegedly reasonable access fee that is not anticompetitive or a refusal to deal (*id.* at 25-30); and the inherent public interest acknowledged in the ICCTA Conference Report does not apply to Metra’s Application (*id.* at 30-32). Metra addresses each of these incorrect conclusions below.

Accepting that the Board has authority to grant the requested trackage rights despite its opposition, UP also presents its proposed Interim Terms and Conditions for Metra’s use of its lines. UPRS at 32-38, Exhibit C. UP’s proposed compensation and terms are not the result of private negotiations. They were not established by agreement between the parties or by the Board, as envisioned by § 11102. Nor are they reasonable, even on an interim basis. Accordingly, Metra has

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proposed alternative Interim Conditions and Compensation (**Exhibit A**) that would maintain the status quo, ensure that UP is both paid and adequately secured for Metra's use, and protect the continued high-quality delivery and reliability of Metra's service to the public. Metra's proposed Interim Conditions and Compensation acknowledge that the final compensation agreed between the parties or determined by the Board may be higher or lower than the status quo amount previously agreed between the parties, and any difference would be subject to a retroactive true up and adjustment.

A. Metra is not required to meet the *Midtec* anticompetitive conduct requirement

UP insists that Metra must satisfy the anticompetitive conduct requirement of *Midtec* to obtain trackage rights. Anticompetitive conduct is not part of the statutory analysis; "public interest" is. The requirement has been applied only where entry of a second carrier and associated competition is sought, as in *Midtec*, *Western Fuels*, and *Shenango Inc. v. Pittsburgh, Chartiers & Youghioghenny Ry.*, 5 I.C.C.2d 995, 1002 (1989). UP cites two other cases where entry of a second carrier was sought. *Cent. States Enters., Inc. v. ICC*, 780 F.2d 664, 680 (7th Cir. 1985); *Jamestown, N.Y., Chamber of Com. v. Jamestown, Westfield & Nw. R.R.*, 195 I.C.C. 289, 292 (1993) (UPRS at 31). Again, however, Metra is not seeking the entry of a new service, but preservation of existing service.

UP does not, and cannot, cite a single case applying *Midtec* that did not involve an attempt to bring in an additional carrier for competition. Even *Midtec* recognized the distinction: "There is a vast difference between using the

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Commission's regulatory power to correct abuses that result from insufficient intramodal competition and using that power to initiate an open-ended restructuring of service to and within terminal areas solely to introduce additional carrier service.” 3 I.C.C.2d at 174. Still, UP doubles down on its theory by claiming legislative endorsement through reenactment. UPRS at 24-25. The claim is far-fetched, because the *Midtec* standard has been applied only to increase competition in the case of a second carrier, never in circumstances involving the maintenance or preservation of service or competition. Furthermore, the ICCTA Conference Report makes clear that *Midtec* does not apply when local government authorities, like Metra, seek terminal trackage rights, as Congress enacted § 10501(c)(3)(B) to provide them with the statutory remedy of trackage rights.

UP's related argument, that the legislative history cannot override the statutory text (UPRS at 30), is a strawman. UP's attempts to negate the Conference Report's admonition regarding the public interest by arguing that the statutory text alone must control and that the legislative history should be ignored. *E.g.*, UPRS Reply at 5, 12 n.13, 13; *id.* at 30-31 (citing *Chamber of Com. of the U.S. v. Whitting*, 563 U.S. 582, 599 (2011) for the proposition that “Congress’s authoritative statement is the statutory text, not the legislative history”). UP overlooks the important role of context in helping to understand the meaning of statutory text. “Legislative history is of course not the law, but that does not mean it cannot aid us in our understanding of a law.” *Lallave v. Martinez*, 635 F. Supp.3d 173, 189

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(E.D.N.Y. 2022) (quoting *Digital Realty Tr. v. Somers*, 138 S. Ct. 767, 782 (2018) (Sotomayor, J. concurring)).

Even textualists “look at background and legislative history when a fair reading of the statute does not answer the particular question at hand or, in plain English, when the statute is ambiguous.” *In re Trejos*, 352 B.R. 249, 258 (Bankr. D. Nev. 2006). Under the Supreme Court’s “developing doctrine” for ascertaining congressional intent, “analysis begins with application of the plain meaning rule and is followed by examination of the legislative history. *Tello v. McMahon*, 677 F. Supp. 1436, 1441 (E.D. Cal. 1988). “[T]he plain meaning rule does not prohibit recourse to legislative history.” *Id.*

Conference committee reports also stand on higher ground than other forms of legislative history for establishing legislative context. *E.g.*, *United States v. Perkins*, 67 F.4th 583, 639 (4th Cir. 2023); *Bruesewitz v. Wyeth Inc.*, 561 F.3d 233, 245, 247-50 (3d Cir. 2009) (looking to the “language, structure, and purpose” of the subject Act – including the Conference Report – to ascertain the scope of associated preemption and declining to adopt a contrary view purportedly supported by less relevant forms of legislative history).⁹

Most importantly though, the Conference Report is entirely consistent with § 11102(a), as enacted, which specifies the “public interest” and not “anticompetitive

⁹ Reference to the Conference Report is particularly appropriate for understanding the “mischief” or “problem” that Congress sought to address and the “way in which the statute is a remedy for that problem.” *E.g.*, Samuel L. Bray, *The Mischief Rule*, 109 Geo. L.J. 967, 967-69 (2021).

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conduct;” as one of the trackage rights criteria. “Public interest” is an open-ended term reflecting the provision’s remedial purpose. The Conference Report does not alter the meaning of the provision, but instead explains its context and purpose, which is entirely proper.

B. The public interest does not turn on UP’s view of its own “reasonableness”

Repeating its earlier filings, UP asserts in its Reply Statement that the Board should deny Metra statutory relief, because “the Board has made clear that it will not be conscripted into refereeing [] commercial negotiations.” UPRS at 3. UP asserts that Metra has “rebuffed” negotiations, and the Board should send “Metra back to the bargaining table.” *Id.* at 2, 6, 32. UP asserts that “Metra has not even alleged that Union Pacific has threatened to exclude Metra from the UP Lines.” *Id.* at 31. UP also asserts that “granting Metra’s request in this scenario would create dangerous precedent in Chicago and elsewhere where state and local governments provide commuter service over the freight rail network.” *Id.* at 9.

Each of the above assertions is factually incorrect or relies on an incorrect premise. Metra over several years has exchanged multiple proposals for structuring a post-PSA contractual relationship with UP, including compensation terms. Metra Opening Statement and Evidence, Kane VS at 7-8. UP has submitted no contrary evidence. UP’s demands have been unilateral, however, and, contrary to UP’s assertion, specifically have included provisions that would exclude Metra from the UP Lines, if Metra did not meet UP’s non-negotiated requirements. Metra Reply to MTD at 17-21, Exhibit A, § 11.1. Metra has shown that the “dangerous precedent”

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UP warns against would involve at most a limited number of commuter railroads operating on freight-owned track with no indication of how many of those entities, like Metra, could meet the § 10501 jurisdictional threshold. *Id.* at 17 n.12. Metra also demonstrated the uniqueness of Chicago area operations overseen by multiple intercarrier planning and operating entities established by over a dozen area freight, passenger, and commuter railroads to address integrated operations in the “Chicago Terminal,” which incorporates the entirety of the UP Lines as defined in the Chicago Train Operations Protocol Guidelines. Metra Opening Statement and Evidence at 31-33, Cork/Godfrey VS at ¶¶ 33-55, Exhibit SC-GC 1.

UP argues that “this dispute about money is not the Board’s problem” (UPRS at 3), although UP has taken the opposite position elsewhere before the Board. In the pending *Kern-Mojave* trackage rights case, where BNSF urged UP to negotiate rather than seek Board relief, UP has argued that “[w]hen line owners and tenants cannot agree on appropriate compensation for trackage rights and the issue cannot be left to bargaining by the railroads, the Surface Transportation Board resolves the dispute using the principles established in *SSW Compensation*.” *Kern-Mojave* (UP Reply Statement and Evidence filed Mar. 14, 2025, at 1, 9 and Hughes Reply VS at 1, 4). UP emphasized that “[t]he stability of the regulatory environment” requires Board resolution of such disputes, and that declining to decide the case “would disrupt this stable environment, create significant uncertainty regarding interest rental payments that would be found appropriate, and thus increase the likelihood

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parties would not resolve their disagreements without regulatory intervention.”

UP’s Final Brief filed Apr. 15, 2025, at 2-3.

The point is that the public interest element of § 11102(a) does not turn on UP’s view of the reasonableness of its own conduct or its compensation demand. UP devotes much of its argument and all its evidence to this proposition. UPRS at 2-3, 25-30, 32-38; Carey VS; Turner/Bristol JVS. Under the express statutory language, however, UP’s proposed rates and other conditions of use cannot be considered at this stage of the proceeding. Under § 11102(a), the Board is allowed to consider “conditions and compensation” only *after* (a) the Board has first granted the application for terminal trackage rights, and (b) the parties are unable to reach agreement. By inserting the putative reasonableness of its compensation demand into the public interest analysis, UP not only has put the cart before the horse – it has effectively nullified the second and third sentences of § 11102(a), which defer consideration of that question until after the grant of trackage rights.¹⁰

C. UP’s compensation demand is economically unreasonable

Undeterred by the statutory language and scheme, UP argues that Metra’s Application should be denied because Metra does not “state what would be an

¹⁰ A basic tenet of statutory interpretation is that one section should not be read in such a way as to nullify another provision.” *CF Industries, Inc., v. Koch Pipeline Co.*, NOR 41685 (STB served May 14, 1996), at 6 n.10. A statute “should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. U.S.*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (relied upon in *Bessemer & Lake Erie R.R. – Acquisition and Operation – Certain Rail Lines of CSX Transp., Inc., in Onondaga, Oswego, Jefferson, St. Lawrence, and Franklin Cntys., N.Y.*, FD 36347 (STB served Feb. 25, 2021), at 21 (Fuchs, Board Member, dissenting).)

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economically reasonable rate.” UPRS at 27. In the interest of completeness, Metra addresses below the problems with UP’s compensation demand and provides evidence of a more reasonable approach to calculating an appropriate rate for Metra’s use of the UP Lines.

UP presents its proposed pricing through two company witnesses (“Turner/Bristol JVS”) and an outside expert, Julie M. Carey (“Carey VS”). They assert that the train mile is the appropriate basis of comparison and analysis and a starting franchise access fee of \$18.50 per train mile is reasonable as measured against the value of the underlying land or, alternatively, what UP perceives as the competitive market rate paid by other passenger rail operators. UP acknowledges a split among its own employees as to which method is appropriate.¹¹ UPRS at 28 & n.41 (citing Turner/Bristol JVS at 11).

Metra asked Mr. Mulholland to assess the reasonableness of UP’s proposed rate. The Mulholland VS addresses numerous deficiencies in UP’s submission.

Among other things:

1. The proposed rate would give UP a windfall. In the first year, UP would receive 11 times what UP reported earning on the Metra traffic in 2019, when UP operated Metra’s trains. *Id.* at 5.

¹¹ A “split” is an understatement. At his deposition, Mr. Hughes was asked about the

See excerpts from the Deposition of David Hughes, at Exhibit B.

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2. UP skews its comparison by using train miles instead of car miles. In 2024, UP's average freight train was 14 times the length of Metra's trains. UP assigns each Metra car the same burden as 14 freight cars. UP's passenger train comparatives also have different lengths, *e.g.*, the American Rocky Mountaineer ("ARM") has 14 cars to Metra's average of 7 cars. *Id.* at 6-7, 11.
3. Unlike many or most of the other passenger trains, Metra has already paid for all the track capacity it uses through the FFAs. UP is effectively asking Metra to pay twice or provide UP with a return on Metra's own investment. *Id.* at 7.
4. Except for the Amtrak-SEPTA agreement, the nine other contracts for which UP identified train miles are individually no more than 11% of Metra's train miles. The nine contracts together account for less than half of Metra's annual train miles. UP's chosen comparison deprives Metra of the volume discount that is common for high-volume operations in the railroad industry. *Id.* at 10.
5. The Amtrak-SEPTA payment is not an access fee, but an expense allocation mechanism for assigning costs, including maintenance of way and station operating and maintenance ("O&M") costs (which Metra pays separately), for the Northeast Corridor based on a formula. *Id.* at 19.
6. Three of UP's comparative are not even daily commuter trains, but excursion, long-distance, and/or weekend-only trains. The CN-Metra train is limited to four daily trips in each direction due to capacity limitations. *Id.* at 10-11.
7. UP presents an inaccurate picture of the terms of the agreements in other instances. The UP-IDOT Rockford agreement has an annual { } million fixed fee and variable access fee of { } per train mile for 2025. Metra would owe UP { } on that basis. *Id.* at 12-15.
8. The NSE-VRE agreement has a base fee plus actual train miles charge that is undisclosed and cannot be verified. The superseding contract that took effect on September 4, 2024, has a fixed operating fee of \$750,000, significantly less than the \$4.8 million under the current agreement. *Id.* at 15.
9. Some of UP comparatives have "all-in" arrangements that include maintenance, capital, or other costs that Metra pays separately, which skews the comparisons. *Id.* at 15-19. The UP-Altamont Corridor Express (ACE) agreement may include capital access, funding for "initial projects," and "additional capital improvements, plus possible extensions." *Id.* at 16. Metra pays separately for its capital contributions under the FFA. UP has not

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disclosed sufficient detail for its calculations. *Id.* Since compensation is not part of the first phase of the trackage rights case, Metra has not been able to engage in full discovery.

10. The UP-LOSSAN fee for the Pacific Surfliner includes operating maintenance fees that Metra pays separately. Those costs appear significant enough for UP to have sought renegotiation. *Id.* at 17. The UP-ARM agreement appears to include an O&M and possibly other fees in addition to the franchise access fee. *Id.* The Metra-NICTD agreement also appears to include an O&M fee, which Metra pays separately. *Id.* at 18. UP appears to have included a one-time payment of { } million along with a capital contribution of { } in the calculation of annual access fees. *Id.*
11. The CSXT-VRE agreement also includes O&M, as does the Amtrak-SEPTA payment, as noted above. *Id.* at 18-19.
12. UP purports to exclude agreements negotiated more than a decade ago, but includes some older agreements, such as the UP-ACE (1997), NS-VRE Manassas (1989), WCL-Metra (1995), Metra-WCL (1996), and UP-VCTC (1998). *Id.* at 19-20. UP witnesses Turner and Bristol also state that UP developed its { } per train mile figure between 2000 and 2012. *Id.* at 20. As Mr. Mulholland explains, comparable contract analysis requires a like-to-

like comparison, and the agreements that UP has presented are not comparable to the UP-Metra relationship. *Id.* at 8-9. In addition, UP has not demonstrated, or attempted to show, that the other passenger agencies had effective bargaining leverage when contracting with UP, or any more than Metra has had, which is effectively none. *See also id.* at 21-22.

UP's reliance on allegedly comparable "market" rates for its demand here also is contradicted by its own evidence in the *Kern-Mojave* case. In recent sworn testimony, UP's Mr. Hughes rejected the notion that UP seeks to "ensure consistency amongst ... trackage rights agreements" or that any "agreed-upon rates provide a 'market' or 'market range' benchmark for the interest rental." *Kern-*

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Mojave (UP Reply filed March 14, 2025, David Hughes Reply VS at 1). Testifying as UP's in-house expert on such matters, Mr. Hughes affirmed:

There is no general “market” for trackage rights or “market range” for trackage rights rates. When Union Pacific negotiates trackage rights, our starting point is not rates we have negotiated in other transactions; rather, we seek to achieve the most favorable result possible in each individual case. In many cases, we ultimately agree to rates that are different in form and dollar amount from those that would be established in an actual cost arrangement. The trackage rights rates in our negotiated agreements reflect a wide variety of situation-specific factors and trade-offs that make them completely unsuitable as benchmarks for rates that should be imposed when parties cannot agree.

Id.

As for Metra's position on “what would be an economically reasonable rate” (UPRS at 27), if the issue of compensation were to be considered before the grant of terminal trackage rights by the Board, the appropriate means for establishing compensation would be to utilize the capitalized earnings framework that is the Board's preferred approach under the *SSW Compensation* formula. Using that framework, Mr. Mulholland calculates annual payments of \$6.7 million (book value), \$10.4 million (inverse cost of capital multiplier), and \$16.9 million (enterprise value). These calculations account for the value of land¹² along with

¹² UP's expert claims a land value of [REDACTED]. Carey VS at 20-24. That value includes premium adjustments that the Board has rejected in stand-alone cost proceedings. *E.g.*, *FMC Wyoming Corp. and FMC Corp. v. Union P. R.R.*, 4 S.T.B. 699, 798 (2000). The capitalized earnings framework takes into account the value of all the road property assets, including land. Mulholland VS at 25 & n.60.

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other road property investments, including those that Metra has funded through the FFAs.¹³ Mulholland VS at 23-28.

D. Granting Metra trackage rights serves the public interest

UP asserts that “Metra’s public interest argument hinges on a single sentence in the ICCTA Conference Report . . .” UPRS at 30. That assertion is incorrect. UP’s argument ignores the unrefuted public interest evidence presented with Metra’s Opening Statement. Metra Opening Statement and Evidence, Derwinski VS. It is remarkable that UP would contend otherwise, even as its CEO acknowledges the necessity of the service involved.¹⁴ The trackage rights requested would be manifestly in the public interest, even if that legislative language did not exist. Consider this passage from *Use of Erie of Niagara Junction Ry. Co. Terminals* from nearly 80 years ago, finding the public interest in the continuation of a long-established switching practice:

It is a fair conclusion from the facts that the present switching arrangement and use of the green track by the Erie for delivering in-bound cars is an outgrowth of switching practices of the Erie, acquiesced in by the Niagara Junction, that developed out of implied or orally expressed agreements between the carriers and industry to meet the changing conditions in the industrial plant. We here have an established switching practice that has endured for many years. The extent to which plant facilities were designed and built because of reliance on an understanding that direct delivery by the Erie would be continued, is not shown, but it is a reasonable presumption that it was

¹³ Metra previously submitted representative calculations under the capitalized earnings framework with its Reply to UP’s MTD (at Exhibit B).

¹⁴ “I personally saw how important the service is when I lived in Chicagoland and used the train to travel downtown.” UP CEO Jim Vena, May 21, 2025, letter to Metra, MTD, Exhibit C.

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an important factor. To abolish it now without a satisfactory substitute would destroy the value of considerable investments, disrupt and impair the industry's manufacturing and switching operations, and adversely affect its own and the customers' business economy. To discontinue such a practice without adequate protection of the industry would be contrary to the public interest.

269 I.C.C. at 502 (emphasis added).

Metra's situation is similar to that of the Erie railroad in terms of "an established . . . practice that has endured for many years" with "facilities [that] were designed and built because of reliance" and that "[t]o abolish it now without a satisfactory substitute would destroy the value of considerable investments, disrupt and impair the industry's ... operations, and adversely affect its own and the customers' [commuters'] economy." *See also Chicago & N.W. Ry. (Charles M. Thomson, Trustee) v. Ann Arbor R.R.*, 263 I.C.C. 287, 296 (1945) ("Similarly this long past experience has demonstrated that the joint use is in the public interest.").

E. The status quo is the reasonable interim path forward

Under § 11102(a), "compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section." Metra already is using the UP Lines and paying for that use – and it is indisputably in the public interest for that use to continue – accordingly, if the Board grants tracks rights, or while the Board is considering Metra's Application, interim compensation is appropriate. Interim terms of use also should be in place – all subject to adjustment to reflect the ultimate conditions and compensation agreed by the parties or determined by the Board under § 11102(a). UP agrees as much. UPRS at 34-38. The Board is faced with a sharp difference in approach, however, between

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the Interim Terms and Conditions submitted by UP (UPRS, Exhibit B) and Metra's proposed Interim Conditions and Compensation (**Exhibit A**).

