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Via E-Filing

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

Re: FD 36844, *Commuter Rail Division of the Regional
Transportation Authority d/b/a Metra – Terminal Trackage
Rights – Union Pacific Railroad Company*

Dear Ms. Brown:

UP filed a letter on July 17, 2025 (“Letter”), advising the Board of the decision of the U.S. Court of Appeals for the Seventh Circuit (“Decision”) addressing the Board’s final rule in EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service* (“Final Rule”). The Board’s Final Rule provided a new reciprocal switching remedy under 49 U.S.C. § 11102(c), where an incumbent rail carrier service failed to meet certain performance standards. UP’s Letter goes beyond providing notice of the Decision and omits or misstates key aspect of the Final Rule, the Decision, and Metra’s Application.

First, Metra does not seek reciprocal switching for a service inadequacy under § 11102(c) as addressed in the Decision and Final Rule. The public interest test for a local governmental authority seeking the use of terminal facilities under § 11102(a) is different from that for a shipper or receiver requesting reciprocal switching under § 11102(c). Congress specified in ICCTA that “a local transportation authority’s request would virtually always satisfy the public interest standard.” H.R. Rep. No. 104-422, at 184 (Conf. Rep.). Metra seeks terminal trackage rights not to remedy UP’s inadequate service – because as described below, UP has discontinued the service involved entirely – but to serve the public interest inherent in Metra’s continued operation on the UP Lines. The “public interest” test under § 11102(a) in Metra’s situation does not turn on the inadequacy of the incumbent’s rail service any more than it turns on the

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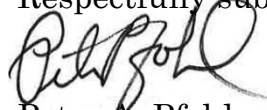
Page 2

Midtec anticompetitive conduct standard, which UP championed in its Reply Evidence.

Second, even assuming, *arguendo*, that a showing of service inadequacy might apply under § 11102(a), UP ignores that the Final Rule was designed to apply where an incumbent railroad provides jurisdictional service subject to common carrier requirements. UP has been clear that the ICCTA eliminated its obligation to provide jurisdictional passenger service for Metra. The non-negotiated COE it purported to impose on Metra's post-June 30, 2025 operations does not involve jurisdictional service, and UP has no intention to reestablish any such service. Service that does not exist is, by definition, inadequate. UP's claim that Metra "cannot demonstrate any service inadequacy" because UP "has not excluded Metra from the UP Lines" both inaccurately states the test under § 11102(c) and what the public interest requires under § 11102(a). Mere access based on whatever non-negotiated terms UP determines to impose is a meaningless proxy for the public interest standard. The public interest, as Congress envisioned under § 11102(a), requires something more, which are the rights Metra seeks in this proceeding.

Metra respectfully requests that the above be given full consideration in reviewing the Decision and determining whether the remedial purpose of § 11102(a) and the terminal trackage rights requested by Metra serve the public interest.

Respectfully submitted,



Peter A. Pfohl

Robert D. Rosenberg

*Attorneys for the Commuter Rail Division of the
Regional Transportation Authority d/b/a Metra*

CERTIFICATE OF SERVICE

I hereby certify this 18th day of July, 2025, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by more expeditious means to all parties of record.

/s/ Peter A. Pfohl