

SERVICE DATE – AUGUST 19, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36844

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

Digest:¹ This decision denies a request by Union Pacific Railroad Company to bifurcate a dispute regarding the scope of facilities encompassed by the Board's previous grant of terminal trackage rights to the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra and sets a procedural schedule for determining conditions of use and compensation. The Board also assigns and authorizes an administrative law judge to address any discovery matters.

Decided: August 19, 2026

On December 1, 2025, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) requested the Board to establish conditions and compensation for Metra's use of three rail lines owned by Union Pacific Railroad Company (UP) in the Chicago area (the UP Lines), pursuant to an application for terminal trackage rights granted by decision served September 3, 2025. Commuter Rail Div. of the Reg'l. Transp. Auth.—Terminal Trackage Rts.—Union Pac. R.R. (September 2025 Decision), FD 36844 (STB served Sept. 3, 2025). In March 2026, the Board denied Metra's request to set conditions and compensation as premature and directed the parties to continue negotiations for 60 days, followed by submission of a joint report describing the status of negotiations and any issues that remained unresolved. Commuter Rail Div. of the Reg'l. Transp. Auth.—Terminal Trackage Rts.—Union Pac. R.R. (March 2026 Decision), FD 36844 (STB served Mar. 13, 2026). On May 22, 2026, the parties filed a joint report addressing the issues specified in the March 2026 Decision and advising the Board that they are unable to reach resolution absent Board intervention (hereafter, the May 22, 2026 Joint Report, or Joint Report).

This decision sets a procedural schedule for the Board's consideration of evidence and argument relating to the issues concerning conditions of use and compensation that remain unresolved. The Board also denies a request by UP to bifurcate the schedule and assigns and authorizes an administrative law judge to address any discovery matters.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

On September 3, 2025, the Board granted an application for terminal trackage rights filed by Metra under 49 U.S.C. § 11102(a) to continue commuter rail service over the UP Lines. In that decision, and consistent with the statutory command, the Board directed the parties to attempt to reach agreement on conditions and compensation for Metra's use of the UP Lines.² September 2025 Decision, FD 36844, slip op. at 33. The Board directed the parties to file status reports every 60 days stating whether they had reached agreement, required additional time, or were unable to agree. Id. The parties submitted their first joint report on November 13, 2025, stating that they had exchanged proposals regarding the conditions and compensation for Metra's use of the UP Lines and that, although they had not reached agreement, negotiations continued. (Joint Status Report 1, Nov. 13, 2025.)

On December 1, 2025, Metra filed a request for the Board to establish conditions and compensation, arguing the Board should do so because "the parties will not reach agreement on all remaining disputed issues in a way that would remove the need for Board involvement," (Metra Req. 1-2, Dec. 1, 2025).

UP responded in opposition on December 15, 2025. It argued that the parties were making progress and should continue their efforts to reach mutual agreement before proceeding to adjudicate the conditions and compensation. (UP Reply 4, Dec. 15, 2025). UP noted that one of the issues on which the parties could not agree was what real estate and facilities were covered by the Board's September 2025 Decision. (Id. at 5.) Accordingly, UP argued that any dispute about the scope of facilities encompassed by the September 2025 Decision should be briefed by the parties and resolved by the Board before the Board turned to considering compensation and conditions of use. (Id. at 5-8.)³ UP asserted that knowing the scope of the property at issue "is essential to being able to litigate and analyze the compensation that is owed for that property" and that the nature of the facilities at issue will have a direct bearing on the appropriate methodology for compensation and the necessary terms for access to them. (Id. at 7.)

The parties' next two status reports (filed on January 2, 2026 and March 3, 2026) stated that they continued to exchange proposals.

On March 13, 2026, the Board denied as premature Metra's request to set conditions and compensation, explaining that Metra's and UP's filings reflected that productive negotiations were ongoing and, in the Board's view, did not demonstrate that the parties were at an impasse.

² Under Section 11102(a), "[t]he rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings."

³ Separately, on December 15, 2025, UP also moved for a protective order to halt discovery sought by Metra, arguing that discovery was premature for similar reasons. (UP Mot. 2-4, Dec. 15, 2025.)