Metra's Interim Conditions and Compensation preserve the status quo in all material respects, including: UP's compensation (with annual escalation), Metra's ability to add trains and adjust train schedules to serve the public need subject to UP's concurrence, and liability terms already in effect addressing the risks associated with Metra's operations (*i.e.*, indemnification and insurance for UP). Metra's proposal also requires Metra to pay the monthly compensation in advance to address UP's concerns regarding adequate security.¹⁵

UP's Interim Terms and Conditions, in contrast, would sharply alter the status quo in UP's favor. The annual compensation is nearly doubled to \$18.50 per train mile, or approximately \$41 million a year (§ 2.1), and Metra is required to pay in addition for "other properties such as stations, parking lots, industry tracks, or yard tracks" (§ 1.1) used in its operations, which historically were not subject to additional charges.¹⁶ Metra is locked into the train schedules existing as of the date of the Board's order (§ 1.2), and UP "has no obligation to permit changes," unless

¹⁵ Metra currently is compensating UP at an annualized rate of approximately \$22 million under the terms of an earlier Memorandum of Understanding ("MOU") between the two sides providing that "until the parties have a new post-PSA agreement in place, Metra will continue, in good faith, to pay Union Pacific for the use of the UP Lines, consistent with the amounts outlined in the PSA." Exhibit C, Declaration of Jennifer Kane at ¶18. A copy of the relevant MOU agreements is attached at **Exhibit D**.

¹⁶ Regarding compensation, UP's Reply contains the remarkable statement – repeated twice – that UP as a party to this proceeding is willing to accept its own demand. "Union Pacific is willing to accept interim compensation at the level sought by Union Pacific in private negotiations." UPRS at 29, 33.

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specifically ordered by the Board (§ 1.4). Metra is required to indemnify UP “against any and all claims” (§ 6.1) with that obligation to apply “irrespective of whether the liability is vicariously implied in law, strict, or is a result of [UP’s] own negligence” (§6.2). In short, UP is seeking to better its position at the expense of Metra, its riders, and the taxpayers relative to the status quo that has governed the parties’ relationship – and despite the parties’ prior understanding that they would maintain the status quo as to compensation until a new bilateral agreement had been reached – even while this proceeding is pending before the Board.

UP’s proposed Interim Terms and Conditions are similar, although not as draconian as the “Conditions of Entry” that UP unveiled the day after it submitted its Reply Statement. Metra Reply to MTD, Exhibit A. Absent Board action to establish interim provisions to govern Metra’s use of the UP Lines after June 30, 2025, UP plans to impose the Conditions of Entry unilaterally on July 1, 2025.

Attached as **Exhibit C** is the Declaration of Jennifer Kane, Metra’s Director of Rail Contract Management & Special Projects, which Metra submitted in its case pending before the Northern District of Illinois. Ms. Kane addresses the COE at ¶¶ 51-55 and testifies that the COE unreasonably:

1. Requires Metra to pay for rail property that Metra already owns (¶ 55b), as does UP’s Interim Terms and Conditions;
2. Degrades Metra’s ability to change schedules and train consists, even for public safety (¶ 55c, e-f);
3. Requires Metra to pay for engineering/maintenance as billed, with no audit rights or “true-up” to actual costs (¶ 55i);

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4. Requires Metra to pay for 100% of capital expenditures without any proportional allocation based on usage, in violation of Metra's grant conditions (§ 55k);
5. Requires Metra to indemnify UP for its own negligence and guarantee indemnification from UP's agents (§55t-u) and obtain insurance to cover punitive damages incurred by UP (§55w); and
6. Requires Metra to waive its constitutional right to a jury trial.

As a more reasonable path forward, Metra is proposing the attached Interim Conditions and Compensation (**Exhibit A**). These terms reflect a continuation of the status quo both for compensation and Metra's terms of use, that the parties previously agreed to and which have guided their relationship during the transfer of operations and personnel from UP to Metra. Under these Interim Conditions and Compensation, Metra would continue to pay rental of approximately \$22 million annually for use of the track and appurtenances, stations, platforms, offices, parking lots, mechanical yards, and other real estate and facilities. The parties would retain existing procedures for adding trains and the same standard for indemnification and insurance. Metra would continue to pay the rental in advance, so that UP would be protected and adequately secured based on its understanding of § 11102(a). Metra's Interim Conditions and Compensation also provide that status quo compensation would be subject to reconciliation and true up later – in either direction – in accordance with the compensation ultimately established between the parties or by the Board.

Metra submits that neither side should seek to improve its position or degrade the other's while the Board is determining the merits or before final

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conditions and compensation are established for Metra's use of UP's facilities and, therefore, Metra's proposed Interim Conditions and Compensation provide the soundest and most appropriate interim solution.

F. The Board has authority to grant injunctive relief to preserve the status quo

UP asserts that the Board lacks authority to issue an emergency order or an injunction (*id.* at 39-45) to preserve the status quo. The point is effectively moot, if the Board enters interim relief while considering Metra's Application, as UP acknowledges (UPRS at 34-35). The issue would be very much on point, however, if UP sought to exclude Metra from its lines or impose the non-negotiated COE, beginning July 1, 2025. In that event, the cessation of service or the imposition of the COE (including the divestment of a public entity's constitutional rights) would create "an emergency situation" with "substantial adverse effects on shippers, or on rail service" within the meaning of § 11123(a). The Board also is empowered to act under § 1321(b) to act "to prevent irreparable harm," which would occur if Metra's service were terminated or the COE imposed.

UP also asserts that injunctive relief can only preserve the status quo, and that "[h]ere, the status quo is that Union Pacific is under no obligation to provide or allow use of its line of its lines for commuter rail service after expiration of the PSA." UPRS at 44. UP has it wrong. The status quo is now. It is: "The situation that *currently* exists." Black's Law Dictionary (12th ed. 2024) (emphasis added). The status quo is that UP has discontinued and Metra currently is operating the commuter service on the UP Lines – which Chicago-area residents and visitors rely

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on every day to get them where they need to go. The Board has authority to enforce this status quo, including to prevent the emergency situation and irreparable harm that would occur if UP excluded Metra from the UP Lines or imposed the COE, after the expiration of the parties' existing agreement, which is exactly what UP has asserted it has the right to do. Preserving the situation as it currently exists is well within the Board's statutory authority and serves the public interest for all concerned.

CONCLUSION

The Board should grant Metra the requested trackage rights over the UP Lines in their entirety, adopt and order the parties to comply with Metra's proposed Interim Conditions and Compensation beginning July 1, 2025, and set a reasonable and prompt deadline for the parties to establish agreed conditions and compensation for Metra's use of the facilities, or report to the Board that they cannot agree so that the Board may establish those conditions and compensation as provided under § 11102.

Respectfully submitted,

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Division of the Regional Transportation
Authority d/b/a Metra*

Dated: June 23, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2025, a copy of the foregoing Rebuttal Statement and Evidence has been served by first-class U.S. Mail, or more expeditious means, on counsel for Union Pacific Railroad Company.

/s/ Peter A. Pfohl

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BEFORE THE
SURFACE TRANSPORTATION BOARD

**FINANCE DOCKET NO. 36844
COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY D/B/A METRA
—TERMINAL TRACKAGE RIGHTS—
UNION PACIFIC RAILROAD COMPANY**

VERIFIED STATEMENT

of

Robert D. Mulholland
Executive Vice President

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

On Behalf Of

**COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY D/B/A METRA**

Dated: June 22, 2025

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LIST OF EXHIBITS

Exhibit No.	Exhibit Description
(1)	(2)
1	Robert D. Mulholland Statement of Qualifications
2	Metra Interest Rental Calculation, Capitalized Earnings Framework, Alternate Calculations, 2024 Annual Data
3	Expansion of the Chicago Terminal District to Include New Rail Facilities

I. INTRODUCTION

I am Robert D. Mulholland, Executive Vice President of L. E. Peabody & Associates, Inc. (“LEPA”). LEPA is an economic consulting firm that specializes in transportation, economic, and operating issues, with an emphasis on freight and passenger railroad matters. The firm's offices are located at: 1501 Duke Street, Suite 200, Alexandria, Virginia 22314; and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737. I have spent most of my career of 30 years evaluating railroad operations, capacity, costs, and profitability and pricing issues for railroads, shippers, producers and government agencies.

I am a graduate of George Mason University’s School of Public Policy, from which I obtained a Master’s degree in Transportation Policy, Operations & Logistics, and Bowdoin College, from which I obtained a Bachelor of Arts degree in Government and Legal Studies. I have been employed by L. E. Peabody & Associates, Inc. since 2008 and from 1995 to 2004. From 2004 to 2006, I was the staff economist for the Office of Freight Management and Operations of the Federal Highway Administration (“FHWA”) of the United States Department of Transportation (“USDOT”). From 2006 to 2008, I worked for ICF International as a consultant in the transportation group. A copy of my statement of qualifications is attached as Exhibit No. 1 to this Verified Statement (“VS”).

I have been asked by counsel for the Commuter Rail Division of the Regional Transportation Authority (“Metra”) to evaluate the Union Pacific Railroad Company’s (“UP”) Reply Statement and Evidence filed in this docket on June 3, 2025 (“UP Reply”), and to respond to claims made by UP and its witnesses. Specifically, I was tasked with evaluating the Rail Access Fee (“RAF”) included at Section 2.1 in the Interim Terms and Conditions (“ITC”) set forth in Exhibit B to the UP Reply and the data and analysis that UP presents to explain the development of the RAF, including statements related to the development of fees included in UP agreements

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with other railroads. In addition, I was asked to explain the calculation supporting “Metra’s suggested range” for access fees that was included in UP’s comparative analysis. Finally, I was asked to review UP’s statements regarding the history of Chicagoland terminal operations and the nature of freight switching and commuter rail operations.

The results of my analysis are included in this VS below under the following sections:

- II. Summary of Findings
- III. Union Pacific Interim Rail Access Fee
- IV. Review of Other Operating Agreements
- V. Capitalized Earnings Framework of the SSW Compensation Formula and Estimates
- VI. Chicago Terminal Area

II. SUMMARY OF FINDINGS

UP's proposed { } per train mile RAF more than { } the interest rental fee that would be calculated using the capitalized earnings framework of the Surface Transportation Board's ("STB" or "Board") *SSW Compensation* formula. UP claims to base the proposed fee on a UP study that sought to "equate the economic value of passenger train capacity to the economic value of capacity consumed by a freight train."¹ The fee implicitly compensates UP for the opportunity cost of capacity that theoretically could be used to move freight trains, but is instead consumed by passenger trains. The UP line segments over which Metra seeks to operate are not capacity constrained. Metra has contributed over a billion dollars in capital improvements on the UP line segments to ensure its trains have sufficient capacity to operate, including the addition of third mainline track over the freight-heavy UP-West ("UP-W") line.

UP justifies its proposed per-train-mile rate by comparing it to rates derived from agreements governing passenger train operations over other line segments. None of the rates included in UP's analysis are comparable to the RAF rate offered to Metra. All but one of the passenger operations covered by the agreements are much smaller in scale than Metra's operations. Some of the services involve intercity and tourist trains, not commuter trains. The length of passenger trains also varies. The analysis misstates some of the rates and/or misrepresents the terms of the cited agreements. Many agreements include rate and payment structures that materially differ from those offered to Metra: they include maintenance fees and/or capital contributions, which UP requires Metra to pay separately from and in addition to the RAF under UP's proposed terms. UP also selectively applied the screening filters it used to select the agreements included in its analysis.

¹ Joint Verified Statement of John W. Turner and Mark Bristol ("Turner/Bristol VS") at p. 4.

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UP's desire to recover a relatively uniform "market rate" across its system for hosting passenger rail operations does not obviate the need to account for differences in operations, volumes, densities, and contributions to maintenance and capital expenditures. In contrast, I developed an estimate of the compensation for Metra's use of UP's line segments under the capitalized earnings framework of the STB's *SSW Compensation* formula that accounts for the traffic volumes and traffic mix over the specific segments at issue. The level of compensation determined using the STB's methodology is not expected to be the same for every segment across the network, because the volume of traffic and nature of hosted rail services can vary significantly from segment to segment.

Historical maps of the Chicago terminal district included in UP's filing demonstrate that the terminal area is dynamic and its boundaries have expanded to incorporate new Chicagoland rail yards and other facilities at least four (4) times, while never contracting in size.

III. UNION PACIFIC INTERIM RAIL ACCESS FEE

Section 2.1 of the ITC, attached as Exhibit B to the UP Reply, includes a RAF rate of { } per train mile starting on July 1, 2025. The fee increases by { } on January 1 of each year. UP estimates that Metra operates { } million train miles per year. Including the escalation that applies January 1, 2026, UP's compensation for the first year of access would be { } ({ }). UP's proposed RAF would result in an { } increase over Metra's 2024 compensation of { }² to UP under the current agreement, not including the separate facilities payments that UP demands.

UP states that this level of increase is justified and reasonable.

[A]nother way to consider the overall reasonableness of Union Pacific's proposed rate for Metra is to consider the incremental difference in compensation between the two parties' proposed rates on the overall Metra system operations costs. The cost difference between the Union Pacific proposed rate and the Metra status quo rate (which is higher than the rate Metra would propose going forward) is approximately { } annually.[] This { } is about { } of the \$222.5 million [] total estimated costs for Metra's use of the UP Lines for commuter rail service based on Union Pacific's prior cost expenses for 2019.³

UP's 2019 R-1 Annual Report filed with the STB confirms that UP reported \$222.2 million in passenger-related railway operating expenses in 2019. It also shows that UP reported \$225.8 million in passenger-related railway operating revenues in 2019, and UP's pre-tax net revenues on this service were \$3.6 million in 2019.⁴ UP's proposed payment of { } annually is { } the amount UP earned on this traffic in 2019, when UP operated Metra's trains, which Metra will do itself going forward.

² Carey workpaper "Copy of Franchise Access Fee Engr Other Costs 20250516.pdf"

³ Verified Statement of Ms. Julie M. Carey ("Carey VS") at p. 19

⁴ \$225.8 million - \$222.2 million = \$3.6 million.

UP explains that the RAF reflects UP's desire to equate the economic value of passenger train capacity to the economic value of capacity consumed by freight trains.⁵

As John W. Turner and Mark Bristol further explain in their Joint Verified Statement, Union Pacific undertook an analytical exercise to determine the appropriate access rate for passenger rail franchise access rights. Union Pacific determined that approximately {██████}[] per train-mile (which combines the total track miles and the frequency of trains that traverse the line) was the price that would equate to the economic value that Union Pacific would realize on freight trains.”⁶

The basic economic unit for railroad rate setting is a carload. Railroads, including UP, set freight transportation rates on a per railcar (or per intermodal unit, or per ton) basis, not on a per train basis. This is because trains are not homogenous. For example, one train may consist of two (2) locomotives and 65 railcars, while another train moving the same commodities over the same route may consist of four (4) locomotives and 130 railcars. These two trains would have different economic value to UP.

Setting aside the issue of differences in economic value among freight trains, UP reports moving 9.5 billion freight car miles and 98 million freight train miles in 2024.⁷ This implies an average of 97 cars per train.⁸ An average Metra train consists of a single locomotive and seven (7) passenger cars.⁹ UP's rate structure seeks to assign each Metra passenger car the same economic burden as 14 freight cars.¹⁰

An argument that UP should be compensated for the opportunity cost associated with sacrificing a freight train slot to accommodate a passenger train could only be relevant in a situation

⁵ Turner/Bristol VS at p. 4.

⁶ Carey VS at p. 9.

⁷ 2024 UP R-1 Annual Report, Schedule 755, Line 7, Column (b) and Schedule 755, Line 89, Column (b) respectively.

⁸ $9.5 \text{ billion car miles} \div 98 \text{ million train miles} = 97 \text{ cars per train}$.

⁹ $14,915,130 \text{ passenger car miles} \div 2,214,167 \text{ train miles} = 6.7 \text{ cars per train}$, rounded to 7 cars. See: UP Section (7.02(c) Report dated January 31, 2025. “PSA 7.02(c) – December 2024.pdf”

¹⁰ $97 \text{ freight cars} \div 7 \text{ passenger cars} = 13.9$.

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where the passenger trains seek to operate on capacity-constrained portions of UP's network, which is not the case here.

Two of the line segments over which Metra seeks access (UP-North ("UP-N") and UP-Northwest ("UP-NW")) host relatively little freight traffic. Although the third line segment (UP-West ("UP-W")) hosts significant volumes of freight trains, Metra provided capital to add contiguous third mainline track over the freight-heavy segment, so that passenger trains and freight trains would not interfere with each other.¹¹

Metra has invested over a billion dollars in capital contributions over the last several decades on all three UP line segments to ensure that there is sufficient capacity for all of Metra's trains to run without interference.¹² Basing the rate on the purported economic value of capacity consumed by a freight train would effectively punish Metra for expending capital to increase capacity on UP's line segments. This is not a commercially reasonable charge.

¹¹ Metra Opening Statement and Evidence, Verified Statement of Steve M. Cork and Greg J. M. Godfrey, at p. 19, and Verified Statement of Aaron R. J. Maertins, at pp. 5-6. See also: "Metra, Union Pacific break ground on UP West Line track project," RT&S, April 24, 2017, "The project will add nearly eight miles of third track in the only two remaining segments between Elburn and Chicago that have two tracks. The ceremony in Maywood marked the start of construction on the first segment, a 1.8-mile section from just east of the Des Plaines River in River Forest to 25th Avenue in Melrose Park. Third track will also be added starting later this year along a 6.1-mile segment from Kress Road in West Chicago to Peck Road in Geneva." available online at: <https://www.rtands.com/track-maintenance/on-track-maintenance/metra-union-pacific-break-ground-on-up-west-line-track-project/>

¹² Metra Opening Statement and Evidence, Verified Statement of James M. Derwinski, at p. 7.

IV. REVIEW OF OTHER OPERATING AGREEMENTS

UP frames the RAF rate as commercially reasonable based on comparisons to rates derived from agreements between UP and other passenger rail services, along with estimated rates from agreements between other rail carriers. UP includes an analysis conducted by its witness Julie Carey, in which she estimates per-train-mile access rates under agreements governing other passenger rail operations and compares them to the RAF rate. Ms. Carey's calculations result in estimated per-train-mile rates greater than the RAF for all other agreements included in her comparison. She concludes that, "[b]ased on the rates mutually agreed to in these other recent commercial negotiations, Union Pacific's offer is not only demonstrably economically reasonable, it is conservative (i.e., low)."¹³

Ms. Carey's analysis contains technical and structural flaws, which I discuss below under the following topical headings:

- A. Incomparable Operations
- B. Misapplied Agreement Terms
- C. Incomparable Rate Components
- D. Selective Application of Screening Filters
- E. Review of Selected Comparisons

A. INCOMPARABLE OPERATIONS

UP asserts that Metra seeks to avoid paying market rates for continued access to UP's rail lines.¹⁴ UP misrepresents the market, assuming that the disparate and divergent agreements Ms. Carey reviews can be considered to form a market. Ms. Carey correctly notes factors to be considered in reviewing competitive market rates:

The range of possible competitive prices will be affected by the economic strengths of each party, including information asymmetries, stature and

¹³ Carey VS at p. 9.

¹⁴ UP Reply at p. 9.

leverage. Differentiation in economic circumstances could also lead to a broader range of negotiated prices with a potential advantage to the more sophisticated or otherwise advantaged negotiator including the larger entity with greater stature or other leverage characteristics.¹⁵

Metra is a large and sophisticated provider of passenger rail service in the Chicago metropolitan area which provides approximately 35 million passenger trips per year.[] Metra uses many Chicago area freight railroads' lines to provide commuter rail service, including BNSF Railway, Canadian National Railway, Norfolk Southern Railway, and Union Pacific Railroad Company ("Union Pacific").[] Metra has a 2025 operating budget of \$1.14 billion.[]¹⁶

However, Ms. Carey ignores her own framework in her analysis of competitive RAF market rates. Table No. 1 below demonstrates that nearly all the agreements Ms. Carey included in her comparison group govern the operation of significantly smaller traffic volumes—often well below 10% of Metra's scale—as measured using UP's preferred train miles metric.¹⁷

¹⁵ Carey VS at p. 8.