March 2026 Decision, FD 36844, slip op. at 3-5. The Board directed the parties to continue negotiations for 60 days and submit a joint report on May 22, 2026, identifying: the issues on which agreement had been reached; any remaining issues to be resolved (with a brief description of the nature of the disagreement and the parties' respective positions); and the parties' positions on whether or not mediation would be useful to resolve those issues. Id. at 5. The March 2026 Decision also granted in part UP's motion for a protective order. Specifically, the Board temporarily stayed discovery sought by Metra—explaining that “discovery is premature and may ultimately prove unnecessary”—but provided that, as a general matter, discovery on unresolved issues identified in the parties' Joint Report could commence on the date of the submission of the Joint Report. Id. at 6-7.⁴

On May 22, 2026, the parties filed their Joint Report addressing the issues specified in the March 2026 Decision and advising the Board that they “agree that they are unable to reach resolution absent Board intervention.” (Joint Report 1, May 22, 2026.)⁵ In the Joint Report, UP renews its request to bifurcate the parties' dispute so that the Board can determine which facilities are encompassed by the September 2025 Decision before the parties adjudicate conditions and compensation. (Id., Ex. B at 1.) Metra objects to the request. (Id.)

As discussed below, the Board will deny UP's request to bifurcate and will proceed to set a procedural schedule to address the unresolved issues identified in the parties' May 22, 2026 Joint Report (as narrowed on July 20, 2026). An administrative law judge will also be assigned to handle any discovery matters. The Board will not order mediation at this time.

DISCUSSION AND CONCLUSIONS

UP's Bifurcation Request

UP's December 15, 2025 filing asserts that any request by Metra to expand the scope of the facilities to which Metra has access under the September 2025 Decision must be resolved before compensation and conditions are addressed. (UP Reply 5-7, Dec. 15, 2025.) UP notes that Metra's December 1, 2025 request to set conditions and compensation identifies “scope of the trackage rights” as a disputed issue, and UP states that, based on interim terms proposed in a

⁴ The March 2026 Decision noted that the Board had deferred ruling on UP's request to bifurcate any scope-of-facilities issues that remained in dispute and that Metra accordingly could not pursue discovery on such issues absent further Board order. March 2026 Decision, FD 36844, slip op. at 6 n.11. Metra states that the discovery that prompted UP's motion for a protective order did not implicate UP's request for bifurcation, (Metra Response to Mot. 1, Dec. 29, 2025), and Metra's filings do not otherwise mention a desire to seek discovery on that subject. If necessary, discovery pertaining to scope-of-facilities issues may commence upon service of this decision, as discussed below.

⁵ The May 22, 2026 Joint Report provided a table describing the parties' disagreements and respective positions. On July 20, 2026, the parties advised the Board that they are now in substantial agreement as to one of the items listed in that table, namely, Exhibit H (Insurance Requirements) of the draft Trackage Rights Agreement. (Suppl. to Joint Report 1, July 20, 2026.)

prior Metra rebuttal filing, it “assumes that Metra will seek to expand the [September 2025 Decision] from covering the UP Lines to a potentially wide array of other real estate and/or facilities.” (UP Reply 5, Dec. 15, 2025 (referencing interim Metra proposal that included parking lots and offices).) UP maintains that any attempt by Metra to access facilities beyond the UP Lines must be resolved after Metra identifies with specificity the facilities to which it seeks access, with an opportunity for UP to respond, and that it is “essential” that this occur before conditions and compensation are considered. (Id. at 6-7.)

Metra counters that it is not attempting to expand the scope of the trackage rights conferred in the September 2025 Decision. (Metra Surreply 3-4, Dec. 18, 2025.) Metra maintains that the term “terminal facilities” is to be broadly construed, whether for freight or passenger traffic, and that the term encompasses “what is ‘necessary for the convenience of passengers.’” (Id. (citing September 2025 Decision, slip op. at 14 & n.28).) According to Metra, “[t]he appropriate delineation of the facilities involved in actual contract language has been a point of discussion between the parties.” (Metra Surreply 4, Dec. 18, 2025.) Metra states that its reference to the scope of the rights in its December 1, 2025 request to set conditions and compensation “simply reflects the reality that the Board likely will need to determine the ‘functions and facilities’ covered by the [September 2025 Decision] in the context of Metra’s operations and the implementing terms of the parties’ trackage rights agreement.” (Id.)⁶