¹⁶ *Id.*, pp. 1-2, footnotes omitted.

¹⁷ The lone exception is the agreement governing SEPTA's use of Amtrak facilities on the Northeast corridor. As discussed in Section C. below, this charge is more an "all-in fee that covers maintenance and capital projects as well as track access. UP also did not provide train mile data for some of its own agreements.

Table No. 1 <u>Estimated Annual Train Miles as Percentage of Metra Train Miles</u>		
<u>Agreement</u>	<u>Estimated Annual Train Miles</u>	<u>Percentage of Metra Train Miles</u>
1. Metra - UP		
<u>A. UP Agreements</u>		
2. UP – IDOT Rockford		
3. UP – Altamont Corridor Express (ACE)		
4. UP – Metrolink Ventura (VCTC)		
5. UP – Pacific Surfliner (LOSSAN)		
6. UP – Rocky Mountaineer (ARM)		
<u>B. Other Railroad Agreements</u>		
7. Metra – NICTD, Millenium to Kensington		
8. Metra – NICTD, Northwest Indiana		
9. Metra – NICTD, West Lake		
10. CN – Metra, North Central Line		
11. Metra – CN, Chicago		
12. CSX – Virginia Railway Express (VRE), Fredericksburg Line		
13. NS – Virginia Railway Express (VRE), Manassas Line		
14. AMTRAK – SEPTA		

Basic economic principles dictate that an entity with Metra's scale and scope of operations should achieve a lower negotiated price than entities with much smaller operations. Even if the rates calculated by Ms. Carey were accurate and the agreement terms were comparable, her benchmarks are simply unsuitable because the involved passenger services are not similar to Metra's. One would not expect a high-volume user to pay the same rate as small-volume users in a competitive market, holding all else equal.

Three (3) of Ms. Carey's five (5) direct comps (60 percent of the observations in Section A of Table No. 1 above) are not even daily commuter train services.

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The American Rocky Mountaineer (“ARM”) service (Table No. 1, Line 6) is a [REDACTED] [REDACTED] that conducts seasonal [REDACTED] on UP’s Denver-Moab line for seven months a year (April through November).¹⁸ It is an 840-mile round-trip operation that takes three (3) days to complete. The schedule includes the following note: [REDACTED]¹⁹ The ARM service involves trains with consists that are { [REDACTED] [REDACTED] }, compared to Metra’s one (1) locomotive and seven (7) railcars).²⁰

The Pacific Surfliner (Table No. 1, Line 5) is not commuter service, but rather an “Intercity Passenger Rail Service” that operates over a 351-mile route.²¹

The rate Ms. Carey calculated for the Metrolink Ventura service (Table No. 1, Line 4) “shall only apply” to { [REDACTED] } added in the Third Amendment.²² Ms. Carey excluded the rates applicable to the other { [REDACTED] } round trip trains that operate under the same agreement from her analysis.²³

Ms. Carey claims that the operations share “similar economic circumstances,” which she defines as (1) “agreements [that] all provide the same basic service—access to Union Pacific’s rail

¹⁸ Passenger Rail Operating Agreement Between American Rocky Mountaineer Service and Union Pacific Railroad, dated June 30, 2021, p. 1. Carey workpaper “UP-ARM-UP PROA Executed 20210630.pdf.pdf”

¹⁹ *Id.*, Exhibit 2.

²⁰ Exhibit 3 to the UP-ARM Agreement specifies [REDACTED] [REDACTED] This train length exceeds the limit imposed on Metra in the ITC. Section 1.2 states: “Each train consist shall not exceed 1,100 feet in length.” See: “ITC Section 1.2”

²¹ “The Amtrak® Pacific Surfliner® travels along a 351-mile route through San Diego, Orange, Los Angeles, Ventura, Santa Barbara, and San Luis Obispo counties, with portions of the route hugging the Southern California coastline.” <https://www.pacificsurfliner.com/about/>

²² Third Amendment to Commuter Train Access Agreement Between Ventura County Transportation Commission and Union Pacific Railroad Company, dated June 19, 2023, page 2, Item 3. Carey workpaper “UP-VCTC Commuter Access Agreement - 3rd Amendment 06.19.23.pdf”

²³ { [REDACTED] [REDACTED] } See: Third Amendment to Commuter Train Access Agreement Between Ventura County Transportation Commission and Union Pacific Railroad Company, dated June 19, 2023, p. 1, Recital B, Recital D.2, and Recital F.1. Carey workpaper “UP-VCTC Commuter Access Agreement - 3rd Amendment 06.19.23.pdf”

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lines for passenger operations,” (2) “are within a reasonable time horizon of Union Pacific’s offer to Metra,” and (3) some “are in geographic areas that have reasonably comparable economic characteristics in terms of per capita income as the UP Lines for Metra.”²⁴ She ignores operational differences among the services including the volume of traffic, frequency of services offered, length of movement, and condition of facilities.

Metra is not comparable in size, stature, leverage, scope, or nature of operations to the services included in UP’s analysis. Nor are the line segments over which they operate comparable to the UP lines that host Metra. The agreement governing CN (then Wisconsin Central, Ltd. (“WCL”)) access over Metra tracks explicitly states: [REDACTED]

[REDACTED]

[REDACTED]²⁵ Operating capacity is generally not restricted on the Metra UP Lines. This agreement governs the operation of { [REDACTED] } train miles per year, or { [REDACTED] } of Metra’s annual train miles (See Table No. 1, Line 10).

B. MISAPPLIED AGREEMENT TERMS

Ms. Carey claims that fees per train mile “is an appropriate way to compare rates across a diverse array of locations, total mileage, and service frequency because it offers standardized points of comparison.”²⁶ Her calculation includes technical errors that distort and misrepresent the rates paid under the selected comparison agreements. Ms. Carey attributed a rate of { [REDACTED] } per train mile to the agreement governing the Illinois Department of Transportation (“IDOT”) service

²⁴ Carey VS at p. 14.

²⁵ Trackage Rights Agreement between Metra and WCL, dated August 16, 1996, p. 2. Carey workpaper “(1996-10-01) WC8020-Trackage Rights Agreement.pdf”

²⁶ Carey VS at p. 9.

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on the Rockford Line. This calculation misrepresents the terms of the agreement.²⁷ The Memorandum of Agreement states that IDOT will pay UP a Franchise Access Fee comprised of: (1) an annual fixed access fee, and (2) a variable access fee. Per the terms of the agreement, the 2025 annual fixed access fee is [REDACTED]²⁸ and the 2025 variable access fee is [REDACTED] [REDACTED] [REDACTED].

This is a simple rate structure that could easily be applied to Metra, and the variable per train mile rate is { [REDACTED] } the “Metra Suggested Rate Range” of \$3.05-\$7.68 per train mile, as included in Carey Figure 4.³⁰

Ms. Carey distorts the terms of the agreement by performing unnecessary conversions. She determined the total annual payment under the terms of the agreement, and then divided that amount by the train miles that are used to determine the variable portion of the annual payment. Table No. 2 below shows the overstatement resulting from this approach.

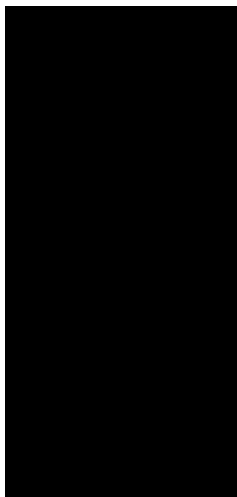
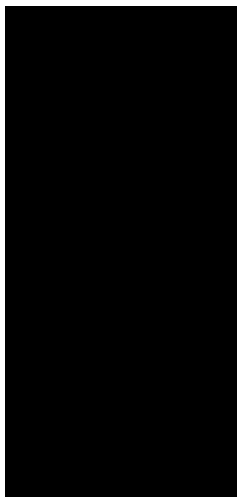
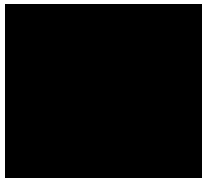
²⁷ Memorandum of Agreement between UP and the Illinois Department of Transportation ("IDOT") ("Memorandum of Agreement"). Carey workpaper “UP-IDOT Rockford MOA_Fully_Executed 2023-12-18.pdf.pdf”.

²⁸ [REDACTED] See: Memorandum of Agreement Exhibit C.

²⁹ [REDACTED] See: Memorandum of Agreement Exhibit C.

³⁰ Carey VS at p. 26.

Table No. 2
UP's Mischaracterization of IDOT Contract Terms

<u>Item</u> (1)	<u>Source</u> (2)	<u>Amount</u> (3)
<i>IDOT Contract Terms Applied to IDOT Traffic</i>		
1. Annual Base Fee	Contract	
2. Rate per Train Mile	Contract	
3. IDOT Train Miles	Carey WP	
4. IDOT Train Mile Payment	Line 2 x Line 3	
5. IDOT Total Annual Payment	Line 1 + Line 4	
<i>IDOT Contract Terms Correctly Applied to Metra Traffic</i>		
6. Annual Base Fee	Contract	
7. Rate per Train Mile	Contract	
8. Metra Train Miles	Estimate	
9. Metra Train Mile Payment	Line 7 x Line 8	
10. Metra Total Annual Payment	Line 6 + Line 9	
<i>Carey's Misrepresentation of IDOT Contract Terms Applied to Metra Traffic</i>		
11. IDOT Total Annual Payment	Line 5 rounded to 10 thousands	
12. Misstated Rate per Train Mile	Line 11 ÷ Line 3	
13. Misstated Rate Applied to Metra	Line 12 x Line 8	
14. Overstatement (Amount)	Line 13 - Line 10	
15. Overstatement (Percent)	Line 14 ÷ Line 10	

As shown in Lines 6 through 10 of Table No. 2 above, applying the terms of the IDOT agreement to Metra would produce an annual payment to UP of  (Line 10, Column (3)) based on the fixed annual payment of  (Line 6, Column (3)), plus the per-train mile rate multiplied by Metra's annual volume (Lines 7 through 9, Column (3)). This figure is likely overstated because as a high-volume user, it would be commercially reasonable for Metra to achieve a reduction (or elimination) of the fixed portion of the rate.

Rather than apply the terms of the IDOT agreement to Metra's traffic, Ms. Carey sums the fixed plus variable portions of the IDOT annual payment and divides that result by  IDOT

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annual train miles (equivalent to { } of Metra’s annual volume) to develop a per-train-mile allocation that distorts the contract terms and applicable rate. Her framework implies that Metra should pay UP { } per train mile for Metra’s { } train miles, for a total of { } (Table No. 2, Line 13, Column (3)), which is more than { } greater than the amount that would be paid under the actual terms of the agreement (Table No. 2, Line 15, Column (3)).

The VRE Agenda Item Report from Rich Dolton to the Chair of the VRE Operations Board regarding the NS-VRE agreement states that the fee included in the FY 2025 budget under the current contract included an access fee calculated using a “Base fee plus actual train miles.”³¹ Without knowing the structure of the base fee plus variable fees, it is not possible to evaluate whether the agreement terms were applied correctly, or whether the calculated per-train-mile rate is misstated similar to the IDOT rates depicted in Table No. 2 above. The superseding contract which takes effect after the initial closing on the grant of Manassas Passenger Easement, which was on September 4, 2024³², provides that NS-VRE will operate under a “fixed operating fee” of \$750,000, significantly less than the \$4.8 million under the current agreement.³³

C. INCOMPARABLE RATE COMPONENTS

Many of the per-train-mile rates selected for UP’s comparison include payments for maintenance and/or capital contributions. These rates are not comparable to the proposed Metra RAF, because the RAF does not include Metra’s share of maintenance expenses or capital

³¹ VRE Operations Board Meeting Agenda Item Report Re: Recommend Authorization to Execute an Operating Access Agreement with Norfolk Southern dated September 20, 2024, at p. 2. “VRE Operations Board_Agenda Item Report - AIR-24-057 – PDF.pdf”

³² “VPRA Purchases Manassas Line from Norfolk Southern” at <https://vapassengerrailauthority.org/vpra-purchases-manassas-line-from-norfolk-southern/>

³³ VRE Operations Board Meeting Agenda Item Report Re: Recommend Authorization to Execute an Operating Access Agreement with Norfolk Southern dated September 20, 2024, at p. 2. “VRE Operations Board_Agenda Item Report - AIR-24-057 – PDF.pdf”

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contributions Metra makes under Fixed Facilities Agreements (“FFAs”), which UP proposes to continue collecting separately from and in addition to the access fee.

UP’s estimate of the access fee paid by the Altamont Corridor Express (“ACE”) to operate on UP lines in California is unsupported. Ms. Carey divided an annual “Capital Access Usage Charge” of {REDACTED} by an estimated {REDACTED} annual train miles to arrive at an estimated the per-train-mile rate of {REDACTED}.³⁴

It is unclear what is included in the Capital Access Usage Charge. The original 1997 contract between UP and the San Joaquin Regional Rail Commission (“SJRRRC”) included a provision that required SJRRRC to contribute {REDACTED} in capital to fund {REDACTED} at the start of the term, plus an additional {REDACTED} per year for {REDACTED} {REDACTED} in years three (3) through five (5) of the contract.³⁵

Another section of the agreement gave SJRRRC the option to extend the agreement beyond the initial five-year term, provided that, {REDACTED}
{REDACTED}
{REDACTED} }³⁶

“Capital Access Usage Charge” in context implies contributions to fund capital improvements. Metra has and will continue to pay millions per year in capital contributions separately from and in addition to the access fee.

³⁴ Workpaper “HC Carey_WP_UP Agreements_Metra Rebuttal.xlsx” at tab “ACE”.
The annual ACE train miles represent less than {REDACTED} percent of Metra’s annual volume (See: Table No. 1, Line 3).

³⁵ Altamont Pass Trackage Rights Agreement Between UP and San Jaquin Regional Rail Commission, Section 2(c), pp. 6-8. workpaper “UP-Metra-022041.pdf”

³⁶ *Id.*, pp. 40-41.

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The Pacific Surfliner (UP-LOSSAN) fee is an [REDACTED] that includes operating and maintenance fees.³⁷ According to the VS of UP witnesses Turner and Bristol, “[t]his route runs parallel to the coastline, which makes maintaining the rail infrastructure necessary for safe operations extremely costly.”³⁸ Messrs. Turner and Bristol also claim “Union Pacific approached LOSSAN to renegotiate the existing agreement, explaining that Union Pacific was not earning enough revenue on the line to justify the maintenance expense required of a passenger service.”³⁹ UP has not specified how the O&M Access Fee is allocated among access, maintenance, and potentially capital expenditures on the line segments. Metra pays UP for its share of actual maintenance expenses in arrears and separately for capital expenditures, so the all-in fee structure included in the UP-LOSSAN agreement is not comparable to the Metra RAF.

Section 5.3 of the Rocky Mountaineer (UP-ARM) agreement stipulates that, [REDACTED]

[REDACTED] } Section 4.1 stipulates that, [REDACTED]

[REDACTED] 4 only includes a [REDACTED] The Track Access Fee shown in Exhibit 4 apparently includes both the Franchise Access Fee and the Operation and Maintenance Fee, and possibly [REDACTED] as well. The UP-ARM Track Access Fee is not comparable to the Metra RAF.

³⁷ [REDACTED]
[REDACTED] See: Passenger Rail Cooperative Agreement Between Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency and Union Pacific Railroad Company, dated December 15, 2022, Section 2.1. Carey workpaper “UP-LOSSAN PRCA Access Fee Agreement Executed.pdf.pdf”

³⁸ Turner/Bristol VS at p. 6.

³⁹ *Id.*, p. 7.

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The base compensation in the Metra-NICTD, Millenium to Kensington Trackage Rights Agreement⁴⁰ includes operations and maintenance expenses: [REDACTED]

[REDACTED]⁴¹ These amounts are expressed in lump sums and do not specify how much of the Base Compensation consists of access fees and how much consists of operations and maintenance expenses, which Metra pays separately and in addition to access fees. The Metra-NICTD, Millenium to Kensington all-in fee is not comparable to the Metra RAF.

The agreement section⁴² that governs both the Northwest Indiana and West Lake services included a one-time, [REDACTED] payment as a condition of new service, not a recurring access fee.⁴³ This one-time fee also included an operations and maintenance component.⁴⁴ The agreement also required a [REDACTED] capital contribution. Ms. Carey included the full combined amount [REDACTED]) in her calculation of annual access fees.⁴⁵ Neither maintenance fees nor capital contributions are appropriate to include in this RAF market rate comparison analysis. The Metra-NICTD fees are not comparable to the Metra RAF.

The fees assessed to VRE under its agreement with CSXT include maintenance expenses. “CSX Access fees are included in the operations budget because CSX Access fees cover CSX

⁴⁰ Trackage Rights Agreement Between Metra and Northern Indiana Commuter Transportation District, dated February 28, 2019, Section 5 and Section 6, pp. 21-33. “METRA-043416.pdf”.

⁴¹ *Id.*, p. 22.

⁴² *Id.*, Section 6, pp. 25-33.

⁴³ *Id.*, pp. 25-28.

⁴⁴ *Id.*, p. 31.

⁴⁵ Carey Reply workpaper “HC Carey_WP_UP Agreements.xlsx” at tab “NICTD NewSvc”, excel row 6.

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maintenance of the VPRA purchased corridor between Washington, DC, and Petersburg, Virginia.”⁴⁶ The VRE-CSX access fee is not comparable to the Metra RAF.

The AMTRAK – SEPTA payment is not comparable to Metra-UP because, despite being called an access fee, it is actually a mechanism for allocating expenses to users of Amtrak’s Northeast Corridor (“NEC”). The level of the fee is set by the Northeast Corridor Commission using a formula that assigns operating costs including maintenance-of-way as well as station operating and maintenance.⁴⁷

All NEC agencies, including Amtrak, Massachusetts Bay Transportation Authority (MBTA), Metro-North Railroad (“MNR”), CTrail, Long Island Railroad (“LIRR”), Southeastern Pennsylvania Transportation Authority (“SEPTA”), New Jersey Transit (“NJT”), Maryland Area Regional Commuter (“MARC”), and the Virginia Railway Express (“VRE”) pay this fee to cover their share of NEC operating and maintenance expenses. The AMTRAK-SEPTA access fee is not comparable to the Metra RAF.

D. SELECTIVE APPLICATION OF SCREENING FILTERS

UP’s witness intentionally excluded select agreements from its rate comparison based on its claim that the agreements were negotiated more than a decade ago and do not reflect “changes in economic conditions since the current rate under the PSA was set—beyond the modest escalation and other stop gap amendment changes.”⁴⁸

For the remaining three commercially negotiated agreements that I reviewed—Peninsula Corridor Joint Powers Board (PCJPB), dated

⁴⁶ Recommended FY25 VPRA Capital Budget p. 42. “Resolution of the VA Transportation Board_2024_03_19.pdf” (March 19, 2024, Recommended Fiscal Year 2025 Capital Budget Draft presented to the Commonwealth Transportation Board)

⁴⁷ Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy as amended through December 17, 2024, pp. 19-23. “2024-12-17_Cost-Allocation-Policy_v14.00_For-Publicationx.pdf”

⁴⁸ Carey VS at p. 4.

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December 27, 2000; the Las Vegas Railway Express (LVRE), dated November 8, 2012; and the Capitol Corridor Joint Powers Authority (CCJPA), dated December 20, 1991, and December 15, 2004 (amended)—these agreements were negotiated more than a decade ago and are, therefore, not reflective of the most current market conditions.⁴⁹

UP applied this filter selectively. The UP-ACE agreement took effect in August 1997.⁵⁰ The NS-VRE, Manassas Line agreement was originally entered into in 1989 and “has since been amended and extended numerous times”.⁵¹ The agreements granting Metra and the WCL trackage rights over each other’s track were negotiated and implemented in 1995 and 1996.⁵² The UP-VCTC Agreement took effect in 1998.⁵³

While Ms. Carey excluded select rates as having been negotiated between 2000 and 2012, UP witnesses Turner and Bristol state that UP developed the { } per train mile figure “in the early 2000s.”⁵⁴

E. REVIEW OF SELECTED COMPARISONS

Table No. 3 below summarizes my review of the agreements utilized in the UP rate comparisons.

⁴⁹ *Id.*, p. 11.

⁵⁰ Seventh Amendment to Altamont Trackage Rights Agreement between UP and San Joaquin Regional Rail Commission, dated November 27, 2023. Carey workpaper “ACE 7th Amendment UP Executed 20231129.pdf.pdf”

⁵¹ VRE Operations Board Meeting Agenda Item Report Re: Recommend Authorization to Execute an Operating Access Agreement with Norfolk Southern dated September 20, 2024, at p. 1. “VRE Operations Board_Agenda Item Report - AIR-24-057 – PDF.pdf”

⁵² Trackage Rights Agreement Between Metra and Wisconsin Central, Ltd., dated August 25, 1995. Carey workpaper “(1995-08-25) WC8009-Wisconsin Central Trackage Agreement.pdf” and Trackage Rights Agreement between Metra and Wisconsin Central, Ltd., dated October 1, 1996. Carey workpaper “(1996-10-01) WC8020-Trackage Rights Agreement.pdf”

⁵³ Third Amendment to Commuter Train Access Agreement Between Ventura County Transportation Commission and Union Pacific Railroad Company, dated June 19, 2023, p. 1, Recital A. Carey workpaper “UP-VCTC Commuter Access Agreement - 3rd Amendment 06.19.23.pdf”

⁵⁴ Turner/Bristol VS at p. 5.

Table No. 3
Review of Carey Figure No. 4 Comparison Rates

		Incomparable Rate Components							Selective Application of Screening	
		Incomparable Operations			Misapplied Agreement					
		Service	Train			Includes	Includes Capital	One-Time		
<u>Agreement</u>	<u>Type</u>	<u>Volumes</u>	<u>Consists</u>	<u>Terms</u>	<u>Maintenance</u>	<u>Contribution</u>	<u>Fee</u>	<u>Filters</u>		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		
<u>A. UP Agreements</u>										
1.	UP – IDOT Rockford		X		X					
2.	UP – Altamont Corridor Express (ACE)		X				?		X	
3.	UP – Metrolink Ventura (VCTC)	X	?						X	
4.	UP – Pacific Surfliner (LOSSAN)	X	?			X				
5.	UP – Rocky Mountaineer (ARM)	X	?	X		X				
<u>B. Other Railroad Agreements</u>										
6.	Metra – NICTD, Millenium to Kensington		X			X				
7.	Metra – NICTD, Northwest Indiana		X				X	X		
8.	Metra – NICTD, West Lake		X				X	X		
9.	CN – Metra, North Central Line		X				X		X	
10.	Metra – CN, Chicago		X						X	
11.	CSX – Virginia Railway Express (VRE), Fredericksburg Line		X			X				
12.	NS – Virginia Railway Express (VRE), Manassas Line		X		X					
13.	AMTRAK – SEPTA					X	X			

As shown in Table No. 3 above, the access fee comparison analysis conducted by UP does not fairly reflect what UP describes as the market to which Metra seeks access. Because Metra does not compete with these other passenger operations, there is not really a market as the term is

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generally understood. Metra also does not compete with UP for freight, and UP is exiting commuter operations Metra seeks to continue its high-frequency commuter train operations over infrastructure that Metra has funded, and will continue to fund through capital contributions, and for which Metra pays its share of actual ongoing maintenance expenses.

V. CAPITALIZED EARNINGS FRAMEWORK OF THE SSW COMPENSATION FORMULA AND ESTIMATES

I have been asked to explain the calculations I performed to develop the “Metra Suggested Rate Range” that Ms. Carey identified as \$3.05 - \$7.68 per train mile.⁵⁵ The cited “rate range” reflects an estimate of the interest rental component of the trackage rights fee that would result from application of the Board’s Capitalized Earnings (“CE”) framework under the SSW Compensation formula.⁵⁶

The *SSW Compensation* formula calculates compensation as the sum of two main elements: (1) an interest rental component designed to compensate the owning carrier for the tenant carrier’s use of capital dedicated to the track by the owning carrier, and (2) the “below-the-wheel” maintenance costs incurred by the owning carrier due to the tenant carrier’s operations over the owning carrier’s track and the tenant carrier’s usage-proportionate share of the track’s maintenance and operation expenses. The *SSW Compensation* formula also includes a third element for variable (incremental) operating costs associated with the tenant.⁵⁷

The Board’s preferred⁵⁸ approach to calculate the interest rental payment is to use the capitalized earnings method.⁵⁹ This method develops an estimate of the value of line segment(s) at issue based on the pre-tax net revenues (i.e., total operating revenues less total operating expenses) earned on the traffic that uses the line(s), relative to the overall system net revenues. My

⁵⁵ Carey VS at p. 26, Figure 4, Line 2.

⁵⁶ Based on the decisions of its statutory predecessor, the Interstate Commerce Commission, in *St. Louis Sw. Ry.—Trackage Rts. Over Mo. Pac. R.R.—Kan. City to St. Louis*, 1 I.C.C.2d 776 (1984) and *St. Louis Sw. Ry.—Trackage Rts. Over Mo. Pac. R.R.—Kan. City to St. Louis*, 4 I.C.C.2d 668 (1987).

⁵⁷ *BNSF Railway Company—Terminal Trackage Rights—Kansas City Southern Railway Company and Union Pacific Railroad Company*, STB Finance Docket No. 32760 (Sub-No. 46), Decision No. 11, decided November 28, 2023, p. 3

⁵⁸ See: *CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 123, decided May 18, 1999, p. 78. “Under the capitalized earnings (CE) approach - which is our preferred method in SSW Compensation cases”. “BV-4-Jan99-Jul00-75.pdf”

⁵⁹ *Id.*

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calculations of the interest rental fee under the capitalized earnings framework of the *SSW Compensation* formula are presented in Exhibit No. 2 to this VS.

As shown on lines 1-5 of Exhibit No. 2, the first step in the capitalized earnings framework of the *SSW Compensation* formula is to calculate an earnings multiplier for the entire railroad (lines 1-5 of Exhibit No. 2). The earnings multiplier establishes the relationship between the railroad's system net revenues and the value of the road property assets used to generate those revenues. Three ways of making this calculation are shown in Columns (3) through (5).

In Column (3), "Book Value Methodology," the calculation of the earnings multiplier is made by dividing the value of UP's road property assets (net of accumulated depreciation), as reported in its Annual Report R-1 filed with the STB, by UP's system-wide net revenues. The focus is on the road-property accounts because the interest rental fee covers use of the track, but not other UP assets such as locomotives and railcars.

In Column (4), "Cost of Capital Methodology," the calculation of the earnings multiplier is made based on the inverse of the railroad industry cost of capital (line 14) rather than the value of UP's road property assets and UP's net revenues. The Board used this approach in its last decision applying the capitalized earnings approach: *New England Central Railroad, Inc.--Trackage Rights Order--Pan Am Southern LLC*, FD 35842 (STB served Oct. 31, 2017),⁶⁰ reconsideration denied (STB served April 26, 2018).⁶¹ The cost of capital approach theoretically represents the return necessary for rail carriers to earn revenues sufficient to cover all expenses and provide a reasonable return on investment, but no premium above that level.

⁶⁰ *New England Central Railroad, Inc. – Trackage Rights Order – Pan Am Southern LLC*, STB Financial Docket No. 35842, decided October 30, 2017.

⁶¹ *New England Central Railroad, Inc. – Trackage Rights Order – Pan Am Southern LLC*, STB Financial Docket No. 35842, decided April 24, 2018.

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In Column (5), “Enterprise Value Methodology,” the calculation is made by dividing the market value of UP’s road property assets by UP’s system-wide net revenues. First, the railroad enterprise value (line 1) is calculated as the sum of UP’s equity market cap plus the fair value of its long-term debt, less cash and cash equivalents. Because the enterprise value covers all assets, I isolated the road property assets by applying the ratio of the net book value of UP’s road property to UP’s total assets, as shown in lines 2 and 3 of column 5. The value of all land owned by UP, including valuable land in Chicago, Los Angeles, and all other metropolitan areas through which UP’s lines run, is included in this valuation and reflected in the earnings multiplier.⁶²

The second step in the capitalized earnings method of the *SSW Compensation* framework determines the earnings attributable to the segments in question. The STB’s Average Total Cost (“ATC”) methodology for this calculation requires confidential revenue and cost data specific to the traffic that moves over the line segments at issue to develop. Because the required data was not available to me, I developed an estimate based on UP’s system-average net revenues for all of

⁶² UP claims that the value of the land under the line segments at issue is valued at [REDACTED], and that UP is owed a return on that property. UP’s valuation is overstated by at least [REDACTED] because it includes application of a corridor factor to UP’s estimate of the Across-The-Fence (“ATF”) land value of [REDACTED]. See: UP-Metra-018215-16. This calculation reflects a markup of 124 percent [REDACTED] over the claimed ATF value. The STB has historically accepted ATF values without adjustment for corridor factors in the development of Stand-Alone Cost (“SAC”) evidence in maximum reasonable rate proceedings. See: e.g., “We agree with FMC that general application of an assemblage factor would create a barrier to entry, because it is a cost which has not been borne by UP... Because UP has not shown that it actually paid assemblage factors on its predecessor lines or has paid those costs on its expansion projects along the ORR’s ROW, we preclude them as barriers to entry.” (*FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company*, NOR 42022 (STB served May 12, 2000) at 115). “Assemblage costs represent monopoly rents above the fair market price of land in non-rail uses...Therefore, we do not include an assemblage value for land for the WTRR.” (*West Texas Utilities Company v. Burlington Northern Railroad Company*, NOR 41191 (STB decided April 25, 1996), 1 S.T.B. At 670-671). “Moreover, the across-the-fence methodology is reasonable and has been used in prior cases.” (*Consumers Energy Company v. CSX Transportation, Inc.*, NOR 42142 (STB served Jan. 11, 2018) at 168). “TPI utilizes an Across-the-Fence (ATF) method for appraising land... We will accept TPI’s methodology for appraising land in urban areas as feasible and supported.” (*Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, NOR 42121 (STB served Sept. 14, 2016) at 134-135.) “The Board [] uses Xcel’s across-the-fence (ATF) valuation based on recent comparable transactions...Xcel’s valuation approach is reasonable and consistent with prior SAC decisions. See, e.g., *Duke/CSXT* at 73-74 (use of an ATF appraisal found to be the preferable method of valuing the ROW); *TMPA* at 114 (same).” (*Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, NOR 42057 (STB served June 8, 2004) at 88-89).

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its freight traffic. I calculated the net revenue per gross ton-mile (“GTM”) for all freight moving over UP’s system (lines 6-8) and multiplied that result by the UP freight GTMs that moved over the segments to which Metra seeks access (line 9) to determine the UP earnings attributable to those segments (line 10).

In its *New England Central* decision, the STB held that the tenant’s earnings – not the landlord’s earnings – should be considered when calculating segment earnings.⁶³ Including the landlord’s earnings on the tenant’s traffic would result in a circular calculation because the purpose of the exercise is to determine the rate or rent to be collected by the landlord. Metra, like other commuter railroads, does not have positive earnings on its passenger traffic. Rather than attribute negative earnings to the Metra traffic, I assumed that the Metra traffic generates zero (\$0) earnings (line 11). Line 12 shows total segment earnings.

The third step in the capitalized earnings framework of the *SSW Compensation* formula determines the value of the line segments at issue and the annual required returns for those segments. The value of the line segments at issue (line 13) is determined by multiplying the earnings multiplier (line 5) by the earnings attributable to the segments (line 12). Although Metra has contributed \$1.2 billion since 1981,⁶⁴ I conservatively made no downward adjustment to the calculated segments’ values to reflect Metra’s significant capital contributions. Next, the segments’ value (line 13) is multiplied by the Board’s industry average pre-tax cost of capital (line 14) to determine the annual required return to the landlord for the segments at issue (line 15).

The fourth step in the capitalized earnings framework of the *SSW Compensation* formula calculates the interest rental fee by dividing the annual required return (line 15) by the total car-

⁶³ *New England Central Railroad, Inc. – Trackage Rights Order – Pan Am Southern LLC*, STB Financial Docket No. 35842, decided October 30, 2017, at p. 17.

⁶⁴ *Derwinski VS*, p. 7.

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miles for all traffic that uses the line segments (line 18) to determine the annual required return per car-mile (line 19). Metra's estimated annual interest rental charge (line 20) is calculated by multiplying Metra's annual car-miles (line 16) by the annual required return per car-mile (line 19). Metra's actual annual charge will be determined by its actual number of car-miles per year going forward.

My calculations in Exhibit No. 2 yield estimated annual interest rental payments of \$6.7 million (\$0.45 per car mile) based on the book value earnings multiplier, \$10.4 million (\$0.70 per car mile) based on the inverse cost of capital multiplier, and \$16.9 million (\$1.13 per car mile) based on the enterprise value methodology, using 2024 Metra car miles.

UP's proposed RAF rate of { } per train mile would take effect on July 1, 2025, and increase by 2.9% on January 1 of each year. UP estimates that Metra operates { } train miles per year, which would result in compensation of { } for the first year of access, including the escalation that would apply on January 1, 2026.⁶⁵

UP's proposed { } access fee for the first year of service is nearly { } times the top end of the range I estimated using the capitalized earnings method of the STB's *SSW Compensation* framework, and roughly four times the median compensation level.

The range I estimated using the capitalized earnings framework of the STB's *SSW Compensation* formula is also consistent with STB-ordered trackage rights fees in other cases. For example, in the 2017 NECR-PAS decision, the Board prescribed a rate of \$1.06 per car mile which covered the interest rental component plus the below-the-wheel maintenance component.⁶⁶

⁶⁵ { }

⁶⁶ *New England Central Railroad, Inc. – Trackage Rights Order – Pan Am Southern LLC*, STB Financial Docket No. 35842, decided October 30, 2017, at p. 10.

Public

The range I estimated is also reasonable when compared to UP's earnings on its own freight traffic. In my calculations, I estimate \$33.2 million in UP earnings (line 10) and 32.6 million UP car miles (line 17). This equates to \$1.02 per car-mile, which falls within the range of interest rental fees I calculated (\$0.45 to \$1.13 per car mile shown in line 19). Under UP's ITC rate, UP would earn { } per car mile⁶⁷ in rent for each Metra car, equivalent to { } times its per car-mile earnings on its own shipments moving over the line.⁶⁸

UP has sought similar outcomes in trackage rights disputes with other freight carriers.

“Absurdly, under UP's proposal, UP would earn { { } } per car mile in rent for a BNSF shipment moving over the Kern-Mojave Line than UP would earn from its own shipments moving over the Line. [] This would result in an incentive for UP to collect rent from BNSF rather than move UP's own traffic over the Line.”⁶⁹

Notably, UP seeks a standard car-mile based fee for BNSF traffic, as opposed to the train-mile based fee it seeks to apply to Metra traffic.

⁶⁷ { }

⁶⁸ { }

⁶⁹ BNSF Railway Company's Final Brief in STB Docket No. FD 22218, *ATCHISON, TOPEKA & SANTA FE RAILWAY CO.—OPERATING RIGHTS—SOUTHERN PACIFIC TRANSPORTATION CO.*, April 15, 2025, at page 22.

VI. CHICAGO TERMINAL AREA

UP's discussion regarding terminal district boundaries incorporates conflicting theories: On one hand, UP argues that the boundaries of the Chicago passenger terminal should be defined by where freight switching activity occurs:

What is a terminal facility (or not) for one applicant is a terminal facility (or not) for every applicant, in every case.⁷⁰

The Chicago terminal switching limits are generally considered to include major yards such as Proviso, Bensenville, Markham, and Clearing, as reflected in numerous maps that are publicly available and included in Exhibit A.[]

That narrower understanding tracks long-established norms and precedent. The boundaries of terminals—including the Chicago terminal—have long been defined using switching districts (among other things).⁷¹

On the other hand, UP acknowledges that Metra does not seek access to UP's core freight franchise. "Metra and Union Pacific do not compete in any relevant market. Union Pacific competes (not with Metra) for freight traffic, and Metra competes (not with Union Pacific) for passengers."⁷²

UP's conflicting positions cannot be reconciled. UP would apply the Chicago terminal switching district where UP competitors (not Metra) seek access to freight traffic that is switched within those boundaries, but here UP seeks to apply those boundaries despite acknowledging that Metra does not seek access to the freight traffic that is switched within them.

UP also posits that terminal boundaries are locked in place. "Presumably, Metra's "terminal area" grows coextensively with its operations. Nothing in the statute's century-long history supports that view."⁷³

⁷⁰ UP Reply at p. 13.

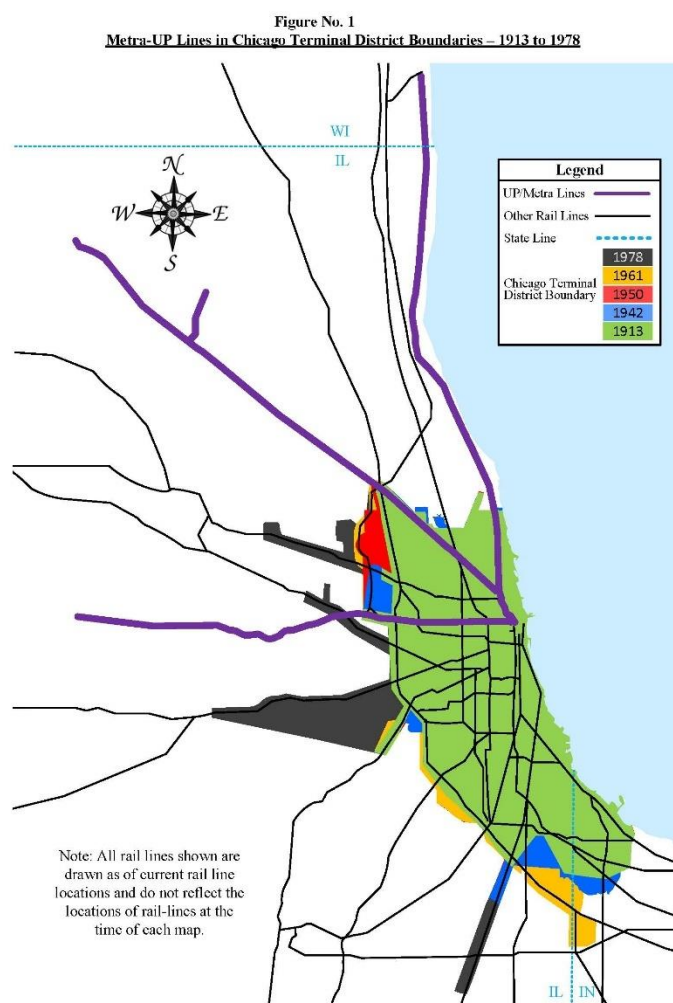
⁷¹ *Id.*, p. 17.

⁷² *Id.*, p. 25.

⁷³ *Id.*, p. 14.