The Board will deny UP’s request to bifurcate this proceeding into two phases but will require that Metra “identif[y] with specificity the facilities to which it seeks access” and provide UP with an opportunity to respond, as UP has requested. (UP Reply 6.) This should allow the parties to address disputes concerning which specific facilities are encompassed by the Board’s grant of trackage rights within the broader context of terms and compensation. UP’s assertion that bifurcating the proceeding into two distinct phases would promote efficiency, (UP Reply 7), is at odds with the agency’s assessment of such issues in comparable cases. For example, in Norfolk Southern Railway—Petition to Set Trackage Rights Compensation—Norfolk & Portsmouth Belt Line Railroad, FD 36223 (STB served Mar. 29, 2019), the Board concluded that although bifurcation could result in more focused evidentiary presentations at the merits stage, any such benefit would be outweighed by the efficiency lost in requiring two rounds of discovery, two rounds of initial and responsive pleadings, and two Board decisions. Id. at 6; see also New Eng. Cent. R.R.—Trackage Rights Order—Pan Am S. LLC, FD 35842, slip op. at 5 (STB served Feb. 12, 2016). The Board finds the same to be true here. Instead, the Board will require the parties to provide the following information by the specified dates as part of the broader procedural schedule:

- Metra will be directed to identify with specificity by August 26, 2026, the facilities (other than rail lines) to which it seeks access pursuant to the September 2025 Decision.

⁶ Metra also notes that if UP believes the trackage rights agreement terms proposed by Metra include facilities beyond the scope of relief granted by the September 2025 Decision, UP will have the opportunity to challenge Metra’s position during the conditions and compensation phase of the case. (Id.) Lastly, Metra asserts that “UP provides no relevant support for its novel bifurcation request, and Metra is aware of none.” (Id. (citing decisions denying bifurcation).)

- UP must thereafter identify with specificity any additional facilities, not listed by Metra, that UP believes are encompassed by the September 2025 Decision, by September 2, 2026.
- The parties' opening submissions, due October 19, 2026, are to: (1) explain the basis for their position that all facilities identified by the parties are (or are not) within the scope of the terminal trackage rights granted in the September 2025 Decision; and (2) present evidence and argument as to the appropriate valuation methodology(ies) and compensation for Metra's use of the facilities identified by either party (including any objected to as outside the scope of the September 2025 Decision).

If necessary, discovery pertaining to scope-of-facilities issues may commence upon service of this decision.

Discovery

The Board has signed a Memorandum of Understanding with the U.S. Department of Health and Human Services, Office of Medicare Hearings and Appeals to employ the services of administrative law judges on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge Jenifer Soulikias to entertain and rule upon discovery matters and to resolve initially any disputes concerning discovery in this proceeding that are filed after the service date of this decision. The parties are directed to send copies of all their filings and documents in this proceeding to Judge Soulikias at alj.soulikias.inbox@stb.gov. The parties are encouraged to cooperate on discovery matters and resolve any disputes promptly.

Procedural Schedule

The Board will adopt the following procedural schedule, the core components of which were proposed in Metra's December 1, 2025 request to set conditions and compensation and to which UP generally did not object in its December 15, 2025 reply (outside of its request for bifurcation).⁷ The Board will add one additional component – rebuttal submissions.

UP commented that Metra's proposed 60-day period for discovery "would almost certainly be insufficient." (UP Reply 8, Dec. 15, 2025.) The schedule entered here will provide that discovery (which, as noted above, has already commenced as a general matter) will close on October 5, 2026. The Board finds no basis in the current record for a determination that more

⁷ These components include an exchange of then-current proposed trackage rights agreements (not to be filed with the Board); the simultaneous submission of opening evidence and argument and reply evidence and argument; and inclusion of the party's proposed trackage rights agreement with its opening submission. As noted by Metra, this approach will allow the parties to continue their negotiations, with the possibility that their disputes will be narrowed; it will also facilitate the Board's consideration of the matter by enabling the Board to more readily identify the disputed issues that remain. (Metra Req. 5, Dec. 1, 2025.)

time should be authorized. However, should future circumstances so warrant, the Board would entertain a request for an extension supported by both parties or a showing of good cause.