Public

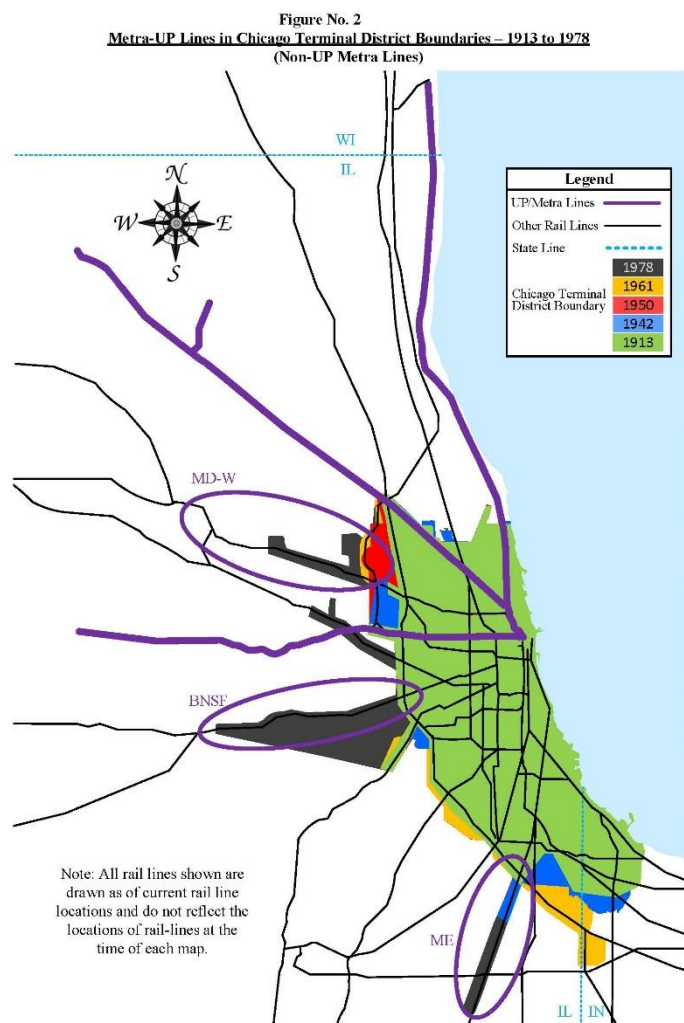
In Exhibit A to the UP Reply, UP offers a series of maps of the Chicago terminal district in support of its position, claiming that the maps “are remarkably consistent over multiple decades.” I reviewed the maps and found UP’s claims to be inaccurate. Figure No. 1 below shows the evolution of the Chicago terminal switching district boundaries from 1913 through 1978.



As shown above, the Chicago Terminal District area boundaries have changed over time, expanding in geographic scope each time. The 1913 boundary is depicted by the green area in Figure No. 1 above. In 1942, the areas shaded in blue were added; In 1950, the areas shaded in red were added; In 1961, the areas shaded in gold were added; and in 1978, the areas shaded in gray were added. The 1978 expansion included the addition of four (4) prominent fingers extending for

Public

miles outside the original district boundaries. Three (3) of the four (4) extensions occurred on Metra commuter lines (the Milwaukee District-West (“MD-W”) line, the Metra-BNSF line, and the Metra Electric (“ME”) line), as shown in Figure No. 2 below.



The expansions were principally made to accommodate changes in the locations of carload switching and handling, due to the construction of new rail yards and related facilities, the advent of containerized intermodal rail traffic in the last half of the twentieth century, and the many railroad mergers that have affected Chicago rail operations. Exhibit No. 3 to this VS includes an example of the expansion of the Chicago terminal district to accommodate the construction of new rail yards, including UP’s Proviso Yard, around present-day O’Hare airport.

Public

UP also claims that Metra's request for access to UP lines would deprive UP of its rights as a property owner, alleging that granting Metra access to operate commuter trains "would gut the Board's standards—in essence forcing the Board to throw open access to all facilities to anyone who wants to use them."⁷⁴

Metra is not just "anyone who wants to use" UP-owned facilities. Metra has invested over a billion dollars in capital to install and preserve what have been and functioned as shared facilities and will continue to be and to do so into the future, and Metra recently entered into agreements with UP to acquire facilities located on the subject lines under the promise that it would be granted access.

⁷⁴ UP Reply at p. 26.

VERIFICATION

I, Robert D. Mulholland, verify under penalty of perjury that I have read this Verified Statement on behalf of Metra, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Robert D. Mulholland

Executed on 6/22/25

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

My name is Robert D. Mulholland. I am the Executive Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314 and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737.

I am a graduate of George Mason University's School of Public Policy, from which I obtained a Master's degree in Transportation Policy, Operations & Logistics, and Bowdoin College, from which I obtained a Bachelor of Arts degree in Government and Legal Studies. I have been employed by L. E. Peabody & Associates, Inc. since 2008 and from 1995 to 2004. From 2004 to 2006, I was the staff economist for the Office of Freight Management and Operations of the Federal Highway Administration ("FHWA") of the United States Department of Transportation ("USDOT"). From 2006 to 2008, I worked for ICF International as a consultant in the transportation group.

L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of passengers and freight. As a result of my extensive consulting experience since 1995 and my participation in and support of maximum-rate, rail merger, service dispute, reasonable practices, and rule-making proceedings before the Surface Transportation Board ("STB"), I have become thoroughly familiar with the major freight and passenger rail carriers in the United States. This familiarity extends to subjects of railroad operations, traffic prioritization, capacity, service, costs and revenues, maintenance, and contract and tariff terms that govern the movement of commodities by rail.

As a consultant, I have directed and conducted economic and operations studies and prepared reports for passenger and freight carriers, shippers, federal agencies, the United States

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

Congress, associations, and other stakeholders dealing with transportation and related economic issues. Examples of studies I have participated in include organizing and directing rail facilities analyses, quantifying the impact of service disruptions for shippers, shared use of rail facilities by passenger and freight traffic, evaluation of traffic and operating factors in connection with single and multiple car movements and unit train operations for various commodities, rate and revenue division analyses, fuel consumption and cost analyses, and other studies dealing with transportation markets for many commodities over various surface modes throughout the United States. Through these studies I have become familiar with railroad costing and operating practices.

I testified in the STB proceeding regarding the merger between Canadian Pacific Railway Limited (“CP”) and the Kansas City Southern Railway Company (“KCS”) that formed the Canadian Pacific Kansas City Limited (“CPKC”). I have presented written testimony before the STB related to rail traffic volume and revenue forecasts, cross-over traffic revenue divisions, and train operations in several maximum reasonable rate proceedings on behalf of coal and chemicals shippers. I developed evidence related to rail fuel consumption and cost determinations in an STB unreasonable practice proceeding. I presented written testimony before the STB in Ex Parte proceedings related to proposed changes to the Uniform Railroad Costing System (“URCS”), Class I railroad capital and operating expenditure reporting requirements related to Positive Train Control (“PTC”) implementation, the revenue allocation formula applied to “crossover” traffic in STB maximum reasonable rate proceedings, and other matters.

I have conducted field studies of short line rail systems and rail spurs, and industry-owned rail facilities, and developed Verified Statements and other reports assessing their

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

capacity to accommodate various projected operating scenarios and traffic levels. I have inspected and studied railroad terminal facilities used in handling various commodities to collect data that were used as a basis for the determination of traffic and operating characteristics for specific movements handled by rail.

I have supported the negotiation of transportation contracts between shippers and railroads. Specifically, I have conducted studies concerning transportation rates based on market conditions and carrier competition, movement-specific service commitments, and various cost-based rate adjustment provisions. I have developed numerous variable cost calculations utilizing the formulas employed by the STB for the development of variable costs for common carriers, with particular emphasis on the basis and use of URCS. I have utilized URCS costing principles in studies since the beginning of my career with L. E. Peabody & Associates Inc. in 1995.

I have conducted economic analyses regarding rail transportation matters for dozens of electric utility companies located in all parts of the United States, and for major associations, including the Chlorine Institute, the American Chemistry Council, the Chemical Manufacturers Association, the National Industrial Transportation League, and the Western Coal Traffic League. In addition, I have assisted numerous government agencies in analyzing and solving various transportation-related problems.

In the Western rail merger that resulted in the creation of the present Union Pacific Railroad Company ("UP"), I reviewed the railroads' applications including their supporting traffic, cost and operating data and developed detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed merger.

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

While employed at FHWA, I was a member of the USDOT inter-agency working group that drafted the National Freight Policy. In addition, I served on the USDOT Freight Gateway Team, a group headed by the Undersecretary for Policy and composed of one representative from each of the surface modal agencies.

While employed at ICF International, I directed and conducted numerous analyses of the rail and trucking industries for federal transportation agencies including the Federal Railroad Administration ("FRA"), the Federal Motor Carrier Safety Administration ("FMCSA"), and the FHWA, including analyses of then-current rail and trucking industry data and forecasts of future trends in both industries.

Metra Interest Rental Calculation, Capitalized Earnings Framework -- 2024 Annual Data

	<u>Item</u>	<u>Source</u>	<u>Book Value</u> <u>Methodology</u>	<u>Cost of Capital</u> <u>Methodology</u>	<u>Enterprise Value</u> <u>Methodology</u>
	(1)	(2)	(3)	(4)	(5)
Multiplier (System)	1. UP Enterprise Value	Varies, See Notes	xxx	xxx	\$162,514,000,000 8/
	2. UP Road Property Ratio	UP 10-K 1/	xxx	xxx	70.7%
	3. UP Net Road Property Value	Varies, See Notes	\$45,328,088,000 5/	xxx	\$114,900,985,956 9/
	4. UP System Freight Net Revenue	UP R-1: Sch 210, L 15, Col (d)	\$9,439,386,000	xxx	\$9,439,386,000
	5. UP Earnings Multiplier	Varies, See Notes	4.80 6/	7.53 7/	12.17 6/
Est. Earnings (UP Metra Lines)	6. UP System Freight Net Revenue	UP R-1: Sch 210, L 15, Col (d)	\$9,439,386,000	\$9,439,386,000	\$9,439,386,000
	7. UP System Freight GTMs	UP R-1: Sch 755, L 104, Col (b)	914,556,079,000	914,556,079,000	914,556,079,000
	8. UP System Net Revenue per GTM	Line 6 ÷ Line 7	\$0.01032	\$0.01032	\$0.01032
	9. UP GTM, 3 Metra UP Segments	UP CGS Report	3,217,521,494	3,217,521,494	3,217,521,494
	10. UP Earnings, 3 Metra UP Segments	Line 8 x Line 9	\$33,204,822	\$33,204,822	\$33,204,822
	11. Metra Earnings, 3 Metra UP Segments	Assumed 2/	\$0	\$0	\$0
	12. Total Earnings, 3 Metra UP Segments	Line 10 + Line 11	\$33,204,822	\$33,204,822	\$33,204,822
Req. Return	13. Calculated Value, 3 Metra UP Segments	Line 5 x Line 12 3/	\$159,383,145	\$250,032,308	\$404,102,682
	14. Pre-Tax Cost of Capital	2024 AAR Est. for RR Industry	13.28%	13.28%	13.28%
	15. Annual Required Return	Line 13 x Line 14	\$21,166,082	\$33,204,291	\$53,664,836
Interest Rental	16. Usage Passenger (Car-miles)	Metra Data	14,915,130	14,915,130	14,915,130
	17. Usage Freight (Car-miles)	Estimated 4/	32,561,284	32,561,284	32,561,284
	18. Usage Passenger & Freight (Car-miles)	Line 16 + Line 17	47,476,414	47,476,414	47,476,414
	19. Annual Required Return per Car-mile	Line 15 ÷ Line 18	\$0.45	\$0.70	\$1.13
	20. Usage, Metra's Apportionment	Line 16 x Line 19	\$6,711,809	\$10,440,591	\$16,854,097

1/ UP 10-K: Net Book Value of (Land + Road Property) ÷ Net Book Value of Total Assets

2/ Metra's operating expenses exceed its operating revenues, resulting in negative net revenues. Rather than attributing negative earnings to Metra traffic, Metra traffic is assumed to generate no earnings in this analysis.

3/ These values do not reflect adjustments for capital investments made by Metra.

4/ Applied 2021 ratios of Car Miles-to-GTM and Car Miles-to-Train Miles to the UP 2024 CGS Report GTM and Train Miles respectively, then averaged.

5/ UP R-1: Schedule 330, Line 30, Column (h) - Schedule 335, Line 30, Column (g)

6/ Line 3 ÷ Line 4

7/ 1 ÷ Line 14

8/ Equity Market Cap + Fair Value of Debt - Cash & Equivalents - Short-term Investments, as of 12/31/2024

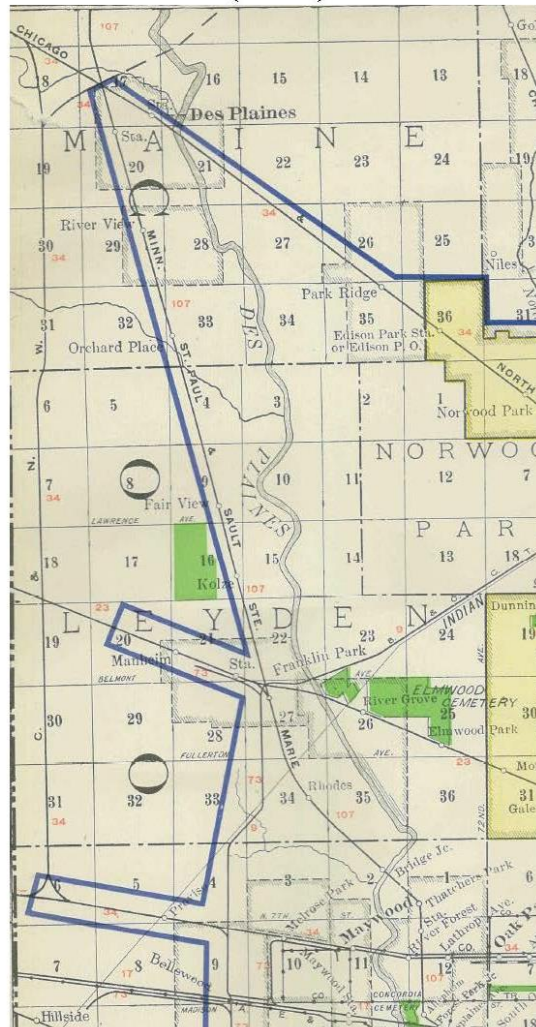
9/ Line 1 x Line 2

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

Expansion of the Chicago Terminal District to Include New Rail Facilities

The change from Figure No. 1 (1913) to Figure No. 2 (1942) shows the expansion of the boundary to incorporate Bensenville Yard, opened in 1916,¹ and Proviso Yard, opened in 1929.²

Figure No. 1
Changes in Boundaries Near Present-Day O'Hare Airport
(1913)

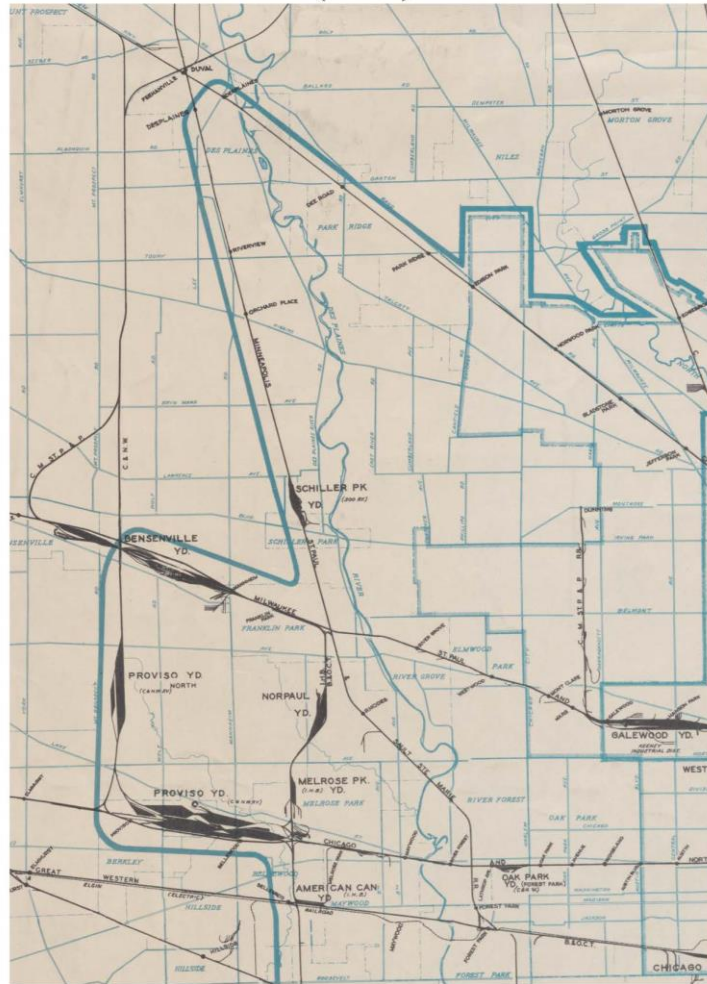


¹ See: Encyclopedia of Chicago page "Bensenville, IL" at <http://www.encyclopedia.chicagohistory.org/pages/130.html>

² See: Trains Magazine "UP confirms shutdown of Proviso yard hump, consolidation of other yards NEWSWIRE" discussion of yard history at <https://www.trains.com/trn/news-reviews/news-wire/18-up-confirms-shutdown-of-proviso-yard-hump-consolidation-of-other-yards/>

Expansion of the Chicago Terminal District to Include New Rail Facilities

Figure No. 2
Changes in Boundaries Near Present-Day O'Hare Airport
(1942)

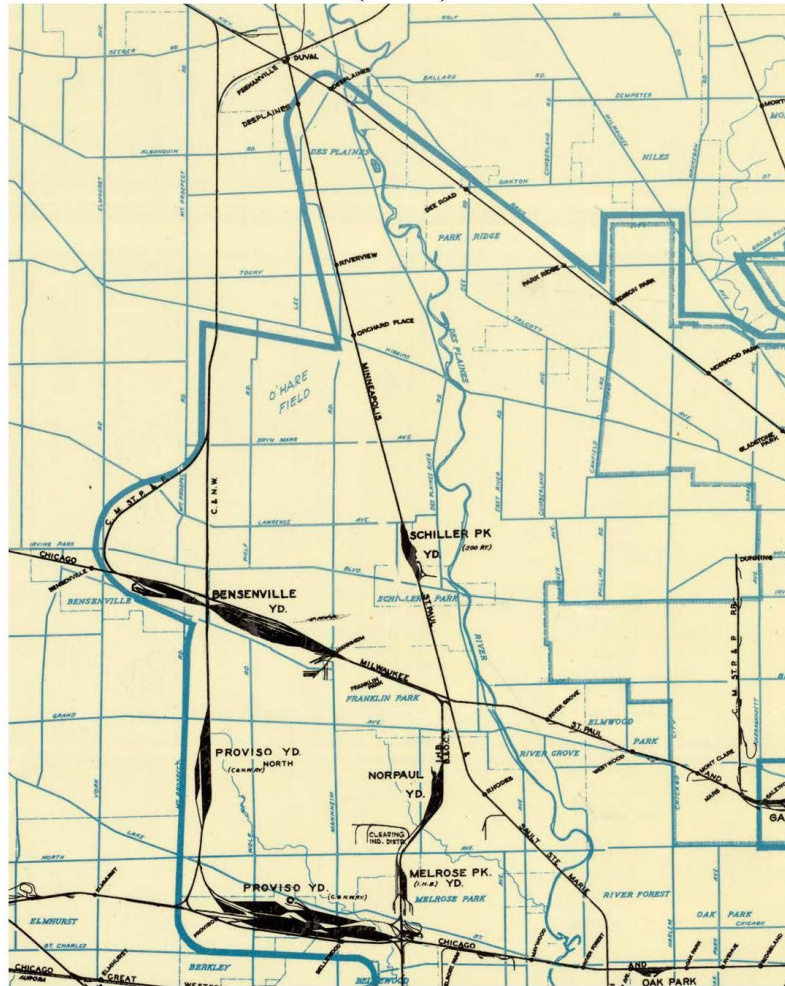


The change from Figure No. 2 (1942) to Figure No. 3 (1950) shows the expansion of the boundary to incorporate O'Hare Field, which was under construction.³ Additionally, the boundary in 1950 was expanded to incorporate the entirety of Bensenville Yard.

³ See: Chicago Division of Aviation's O'Hare history at <https://www.flychicago.com/business/CDA/Pages/OHare.aspx>

Expansion of the Chicago Terminal District to Include New Rail Facilities

Figure No. 3
Changes in Boundaries Near Present-Day O'Hare Airport
(1950)

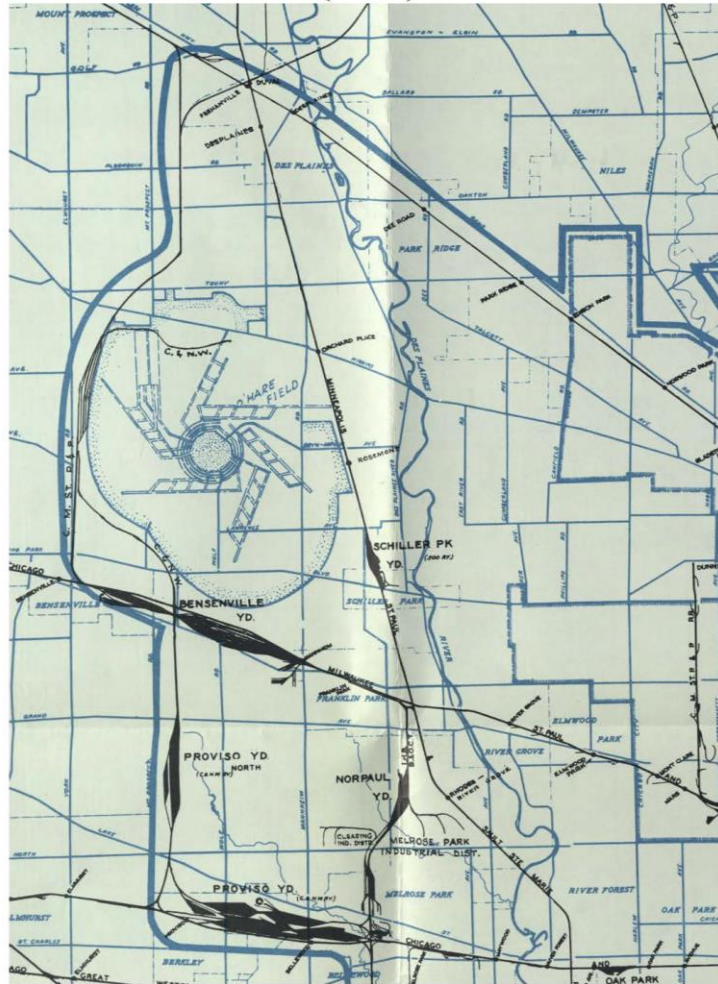


The change from Figure No. 3 (1950) to Figure No. 4 (1961) shows the expansion of the boundary to incorporate the expansion of O'Hare Field in the late 1950s, which results in the relocation of Chicago and North Western Railway's ("CNW") rail lines.⁴

⁴ See: RT&S "Rail line relocation boosts O'Hare Airport expansion" dated April 11, 2012, which discusses the original line relocations in the 1950s. <https://www.rtands.com/track-construction/track-structure/ballast-ties-rail/rail-line-relocation-boosts-o/>

Expansion of the Chicago Terminal District to Include New Rail Facilities

Figure No. 4
Changes in Boundaries Near Present-Day O'Hare Airport
(1961)



The change from Figure No. 4 (1961) to Figure No. 5 (1978) shows the expansion of the boundary to incorporate the Elk Grove Village Industrial Park, which opened in 1962⁵ and the Centex-Schaumburg Industrial Park, which began development in 1967.⁶

⁵ See: Elk Grove village history at <https://www.elkgrove.org/community/about>

⁶ See: History of Schaumburg "Progress Through Thoughtful Planning" presentation, Slide 9 at <https://www.slideserve.com/lotus/history-of-schaumburg>

Expansion of the Chicago Terminal District to Include New Rail Facilities

Figure No. 5
Changes in Boundaries Near Present-Day O'Hare Airport
(1978)

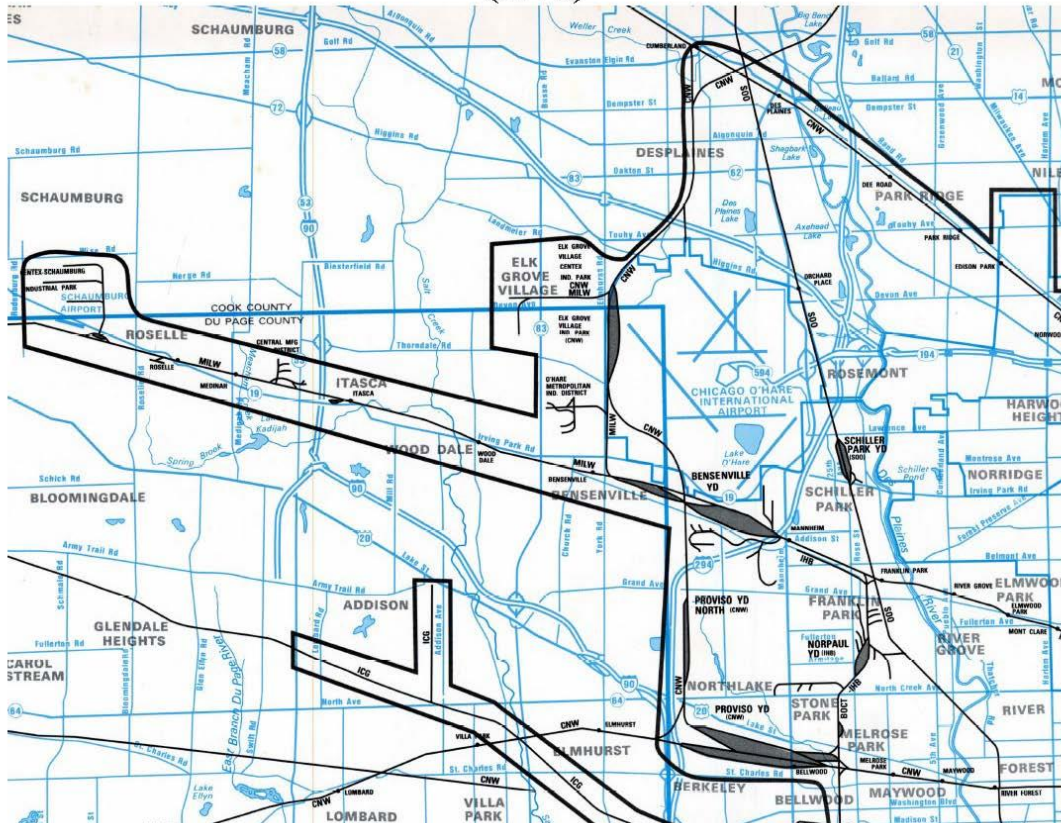


Exhibit A

INTERIM CONDITIONS AND COMPENSATION

Section 1. Scope. During the pendency of the Commuter Rail Division of the Regional Transportation Authority's Terminal Trackage Rights Application, Docket No. FD 36844, before the Surface Transportation Board ("Board") after June 30, 2025, Metra and Union Pacific (collectively, the "Parties") will continue operations of commuter rail service consistent with these Interim Conditions and Compensation ("Agreement").

Section 2. Services to be Provided by Union Pacific.

Section 2.1. Property to be Used. Union Pacific will continue providing its real and personal property needed for the continued provision of commuter rail services, including, but not limited to, track and appurtenances, stations, platforms, offices, parking lots, mechanical yards, and other real estate and facilities.

Section 2.2. Service Changes. Metra may, at any time or from time to time, request changes in commuter rail services ("Service Change"). Metra shall initiate a Service Change by delivery to Union Pacific of a written notice ("Service Change Notice") stating the proposed Service Change and its commencement date. Within 30 days (or such other period as may be agreed to by the Parties in a particular case) after delivery of the Service Change Notice, Union Pacific shall either (1) approve the proposed changes in writing or (2) state in writing to the Metra that it will not implement the Service Change for one of the following reasons:

- a. It is unsafe, illegal or impossible to implement with prudent, economical and efficient use by Union Pacific of amounts which are currently considered reimbursable;
- b. Would require Union Pacific to use real property which was not used by Railroad in providing Public Transportation Services by rail;
- c. Would require or authorize the operation of any facility or service on terms or in a manner which unreasonably interferes with the ability of Union Pacific to provide efficient freight or inter-city passenger service; or
- d. Would result in increased expenses that are currently reimbursable, provided, however, that this exception shall be effective only during any period in which the Metra is in arrears in its payments, excluding disputed amounts, to Union Pacific under this Agreement for a period in excess of 30 days.

For clarification, any changes in Metra's service that impact the manner and timing of Metra's commuter operations on Union Pacific, including changes in maximum train consist length (approximately 1,083 feet), train schedules, station stops, and special trains require a Service Change.

Section 2.3. Dispatch. Union Pacific will continue to be responsible for dispatching the commuter rail services on the UP Lines. Union Pacific will continue to honor Metra's

commuter rail service schedules and will not allow its freight service to unreasonably interfere with Metra's commuter rail service schedules.

Section 2.4. Crew Calling. Union Pacific will continue to provide crew calling for Metra's commuter rail services for 36 months from May 16, 2025. Union Pacific will continue to provide Metra with access to Union Pacific's software.

Metra will give Union Pacific 60 days' notice if Metra wishes to discontinue Union Pacific crew calling services.

Section 2.5. Engineering. Union Pacific will continue to be responsible for engineering maintenance of its real and personal property necessary for the provision of commuter rail services, including, but not limited to, track and appurtenances, stations, platforms, offices, parking lots, mechanical yards, and other real estate and facilities.

Section 3. Operations & Maintenance.

Section 3.1. Mechanical. Metra will continue to be responsible for all maintenance on its rolling stock for the commuter rail services.

Section 3.2. Transportation. Metra will continue to provide its commuter rail services on the Union Pacific lines, through its operator Northeast Illinois Regional Commuter Railroad Corporation.

Section 4. Indemnification and Insurance.

Section 4.1. Indemnification. Metra assumes liability for and agrees to hold harmless, defend and indemnify Union Pacific and Union Pacific's successors, assigns, officers, directors, employees, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, judgments, settlements claims, actions, suits, proceedings, costs, expenses and disbursements, including legal fees and expenses, of whatever kind and nature, imposed on, incurred by or asserted against Union Pacific or any of Union Pacific's successors, assigns, officers, directors, employees, agents or servants, in any way relating to or arising out of any injury to any person, loss of life or damage to property of any person, arising out of the presence of, act of, or omission to act of any of the Metra's authorized representatives occurring while any such authorized representative is on lands or properties of Union Pacific which are related to contract services, other than such lands or properties which are open to the general public, and irrespective of any negligence or fault of Union Pacific, its officers, directors, employees, agents or servants.

Section 4.2. Maintenance of Insurance. Metra will continue to maintain in full force and effect insurance coverage of the same type, character and coverage as recently agreed upon by the Parties on February 19, 2025, for the duration of the litigation and/or negotiations of the Parties.

Section 5. Compensation

Section 5.1. Compensation. Metra agrees to continue to pay Union Pacific approximately \$21,000,000 annually until there is a decision by the Board or the Parties enter into a successor agreement.

Section 5.2. Real Estate. Metra agrees to pay amounts as outlined in right of entries between the Parties' station or yard facilities utilized for commuter rail services. See Right of Entry Agreements. If Parties enter into separate agreements (i.e., lease or purchase agreements) for any of the properties covered by the right of entries, the new agreement(s) will control.

Section 5.3. Actual Costs. Metra will continue to pay Union Pacific for actual costs for the following services mentioned above: 2.3 Dispatch, 2.4 Crew Calling, and 2.5 Engineering.

Section 5.4. Retroactive Compensation. The Parties agree to apply any decision by the Board related to compensation retroactively back to July 1, 2025 (i.e., if the Board determines Metra owes UP more for access, it will pay UP the difference, and if the Board decides Metra should have paid less, UP will reimburse Metra the difference) together with interest as set forth at 49 C.F.R. § 1141.1 or as otherwise determined by the Board.

Section 6. Other Provisions.

Section 6.1 Disputes. Any disputes arising out of this Agreement should be resolved by the Board, unless the Board orders or the Parties agree that they should be resolved by some other means.

Exhibit B

REDACTED

Exhibit C

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

Commuter Rail Division of the Regional
Transportation Authority, d/b/a Metra,

Plaintiff,

C.A. No. 25-cv-02439

v.

Union Pacific Railroad Company,

Defendant.

Declaration of Jennifer Kane

I, Jennifer Kane, declare as follows:

1. I am Director of Rail Contract Management & Special Projects for Metra. I have worked at Metra since September 2020 and have held my current role since November 2023.

2. I make this declaration based on my own personal knowledge and business records reasonably available to me in my role as Director of Rail Contract Management & Special Projects for Metra. If called to testify, I could and would competently testify to the matters set forth herein.

3. As Director of Rail Contract Management & Special Projects, I oversee Metra's contractual agreements with other railroads, including Union Pacific Railroad Company. These duties include monitoring and administering existing contracts, and the negotiation, execution, renewal, and/or termination of contracts. I also assist with ensuring that Metra's contracts with other railroads align with Metra's business goals, legal requirements, and internal policies.

A. Metra and Union Pacific's contractual relationship

4. Incident to my duties, I manage and have personal knowledge of the present state and history of the contractual relationship between Metra and Union Pacific involving Metra's

commuter rail service on the UP-North, UP-Northwest, and UP-West lines (the “UP Lines”). I have participated in Metra’s negotiations with Union Pacific regarding Metra’s future use of the UP Lines to continue to provide commuter rail service, following the transition of commuter rail operations to Metra and the expiration of the current Purchase of Service Agreement (“PSA”), governing commuter operations on the UP Lines.

5. Metra and Union Pacific, or their predecessors, have had a contractual relationship governing Union Pacific’s provision of commuter rail service since the 1970s. In 1981 and 1983, the parties also entered into two “Fixed Facilities Agreements” (the “FFAs”) that govern various improvements to the UP Lines largely funded by Metra through federal, state, and local grant funds. The 1981 agreement (the “ROW FFA”) governs Metra’s participation and interest in right-of-way improvements, such as improvements to tracks and bridges. The 1983 agreement (the “Stations FFA”) governs Metra’s full funding of and interest in improvements to stations and platforms improvement projects.

6. The parties have also entered into more than 200 amendments to the FFAs pertaining to individual improvement projects.

7. Pursuant to these and other agreements, Metra has contributed more than \$1 billion in capital improvements to the UP Lines since 1981.

8. Since November 22, 2017, the parties have entered into 42 such FFA amendments, each of which has contained the following provision:

All improvements paid for by Metra under this Project (the “improvements”) shall remain in service and available to be used for commuter rail operations until the end of the useful life of the Improvements.

9. Metra’s contribution to the improvements covered by these amendments amount to approximately \$235 million in project expenditures (including both reimbursement to Union

Pacific and costs directly borne by Metra for those projects). Metra contributed more than two-thirds of the capital invested in right-of-way projects and all of the capital invested in the stations projects.

10. When Metra negotiated the inclusion of this provision, it understood the provision to provide assurance that Metra would not lose the ability to use these improvements, throughout their useful life, to provide commuter rail service.

11. Metra would not have agreed to provide more than \$200 million in additional improvements to the UP Lines without an expectation that those improvements could be used for commuter rail service on commercially reasonable terms, particularly after Union Pacific notified Metra of its intent to cease operating commuter rail service itself in 2019.

12. The five most recent improvement projects have also stated the following:

Metra acknowledges Metra's access onto UP's rail corridors to operate Metra's commuter service or any request by Metra that UP operate commuter rail service for Metra remains conditioned upon Metra first paying UP separate compensation for access to UP's rail corridors.

UP acknowledges that Metra's payment for the Improvements shall be factored into any such separate compensation for access to UP's corridors.

13. Union Pacific's demanded compensation does not reflect Metra's contributions to improvements on the UP lines, under these five FFA amendments nor any other Metra contributions.

B. Negotiations to replace the PSA

14. Presently, the PSA provides a framework for Union Pacific to deliver commuter rail transportation service for Metra, as the parties entered into the PSA at a time when Union Pacific, not Metra, operated commuter rail service.

15. Metra's oversight agency, the Regional Transportation Authority, first entered into a PSA with Union Pacific's predecessor, Chicago and North Western Railway Company ("CNW") in 1975. In 1995, Union Pacific merged with CNW and assumed commuter rail operations over the UP Lines, pursuant to the terms of the PSA.

16. The PSA was amended and restated in 2010. That base agreement, which remains in place, as amended, defines Union Pacific's contractual rights to compensation for its operation of commuter rail service on the UP Lines. As operation of commuter rail service has transitioned from Union Pacific to Metra, the parties have been winding down the PSA with the understanding that Metra—specifically, Metra's operating entity, the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC")—will operate commuter rail service.

17. During the process of negotiating that transition, the parties have agreed to extend the expiration date of the PSA numerous times. These extensions have been executed on a short-term basis—typically, one or two months. The most recent extension, which expires on June 30, 2025, covers a four-month period. Union Pacific's practice has been to wait until the beginning of the final month of the extension period to propose another short-term extension, and the parties at times have been left scrambling to execute an extension shortly before the PSA expires.

18. The parties also have executed a nonbinding memorandum of understanding (the "MOU") agreeing that, until the parties have a new post-PSA agreement in place, Metra will continue, in good faith, to pay Union Pacific for its use of the UP Lines, consistent with the amounts outlined in the PSA.

19. The MOU notwithstanding, once the PSA expires after June 30, 2025, unless the parties agree otherwise or a court order preserves Metra's ability to use the UP Lines to provide commuter rail service, Metra will be excluded from use of the UP Lines.

20. Union Pacific informed Metra in 2019 that it would discontinue its operation of commuter rail service. Since 2023, following the conclusion of earlier litigation, the parties have sought to negotiate over two related issues: the transition of commuter rail operations from Union Pacific to Metra—which substantially concluded as of May 16, 2025—and a successor agreement to take the place of the PSA.

21. The current PSA is an outdated, overly complex legacy contract that no longer serves as an appropriate framework for the economic relationship between Metra and Union Pacific, particularly now that commuter rail operations have transitioned from Union Pacific to Metra.

22. The PSA includes byzantine terms, including a cost-plus structure and complex annual budgeting and accounting processes, that make it nonviable as an option moving forward, and have made administration of the PSA problematic for both parties even before Union Pacific's decision to discontinue its operation of commuter rail service.

23. In Metra's experience, when a freight railroad discontinues commuter rail service and the operation of that service transitions to Metra, while the freight railroad retains ownership of the subject trackage, it is typical to dissolve the pre-existing PSA and enter into traditional trackage rights agreements using a modern template.

24. During recent negotiations, Metra has sought to move away from a PSA model in favor of a modern, fixed-fee approach, which is more standard in the railroad industry, would provide greater budget certainty for Metra, and would incentivize Union Pacific to find efficiencies (discussed further below).

C. Negotiations related to compensation

25. Beyond replacing the structure of the PSA, the parties have also attempted to negotiate the appropriate compensation that Metra will pay to Union Pacific post transition under a new agreement.

26. Under the PSA, Metra's compensation to Union Pacific includes approximately \$20-22 million of annual compensation to Union Pacific that Union Pacific realizes as net revenue (functionally profit), in addition to reimbursement by Metra of direct costs for operating the service calculated on an actual-cost basis where Union Pacific incurs expenses—such as engineering expenses or employee labor costs—and bills the amount attributable to commuter rail service to Metra. Under this framework, Metra has paid Union Pacific, all in, approximately \$200 million per year prior to the transition.

27. Post-transition, following industry practice, a reasonable compensation framework would replace the byzantine cost methodology under the PSA with an all-in per car mile compensation amount, calculated using an industry standard method like the Surface Transportation Board's preferred SSW compensation framework. Metra has made Union Pacific offers under this framework in the past, which Union Pacific has refused. In October 2023, for example, Metra made an offer with all-in compensation to Union Pacific of \$62 million per year, which would account for a usage fee, below-the-wheel engineering costs, and certain services retained by Union Pacific, such as dispatching and crew-calling.

28. Union Pacific originally assured Metra that the transition would be cost-neutral to Metra, *i.e.*, Union Pacific would receive the benefit of off-loading the costs and responsibility for the commuter service operation onto Metra, but Metra would not incur additional costs in the form of increased future profits by Union Pacific on Metra's use of the UP Lines. Metra understood Union Pacific's assurance to mean that Metra would not pay more to operate

commuter rail service itself than what it had previously paid, all in, under the PSA for Union Pacific to operate commuter rail service for Metra. In effect, that would mean that any increased operating cost incurred directly by Metra to operate commuter rail service on the UP Lines would be offset by reduced payment obligations to Union Pacific, without additional profits to Union Pacific.

29. Union Pacific's actual offers have not reflected any commitment to a cost-neutral transition for Metra. Even as Union Pacific has transferred considerable operating costs from its books to Metra's, it has consistently come forward with compensation proposals that would yield a significant net increase in Union Pacific's revenue relative to its direct costs (i.e., profit), including a usage fee (what Union Pacific calls a "franchise access fee") that is approximately double the net revenue Union Pacific currently realizes after subtracting operating expenses. Union Pacific's earliest proposals included a proposed usage fee that would quickly balloon to an amount significantly greater than what Union Pacific currently realizes, according to a straight-line escalation formula over the life of the contract. Its most recent proposals have simply started high relative to the current \$20-22 million, while also indicating that that the fee would be subject to significant annual escalation.

30. Beyond the sharply escalated usage fee, Union Pacific has also demanded the retention of actual-cost reimbursement of engineering costs, as opposed to a more standard flat-fee approach. Further, it has demanded additional real estate rental fees for mechanical and station facilities that are not part of the usage fee for its line, despite those facilities being an integral part of the UP Lines. Regarding the mechanical sites and rail yards, Union Pacific is demanding a market-assessed purchase or rental price (described further below). With regard to the commuter station platforms, Union Pacific has demanded "a one-time easement fee or an

annual easement fee based on the value per square foot for the land in the Union Pacific corridor adjacent to each platform.” In this way, Union Pacific is demanding an unspecified fee for access to station platforms for which Metra has paid the maintenance costs and the capital improvement costs for the life of the PSA. These payments for property acquisition, lease, and/or access fees represent substantial added profit for Union Pacific beyond any track access or usage fee. The current market valuation of these properties is largely attributable to Metra’s capital investments and operating expenditures over the past decades.

31. Union Pacific’s most recent offer using this framework was nearly double Metra’s offer and would, when accounting for operating costs borne directly by Metra post-transition and the real-estate costs just described, result in significant increased costs for Metra to operate commuter rail service.

32. Union Pacific has given shifting and unsubstantiated accounts for the usage fee compensation it has demanded in its proposals. As of July 2024, Union Pacific’s demand was based on the supposed underlying value of the real estate involved. Its most recent proposal—demanding essentially the same usage fee—is purportedly based on the supposed market value established by other “access” agreements as well as the supposed underlying land value. In short, while Union Pacific’s stated valuation methodology has fluctuated, its bottom-line demand has remained the same.

33. Union Pacific’s proposals, including its most recent proposal, have also consistently left undefined key financial matters in two areas. First, Union Pacific’s proposed framework does not clarify key terms and conditions related to the reliable performance of Metra’s commuter rail service, such as providing adequate assurances that Metra’s performance will not be affected by freight activity. Second, Union Pacific does not specifically take into

account Metra's significant and ongoing capital contributions to the UP Lines, leaving Metra uncertain that it will receive any credit for those investments when it comes to compensation paid to Union Pacific.

34. Union Pacific and Metra are separately negotiating the purchase and lease of the yards and mechanical facilities needed to provide commuter rail service on the UP Lines. At Union Pacific's insistence, Metra is acquiring some of the sites through a purchase or permanent easement, while the remainder of the sites will be leased by Metra going forward, representing a new annual rental cost. While surveys, appraisals, and environmental due diligence are not yet complete, Metra anticipates the acquisition cost for the mechanical and yard sites Union Pacific is willing to sell to be approximately \$72 million, with the rental costs of tracks, land, and buildings Union Pacific is unwilling to sell totaling approximately \$1.3 million in annual rent, with an annual escalation of 2 percent.

35. Metra's most recent calculations show that a commercially reasonable annual usage fee is in the range of \$6.7 million to \$16.9 million. This figure would encompass all terms and conditions of use for the UP Lines to assure reliable commuter rail service, as well as access to the real estate needed to provide commuter rail service on the UP Lines that is not being separately negotiated (as just described), such as stations and platforms. On top of that, Metra also would pay below-the-wheel engineering costs and for services provided by Union Pacific like dispatching and crew calling. These expenses would be included in an all-in, up-front compensation figure, which would incentivize Union Pacific to realize efficiencies in its engineering and service activities. Such efficiencies are not currently a priority for Union Pacific when it can simply pass on direct costs plus overhead and related additives to Metra for reimbursement.

36. In other words, after remunerating Union Pacific for its costs associated with engineering and services provided, Metra would pay a usage fee of \$6.7 million to \$16.9 million, which is essentially passive income to Union Pacific for use of its lines, but would guarantee Metra everything needed to provide effective commuter rail service, including access to key facilities and coverage of critical performance measures.

37. Union Pacific, by contrast, has demanded compensation in the form of a usage fee that alone is many multiples of the low-end of the commercially reasonable range calculated by Metra, and is more than double the top-end range. That fee would not even give Metra access to the facilities historically used and needed to operate the commuter rail service. Union Pacific demands that access to facilities like stations and platforms be paid for separately, even though access to them was included under the PSA and Metra's ability to use the UP Lines is meaningless without them. As described above, Union Pacific will also be separately paid for other necessary real estate (yards, yard tracks, and mechanical facilities). Nor does Union Pacific's approach guarantee acceptable performance. Union Pacific also has demanded actual-cost engineering and service payments that would put no onus on Union Pacific to reduce expenses and create efficiencies in these activities that remain Union Pacific's responsibility post transition.

38. Metra has been clear that Union Pacific's offer is unreasonable and unacceptable, because the demanded compensation is higher than what is commercially reasonable, does not account for Metra's investment in the subject properties, and also because the demand does not cover critical terms and leaves in place an unworkable framework modeled after the PSA.

39. In the interest of preserving commuter rail service until a final deal is reached, Metra has made significant concessions to preserve the status quo, including paying (1) under the

PSA, figures that result in annual net revenue (after subtracting operating expenses) for Union Pacific of \$20-22 million; (2) an annual fee of over \$8 million for access to mechanical sites, yard tracks, stations, and platforms while real estate deals are negotiated; and (3) reimbursement of actual engineering costs and provision of commuter-related services. Recently, Metra has attempted to guarantee that this status quo remains in place until litigation concludes, though that would mean paying Union Pacific more than Metra believes is commercially and reasonably warranted.

40. Union Pacific has declined Metra's effort to preserve this status quo until the dispute is finally resolved, meaning the parties do not have an agreement in place to continue commuter rail service past June 30, 2025.

41. Despite years of negotiations related to transferring the commuter service operation on the UP Lines from Union Pacific to Metra, there have been almost no negotiations between the parties over the terms and conditions of a post-PSA agreement. The first contract document ever presented by Union Pacific to Metra was on July 8, 2024. At the time, Metra advised Union Pacific that the terms and conditions and basic contract structure reflected in the July 8, 2024 document were unacceptable to Metra and offered to draft an alternative template for discussion. Union Pacific did not respond to Metra's proposal and rescinded the July 8, 2024, offer three weeks later.

42. Between July 31, 2024, and May 21, 2025, there was no outstanding contract document by Union Pacific for Metra to consider for the use of the UP Lines after June 30, 2025.

43. On May 21, 2025, Union Pacific then conveyed to Metra an "updated Passenger Rail Operating Agreement," to be effective July 1, 2025. In transmitting this document, Union Pacific made clear that it would unilaterally impose a usage fee of \$41.3 million in the first year

(defined as July 1, 2025 through June 30, 2026)—approximately the same unreasonably high usage fee it had previously proposed—should Metra continue to use the UP Lines after June 30, 2025. Union Pacific stated that “[o]n July 1, ... we will be posting the new rates,” even without “an agreement in place with Metra.”

44. In transmitting the proposal to Metra, Union Pacific also provided and publicized assurances that it would “not be stopping services” on the UP Lines. Based on that assurance, Metra has communicated to Union Pacific that it will continue to operate on the UP Lines, and it will provide Union Pacific with *status quo* compensation, and not more.

45. Union Pacific’s proposed operating agreement contains many provisions that are materially the same as the terms that Metra previously rejected as unacceptable, including the demanded compensation for Metra’s use of the UP Lines, which begins at \$41.3 million in the first year (defined as July 1, 2025 through June 30, 2026), with annual escalations each January 1, and does not guarantee adequate on-time performance—but instead demands an additional \$6 million-plus annual incentive payment to hit satisfactory on-time performance levels. The proposal also excludes terms related to the cost to access stations and platforms, and credit for the value of Metra’s capital contributions to the UP Lines.

46. Metra has communicated to Union Pacific that it is preparing a counteroffer to Union Pacific’s May 21, 2025 proposal.

47. Occasionally it is necessary, as a matter of public safety, for Metra to add additional commuter rail service on the UP Lines on certain dates to accommodate large crowds attending events in Chicago, such as sporting events and parades. Union Pacific has historically granted these change of service requests, unless there is a legitimate business need for denial such as inadequate operating personnel to accommodate increased service.

48. On May 12, 2025, pursuant to longstanding practice and protocol between Union Pacific and Metra, Metra delivered to Union Pacific a change of service request seeking to add additional commuter rail service on July 5-6, 2025 to accommodate anticipated large crowds related to an upcoming, highly publicized NASCAR road racing event in downtown Chicago. Union Pacific has previously granted a change of service request related to this event.

49. On Friday, May 30, I was informed by a Union Pacific executive that Union Pacific would not be granting the change of service request, solely because the dates for the NASCAR event fell outside the existing PSA range, as opposed, for example, to any operating constraints on Union Pacific's part.

50. Because Union Pacific's denial of a routine service change request on the basis of a lack of an operating agreement was inconsistent with its representation that it did not plan to discontinue commuter rail operations after June 30, Metra sought clarification via counsel whether Union Pacific intended to honor that earlier assurance to preserve commuter rail service even if the parties had not reached an agreement on a new trackage rights agreement. Union Pacific never responded to Metra's request for clarification.

D. Condition of Entry document

51. On June 4, 2025, Union Pacific delivered to Metra a "Condition of Entry" (COE) document that purports to unilaterally impose on Metra the rate stated in Union Pacific's most recent proposed operating agreement. In addition to unilaterally doubling the amount of compensation Metra pays Union Pacific, the Condition of Entry document purports to impose other material changes to the status quo, if Metra continues to use the UP Lines for its commuter service beginning on July 1, 2025, and to require Metra to waive certain rights, such as the right to a jury trial in any dispute between Metra and Union Pacific arising out of or relating to the "agreement."

52. Specifically, the COE purports to require Metra to pay \$18.50 per train mile operated on the UP Lines as a “Rail Access Fee,” subject to a 2.9% annual fee increase. This per-train-mile rate is identical to the fee specified in Union Pacific’s May 21 proposed operating agreement, which acknowledges that—on an annualized basis—this fee corresponds to an estimated \$40.7 million fee (before annual increases and the imposition of additional costs to use the UP Lines currently included in the PSA compensation), or, in other words, an estimated \$41.3 million fee in the first year, defined as July 1, 2025 through June 30, 2026, with the 2.9% increase on January 1, as specified in Section 3.1 of the COE.

53. The COE purports to become effective upon Metra’s use of the UP Lines on or after July 1, 2025. The document also states that Metra is required to pay Union Pacific at its demanded rate of compensation and that, if Metra breaches this requirement, Union Pacific will have the right to terminate Metra’s use of the UP Lines. That termination automatically takes effect 60 days after the termination notice, unless Metra cures the breach, satisfactory to Union Pacific.

54. I have reviewed and evaluated the COE while performing my professional duties. It contains numerous terms and conditions, across a variety of topics, which are unreasonable and represent a dramatic degradation in Metra’s rights under the existing PSA. Across the board, Union Pacific’s one-sided COE imposes on Metra terms that are unreasonable and materially deleterious to Metra’s interests, both from a business perspective and in Metra’s role as a public agency performing a vital public service. Metra would incur significant new expenses under the terms of the COE, take on unacceptable levels of uncertainty and risk, and be forced to give up significant legal rights in order to continue operating the commuter rail service that has existed for decades.

55. Specifically, the COE contains the following unreasonable and one-sided terms, among others:

- a. The COE unreasonably requires Metra to pay to use physical infrastructure that Metra has funded in its entirety, typically using taxpayer funded grant money.
- b. The COE also claims rail property as part of the UP Lines that is in fact owned by Metra: from Mile Post (MP) 0.0 at the end-of-track bumping posts at Ogilvie Transportation Center to approximately MP 0.2, where UP's property interest begins north of Lake Street.
- c. The COE unreasonably degrades Metra's ability to make previously routine service changes like adjustments to stopping patterns, timetables, and train run times that are necessary to operate Metra's commuter rail service effectively.
- d. The COE degrades Metra's contractual right under active fixed facility agreements to access the UP Lines to perform capital improvement work.
- e. The COE unreasonably and unnecessarily limits Metra's ability to make routine consist changes—referring to the arrangement of cars and locomotives within the train—degrading Metra's ability to operate its commuter rail service safely and effectively.
- f. The COE unreasonably limits Metra's ability to make temporary reductions in service in response to unforeseen contingencies without risking its ability to operate on the UP Lines in the future.

- g. The COE unreasonably imposes a usage fee that represents a more than 100% increase in the compensation paid to Union Pacific for Metra's use of the UP Lines, and that does not provide for the use of all facilities currently employed in commuter service and necessary guarantees of adequate performance.
- h. The COE unreasonably calculates the usage fee in train miles rather than car miles, which is an inaccurate and imprecise metric, in part because Metra's trains typically contain far fewer cars than a freight train running on Union Pacific's tracks and paying a train mile-based fee skew the economics in Union Pacific's favor.
- i. The COE unreasonably degrades Metra's ability to monitor and correct the accuracy of costs billed to Metra, such as engineering costs, as it provides Metra with no right to audit these expenses nor protocol to "true-up" billing as information is confirmed after invoices are issued.
- j. The COE unreasonably demands that Metra pay any invoices in full within five days—much less than the 15 days provided under the PSA—and provides for no mechanism to resolve disputes, meaning Metra must either pay incorrect invoices under protest or withhold funds and risk being deemed by Union Pacific to be in breach.
- k. The COE unreasonably requires Metra to pay for *all* capital expenditures on the UP Lines, rather than proportionally in accordance with Metra's use of the UP Lines. Because Metra's capital contributions are funded by public grant money, those grant funds *must* be used for the service related

to the grant (*i.e.* commuter rail service) and not to subsidize Union Pacific's activities as a private company.

- l. The COE unreasonably shifts the risk of catastrophic loss of rail infrastructure onto Metra, giving Union Pacific sole discretion over whether it will elect to rebuild facilities necessary to operate commuter rail. While Metra has the ability to pay to rebuild if Union Pacific elects not to, the COE disregards Union Pacific's contractual obligation, under the FFAs, to reimburse Metra for capital investment that is no longer used for commuter rail activities during its useful life. Additionally, the COE does not account for failures that are attributable to Union Pacific's conduct, meaning Metra may be required to rebuild facilities due to maintenance failures entirely the fault of Union Pacific.
- m. The COE unreasonably and unnecessarily provides for only 14 days of "merely informative" non-binding notice of potential rail line or station closure due to engineering activity, and that Union Pacific may change plans between the notice and performance of work—with no further communication with Metra specified. Union Pacific plans major work months in advance and would easily be able to provide 60 days of preliminary notice, at a minimum, allowing Metra to assess schedule impacts, communicate with the public, and arrange temporary alternatives. While schedules for planned work can change, and emergency or unplanned work can arise, a protocol of ongoing communication and coordination between the parties is essential, rather than a privilege or

courtesy. Further, the COE also provides no mechanism for Union Pacific to coordinate railroad activity or for Metra to dispute or negotiate regarding planned railroad activity.

- n. The COE unreasonably disregards Metra's property rights in capital improvements funded by Metra.
- o. The COE unreasonably and unnecessarily requires Metra employees to obtain special rights to access Union Pacific property—which occurs every day for routine maintenance, cleaning, security, safety, training, and customer service activity.
- p. The COE gives Union Pacific the unilateral ability to remove or prohibit “any person” from the Rail Lines, to include Metra employees or contractors. There is no mechanism for Metra to appeal such prohibition (i.e., procedural protections for the recipient of a prohibition), nor for Metra to remedy the situation (e.g., remedial training if an employee or contractor violates a rule).
- q. The COE unreasonably fails to provide Metra with guarantees that Union Pacific's activity on the UP Lines—including adding additional freight or passenger activity on the lines—will not interfere with Metra's service schedule or on-time performance.
- r. The COE fails to account for a potential change in access compensation, engineering, or capital costs paid by Metra if additional freight or passenger traffic is added to the UP Lines, despite the historical allocation of costs based on Metra's proportional use of the UP Lines.

- s. The COE unreasonably fails to provide any assurances of on-time performance or a mechanism to coordinate on or cure disputes about dispatching practices impacting performance. Instead, the COE only promises “reasonable efforts to minimize disruption of Metra’s schedules.”
- t. The COE unreasonably shifts liability from Union Pacific onto Metra, rather than merely requiring Metra to indemnify and defend Union Pacific for its liability connected to commuter rail operations, and also unreasonably requires Metra to indemnify Union Pacific whenever Union Pacific’s agents do not have insurance or otherwise fail to indemnify Union Pacific for their negligence.
- u. The COE unreasonably requires Metra to indemnify Union Pacific for strict liability offenses and negligence wholly attributable to Union Pacific’s or its agents’ wrongdoing and raises the risk that Metra may be required to indemnify Union Pacific for conduct, events, and occurrences having nothing to do with Metra’s commuter rail operations.
- v. The COE unreasonably requires Metra to cover all legal expenses incurred in connection to lawsuits covered by the COE’s indemnification provisions, even if Union Pacific elects to conduct its own defense and thus Metra has no input on the litigation or ability to control costs.
- w. The COE unreasonably requires Metra to purchase, at its expense, insurance for punitive damages incurred by Union Pacific, an expense that is currently reimbursed by Union Pacific under the PSA.

- x. The COE unreasonably requires Metra to cure any breach in full within 60 days rather than begin diligent efforts to cure a breach within 60 days. Not all breaches are possible to cure within 60 days, including breaches resulting from disputes between Metra and Union Pacific that may take longer than 60 days to resolve.
- y. The COE unreasonably requires Metra to waive its constitutional right to a jury trial.

56. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: June 11, 2025
Chicago, Illinois

Signed by:


D0FDF104705E432...
Jennifer Kane

Exhibit D

MEMORANDUM OF UNDERSTANDING FINANCIALS AND OTHER TOPICS

This Agreement is made and effective as of April 2, 2024 ("Effective Date"), by and between the COMMUTER RAIL DIVISION of the REGIONAL TRANSPORTATION AUTHORITY, a division of an Illinois municipal corporation (Metra) and the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (Railroad). Metra and Railroad may be individually referred to as a "Party," and jointly referred to as the "Parties."

RECITALS

1. The Parties entered into a Purchase of Service Agreement dated January 28, 2010, as subsequently amended, the most recent of which is dated March 18, 2024 (collectively, the 2010 agreement and ensuing eight amendments through March 18, 2024, the PSA).
2. The Parties seek agreement on new financial terms.
3. Franchise access fee (FAF) means a user fee that is paid as a condition to gain access to Railroad's rail lines and other auxiliary lead and yard tracks, except those leased or sold to Metra, for the operation of Metra's commuter trains on Railroad's rail lines.
4. The Parties acknowledge that they will continue to transition Contract Services from the PSA and Fixed Facility Agreements to a new arrangement.
5. Some of the Parties' discussions regarding the new arrangements have been outlined in previous memorandums of understanding between the Parties the most recent and effective one of which is dated January 5, 2024.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Metra and Railroad agree as follows:

1. While Parties seek a new agreement, Metra will continue to pay Railroad the PSA Reimbursable Expenses, Compensation and Overhead included in 6.02(a)(2): Depreciation, 6.06: Additional Compensation, 6.10(a)(2): Base Amount for General Office/Corporate Overhead Expenses, and 6.13: Security and Administrative Expense including the applicable annual escalation (together approximately \$21 million also referred to as "Payments"). Metra will continue the Payments in good faith while the Parties continue to negotiate, and to allow the Parties to continue progress on the transfer of Contract Services.
2. The Parties agree to extend the "Other Matters" deadline of the January 5, 2024 Memorandum of Understanding regarding certain memorandums of agreement from March 31, 2024 to July 31, 2024.
3. Metra and Railroad have initiated Project No. 4840, which includes the replacement of 11 railroad bridges from Fullerton Avenue to Cornelia Avenue, replacement of retaining walls between bridges, and repair of the Addison Street bridge, under the September 11, 1981, Fixed Facility Agreement (FFA). The parties shall continue to operate under the September 11, 1981,

FFA for Project No. 4840 until it is complete, with the understanding that the Parties will amend the FFA to reflect the Parties updated practices in implementing projects/practices and any updated laws and/or regulations.

4. This Memorandum of Understanding is the Parties' final agreement on these enumerated matters, and it supersedes all prior understandings written or otherwise. This Memorandum of Understanding is binding only to the extent of the underlying agreements.

IN WITNESS WHEREOF, Railroad and Metra have executed this Memorandum of Understanding as of the Effective Date.

UNION PACIFIC RAILROAD COMPANY



By:

John W. Turner
SVP Operations, Northern Region

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY



By:

James M. Derwinski
CEO/Executive Director



**MEMORANDUM OF UNDERSTANDING
BETWEEN
COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY
AND
UNION PACIFIC RAILROAD COMPANY**

This Memorandum of Understanding (“MOU”) is made and entered into as of this 23rd day of November 2022 (“Effective Date”) by and between the COMMUTER RAIL DIVISION of the REGIONAL TRANSPORTATION AUTHORITY, a division of an Illinois municipal corporation (“Metra”), and the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Union Pacific”).

BACKGROUND

Union Pacific currently provides commuter rail service in accordance with a Purchase of Service Agreement (as amended, “PSA”) with Metra on four subdivisions owned by Union Pacific known as the Geneva, Harvard, Kenosha, and McHenry subdivisions. In August 2019, Union Pacific advised Metra that it is willing to enter into an agreement to make its track and property available to Metra for continued commuter rail service on its lines. Union Pacific would continue to provide limited essential services under contract to Metra, such as dispatch and line maintenance, to ensure that Metra’s commuter rail service continues with no difference to riders. Union Pacific, however, has advised Metra that it intends to exit the business of operating commuter rail trains with its employees.

In December 2019, Union Pacific filed a declaratory relief action against Metra asserting Union Pacific did not have a common carrier obligation (“CCO”) to provide passenger services. Metra opposed that action, asserting Union Pacific has a CCO to provide passenger services.

The parties acknowledge that a bifurcated approach to the Services Transfer (as defined below) and a coordinated dispute resolution process for the new financial terms (see Section 4) is in the interest of each party. The parties further acknowledge that each party will work to execute further documents and agreements to effectuate the understandings in this MOU. All capitalized terms not defined herein are defined in accordance with the PSA.

NOW, THEREFORE, the parties mutually understand:

Section 1. Services Transfer. Union Pacific desires to cease, and Metra is willing to assume certain services (*e.g.*, mechanical, train, engineer & yard crews, clerical, and certain engineering services) Union Pacific currently provides under the PSA (“Services Transfer”). Metra’s assumption of such services shall be in consideration for Metra receiving trackage rights/access and facility licenses necessary to operate its current service and meet the needs of the commuting public. This transfer may include the hiring of substantial numbers of employees from Union Pacific to Metra. In accordance with the PSA, Union Pacific will continue to provide the services

that are not transferred. The parties will make plans for Services Transfer in a safe, timely and orderly manner; a “Gantt Chart” example of such plans is attached as Exhibit A. The parties will endeavor to begin Services Transfer no earlier than January 1, 2023; provided however, the parties will endeavor to transfer transportation and mechanical manager positions sooner if both parties are prepared under separate agreement.

Section 2. Financial Framework. The parties will seek agreement on new financial terms. Upon any agreement(s) for Services Transfer the parties will amend the PSA to remove allowable Reimbursable Expenses which correspond with services transferred. Despite the preceding sentence, PSA Reimbursable Expenses, Compensation and Overhead included in 6.02(a)(2): Depreciation, 6.06: Additional Compensation, 6.10(a)(2): Base Amount for General Office/Corporate Overhead Expenses, and 6.13: Security and Administrative Expense will continue, including the applicable annual escalation (together approximately \$21 million). To further clarify, the intent of the parties is, with operational transfers and reductions of the PSA Reimbursable Expenses as services transfer, Metra will nonetheless continue to pay approximately \$21 million annually plus escalations. The parties further acknowledge that the CCO ruling may impact future financial terms.

Section 3. Capital Contributions. As part of the new financial terms and subject to further negotiations, the parties may consider Metra’s capital contributions paid after the date of this MOU, excluding previously committed funding, to mutually beneficial projects (e.g., third mainline or Proviso flyover) as a credit to future trackage rights/franchise access fees. By this language, the parties are not intending to address Metra’s claims of alleged real estate ownership interests arising from prior Metra capital contributions and/or government grants. Real estate discussions will be separately addressed.

Section 4. Mediation. If after 75 calendar days from the execution of this MOU, the parties are unable to agree on new financial terms, either party may request mediation, by giving written notification to the other party. This is without prejudice to either party’s ability to seek any other relief. This does not represent an implied or express consent to any specific forum and the parties disagree on the most appropriate and productive forum.

Section 5. Dismissal of Pending Litigation. If the CCO matter currently pending at the United States Court of Appeals for the Seventh Circuit remains undetermined and the parties desire to complete the Services Transfer prior to receiving a decision, the parties will explore settlement, dismissal, and vacatur of the litigation. Additionally, in the spirit of reconciliation, the parties will endeavor to settle all remaining pending disputes and controversies, including but not limited to the fare collection litigation.

Section 6. Good Faith. Keeping safety at the forefront, the parties agree to work together diligently and collaboratively to facilitate a seamless, effective, orderly, and efficient Services Transfer with no impact to commuter service. Additionally, the parties agree to continue to proceed in good faith with negotiations.

Section 7. Definitive Agreements. This MOU is not an offer and will not give rise to any right or obligation based on a legal or equitable theory and shall not be disclosed to any person for any reason except as required by law. Only subsequent definitive written agreements executed by

the parties would bind the parties to a matter addressed in this MOU. The parties acknowledge definitive written agreements are needed to accomplish the Services Transfer that would include additional terms and conditions.

Section 8. Counterparts. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this MOU as of the Effective Date.

**UNION PACIFIC RAILROAD
COMPANY**



By: _____
John W. Turner
SVP HDC, Network Planning & Ops
Union Pacific Railroad Company

**COMMUTER RAIL DIVISION OF
THE REGIONAL
TRANSPORTATION AUTHORITY**

By: _____
James M. Derwinski
CEO/Executive Director
Metra

the parties would bind the parties to a matter addressed in this MOU. The parties acknowledge definitive written agreements are needed to accomplish the Services Transfer that would include additional terms and conditions.

Section 8. Counterparts. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this MOU as of the Effective Date.

**UNION PACIFIC RAILROAD
COMPANY**

By: _____
John W. Turner
SVP HDC, Network Planning & Ops
Union Pacific Railroad Company

**COMMUTER RAIL DIVISION OF
THE REGIONAL
TRANSPORTATION AUTHORITY**

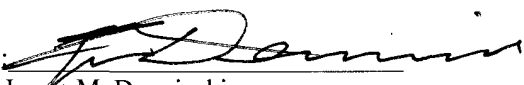
By: 
James M. Derwinski
CEO/Executive Director
Metra 

Exhibit A

Please reference document titled “20220922 UP-Metra Transportation Transition_PDF”

ID	Task Name	Duration	Start	Finish	Predecessor	Notes	19
1	Sign Labor Agreement with SMART-TD, -Y, BLET	1 day	Tue 1/3/23	Tue 1/3/23			
2	Sign PSA Amendment to transfer work	1 day	Tue 1/3/23	Tue 1/3/23			
3	Finalize headcount needs	90 days	Fri 7/1/22	Thu 11/3/22			
4	Review job titles/grades/locations	30 days	Tue 9/20/22	Mon 10/31/22			
5	Review current crew and board requirements	30 days	Thu 9/15/22	Wed 10/26/22			
6	Receive approval for transferring headcount	1 day	Tue 11/1/22	Tue 11/1/22	4,5		
7	Receive approval for hiring new positions	1 day	Tue 11/1/22	Tue 11/1/22	4,5		
8	Finalize Org Structure	90 days	Fri 7/1/22	Thu 11/3/22	3		
9	HR/Kronos HCM/Cadient	60 days	Thu 11/3/22	Wed 1/25/23			
10	Timekeeping/Payroll	60 days	Thu 11/3/22	Wed 1/25/23			
11	Build General Ledger Accounting System	7 days	Fri 11/4/22	Mon 11/14/22	3		
12	Create new GL codes	3 days	Fri 11/4/22	Tue 11/8/22		Implement over a weekend	
13	Test GL codes	1 day	Thu 11/10/22	Thu 11/10/22	12		
14	IT Physical Prep Work	193 days	Fri 7/1/22	Tue 3/28/23			
15	Develop inventory of static tech	60 days	Fri 7/1/22	Thu 9/22/22			
16	UP approval of inventory of static tech (ASAP)	1 day	Thu 10/13/22	Thu 10/13/22		Transition Agreement needed or part of Amendment	
17	Procure laptops for management	60 days	Fri 11/4/22	Thu 1/26/23	8		
18	Procure iPhones for management as needed	60 days	Fri 11/4/22	Thu 1/26/23	8		
19	Install Metra Wi-Fi at Crew quarters	9 days	Wed 1/4/23	Mon 1/16/23		Could use UP's existing circuits as interim step?	

ID	Task Name	Duration	Start	Finish	Predecessor	Notes	19
20	Procure and receive crew iPads & iPhones	60 days	Wed 1/4/23	Tue 3/28/23	2	Potentially need Board approval for this purchase; so we should have a Definitive Agreement with UP first.	
21	Install copiers/printers/fax machines for starting points	1 day	Wed 1/4/23	Wed 1/4/23		Any UP equipment that can be purchased?	
22	Procure and install all other required hardware	TBD					
23	IT Program Prep Work	545 days?	Fri 9/30/22	Thu 10/31/24		Review possible license with PST	
24	Get access to UP's Daily Operating Bulletins (DOBs)						
25	Set up train crew tablets - install, block apps, etc.	21 days	Wed 3/29/23	Wed 4/26/23	20		
26	Build out DIVA to handle scope	545 days?	Thu 10/13/22	Wed 11/13/24		Review possible license with PST	
27	Determine need for numbering structure rehab (independent)	14 days					
28	Analysis of how system works (CBAs, process, organizational)	120 days	Wed 1/4/23	Tue 6/20/23	1,2		
29	Vendor procurement (SOW, Metra Proc)	120 days	Wed 4/26/23	Tue 10/10/23	28		
30	Develop UP crew caller manual for "how it works, how its done" for calling procedures	90 days					
31	Delivery of project	270 days	Wed 8/16/23	Tue 8/27/24	29		
32	Testing	90 days	Wed 4/24/24	Tue 8/27/24	31		
33	Add crew assignments to DIVA	90 days	Wed 7/17/24	Tue 11/19/24	32		
34	Transition HOS data (2 weeks prior to XD)						
35	Payroll Set up	198 days?	Fri 7/1/22	Tue 4/4/23		Review possible license with PST	

ID	Task Name	Duration	Start	Finish	Predecessor	Notes	19
36	Arrange UP system "rental"/data feed?						
37	Decide on Payroll System	30 days	Tue 11/1/22	Mon 12/12/22			
38	Receive applicable Payroll data from UP	5 days?	Mon 1/2/23	Mon 1/9/23			
39	Receive wage agreement data	1 day?	Wed 1/4/23	Wed 1/4/23	1,37		
40	Add data server space	1 day?	Wed 1/4/23	Wed 1/4/23	2		
41	Incorporate wage agreement data into system	1 day?	Mon 1/9/23	Tue 1/10/23	37,38,39,40		
42	Test system	60 days	Tue 1/10/23	Tue 4/4/23	41		
43	UP Manager Transfer	63 days	Thu 9/15/22	Mon 12/12/22	6		
44	Obtain job descriptions from UP	10 days	Thu 9/15/22	Wed 9/28/22			
45	Obtain manager work histories, resumes	14 days	Wed 9/28/22	Mon 10/17/22			
46	Extend offers to UP managers	30 days	Tue 11/1/22	Mon 12/12/22		Potentially negotiate offers / "executive loan" option	
47	New Management Position Hiring-Training	244 days	Thu 12/1/22	Tue 11/7/23	8,3		
48	Post New Support Positions	90 days	Thu 12/1/22	Wed 4/5/23	7		
49	Hire/Onboard/Train new mgt support staff	180 days	Wed 3/1/23	Tue 11/7/23	7		
50	Training/Rules Prep	69 days	Mon 4/17/23	Thu 7/20/23			
51	Develop new OTC terminal rule book?	45 days	Mon 4/17/23	Fri 6/16/23	81		
52	Develop UP/GCOR Rules Exam	30 days	Mon 5/1/23	Fri 6/9/23	81		
53	Develop UP/SSI exam	30 days	Mon 5/1/23	Fri 6/9/23	81		
54	Create transition plan for Metra Rules Class/Exam	30 days	Fri 6/9/23	Thu 7/20/23			
55	Create transition plan for FRA Ops Test Report	30 days	Thu 12/1/22	Wed 1/11/23			
56	Update Op Testing Database & Power BI reports						

ID	Task Name	Duration	Start	Finish	Predecessor	Notes	19
57	2 hour Op Test class for UP Trans Mgrs.						
58	T&E Transfer Prep	119 days	Wed 1/4/23	Mon 6/19/23	6,1	7 months if DIVA issue resolved	
59	Post positions via BLET/SMART-TD	14 days	Wed 1/4/23	Mon 1/23/23	6,1		
60	Receive employee records	7 days	Tue 1/24/23	Wed 2/1/23	59	Include training, cert, rules data	
61	Review employee records	45 days	Mon 2/6/23	Fri 4/7/23	60		
62	Orientation paperwork week				61		
63	Train employees on tablets, TDC if necessary, Metra MRI, Crew Calling				62	Pending determination of DIVA v. PST;...	
64	Enter name of employee in PTC database	1 day	Tue 2/14/23	Tue 2/14/23	62		
65	Provide access to PTC training/refresher	0 days	Tue 2/14/23	Tue 2/14/23	62	Exists, just have to provide access, during orientation?	
66	Take Ethics and Diversity Training	1 day	Tue 2/14/23	Tue 2/14/23	62		
67	Dovetail into current recert training program	1 day	Tue 2/14/23	Tue 2/14/23	62		
68	Take Metra Rules Class/Exam	1 day	Tue 2/14/23	Tue 2/14/23	62		
69	Train crews on DIVA	1 day	Mon 6/19/23	Mon 6/19/23	62,33		
70	Issue Rule Book to each employee	1 day	Tue 2/14/23	Tue 2/14/23	62		
71	CPR/AED/Suicide Awareness (4 hr.)(if needed)				62	Confirmation received in last year/2	
72	Stationmaster Transfer Prep				6	Pending determination whether/how many Stationmasters to take, whether to take them as contract or non-contract. Job descriptions requested from UP	

ID	Task Name	Duration	Start	Finish	Predecessors	Notes	19
76	Fleet Management Prep	365 days	Wed 1/4/23	Tue 5/28/24	2	Pending determination of how many new vehicles needed	
78	Employee Licenses	167 days	Tue 11/1/22	Wed 6/21/23			
79	Notify FRA of Transition/Grandfathering	3 days	Wed 1/4/23	Fri 1/6/23	1,2		
80	Receive FRA response		Mon 1/9/23		79	timeline unknown	
81	UP to provide rules certification course to Metra trainers	120 days	Tue 11/1/22	Mon 4/17/23	1,2		
82	Receive list of Engineers & Conductors entering orientation (and employee ID numbers)	2 days	Thu 2/2/23	Fri 2/3/23	60		
83	Go to yards and take employee pictures and signatures	14 days	Fri 6/2/23	Wed 6/21/23	82		
84	Create new licenses and PINS	5 days	Mon 2/6/23	Fri 2/10/23	82	Send to PTC	
85	PTC Prep	70 days	Sun 1/1/23	Fri 4/7/23			
86	Ensure SIMS and mounting plates on hand	5 days	Sun 1/1/23	Thu 1/5/23			
87	Develop inventory of installable spare modems	14 days	Fri 1/6/23	Wed 1/25/23	86	Start now	
88	Work with UP at Cal Ave to install Metra modems (sticker to indicate reconfigured)	1 day	Thu 1/26/23	Thu 1/26/23	87		
89	Issue bulletin to crews re: PTC initialization	1 day	Fri 1/27/23	Fri 1/27/23	88		
90	CAD/CCF data configuration (Ensure locos on correct back office list)	1 day	Fri 1/27/23	Fri 1/27/23	88	Paul Larsen, keep up with UP pace	
91	Remove/reinstall existing UP modems	6 wks	Fri 1/27/23	Thu 3/9/23	88	whole fleet, depends on manpower/day	
92	Reconfigure removed modems	21 days	Fri 3/10/23	Fri 4/7/23	91	Complete by XD	

ID	Task Name	Duration	Start	Finish	Predecessors	Notes	19
93	Enter new licensed employee names and PIN in system (employee database)	1 day	Wed 1/11/23	Wed 1/11/23	84	D. Martinez	
94	Build jobs in system	1 day	Fri 1/6/23	Fri 1/6/23	93	D. Martinez	
95	XD Transition "Day"	7 days	Tue 8/1/23	Wed 8/9/23		Transition Day activities to be staggered across a week	
96	Turn in UP licenses and Distribute Metra licenses				84		
97	Distribute iPads				20		
98	Distribute cell phones				18		
99	Sign off on receiving Rules Books, Program Training						
100	Sign off on UP HOS				34		
101	Distribute contact phone numbers and HOS books					If we can't provide electronic HOS by then.	
102	Turn in UP employee IDs and Distribute Metra employee IDs						
103	Sign off on how many keys are on hand						
104	Turn in and sign off on UP working funds and remits?						
105	Report UP ticket stock at end of day. Transfer to Metra ticket stock.						
106	Turn in Employee Train Pass						
107	Turn in UP radios, receive Metra radios						
108	Engineers sign off on having flagging kit						
109	Engineers sign off on having reverser						

ID	Task Name	Duration	Start	Finish	Predecessors	Notes	19
110	Provide Safety Kit						
111	Remove personnel from UP databases						
112	Bulletin to employees: log on to Metra BOS using Metra credentials						