The following procedural schedule will govern this proceeding:

- August 26, 2026: Metra submits list identifying the facilities (other than rail lines) to which it seeks access pursuant to the September 2025 Decision.
- September 2, 2026: UP submits list of any additional facilities, not listed by Metra, that UP believes are encompassed by the September 2025 Decision.
- October 5, 2026: Close of discovery.
- October 8, 2026: Parties exchange then-current proposed trackage rights agreements, including agreed-upon terms and conditions (not to be filed with Board).
- October 19, 2026: Parties submit simultaneous opening evidence and argument in support of their position on all unresolved issues, including, without limitation, (1) the basis for their position that all facilities listed by the parties are (or are not) within the scope of the terminal trackage rights granted in the September 2025 Decision; and (2) evidence and argument as to appropriate valuation methodology(ies) and compensation for Metra's use of the facilities identified by either party (including any objected to as outside the scope of the September 2025 Decision).

Opening submissions are to include the party's proposed trackage rights agreement to establish conditions of use and compensation. Agreed-upon terms should appear as regular text. Proposed terms on disputed issues should also appear as regular text but should be highlighted in yellow.⁸

- November 17, 2026: Parties submit simultaneous reply evidence and argument.

⁸ As described in the May 22, 2026 Joint Report, "[t]he parties are in agreement relating to the terms in [the draft trackage rights agreement attached as] Exhibit A not designated 'RESERVED,' [and] the parties do not seek the resolution of these terms and conditions by the Board." (Joint Report 2, May 22, 2026.) Accordingly, the Board will expect the proposed drafts that are attached to the parties' opening submissions to show in regular text (i) the provisions not marked RESERVED in Exhibit A of the Joint Report, and (ii) any additional terms the parties have resolved since that time. The sections marked RESERVED in Exhibit A that remain in dispute should be replaced with the text of the submitting party's proposal and highlighted in yellow.

In addition to evidence and argument, reply submissions are to include a markup of the proposed trackage rights agreement submitted by the opposing party on opening that identifies points of disagreement and shows, as applicable, strike-throughs and/or alternative text in redline reflecting the responding party's position and proposal on the issue in dispute.

December 17, 2026: Parties submit simultaneous rebuttal evidence and argument, including any updates to the trackage rights agreement markups.

Mediation

The March 2026 Decision directed each party to address whether it believes mediation would be useful to resolve any remaining disputes, and the reason(s) for that belief. March 2026 Decision, FD 36844, slip op. at 5. Metra states that it does not believe mediation would be useful, noting that an earlier mediation was unsuccessful; Metra also notes that the parties have since devoted substantial efforts to resolving disputed issues but that significant issues remain. (Joint Report 2-3, May 22, 2026.) According to Metra, "each party understands the other side's positions and the basis for them," and Metra does not believe the remaining disputes will be resolved through mediation now. (Id.)

UP believes that Board-sponsored mediation could help resolve the remaining disputes between the parties described in the May 22, 2026 Joint Report. (Id. at 3.) UP notes that since the initial mediation, which took place in a different docket, the Board has entered an order granting terminal trackage rights and the parties have engaged in ongoing negotiations that resulted in alignment on numerous issues. (Id.) UP recognizes that—given Metra's lack of consent and as provided in 49 C.F.R. § 1109.3(e)—the Board would not hold this proceeding in abeyance pending mediation, but suggests that "mediation could occur concurrently while the parties engage in discovery and/or briefing on the narrow issue of other facilities." (Id. at 4.)

Given Metra's opposition and the fact that the parties have already engaged in one mediation, the Board will not order further mediation at this time. The procedural schedule will allow informal opportunities for the parties to continue their dialogue to seek to resolve issues that remain in dispute, and the Board strongly encourages them to do so. If, after the close of the record, it appears that Board-sponsored mediation could be helpful in resolving any remaining issues, the Board may consider, or a party may request, Board-ordered mediation at that time. The Board will also entertain, at any time, a joint request by the parties.

It is ordered:

1. UP's request to conduct a bifurcated proceeding relating to facilities subject to the trackage rights granted in the September 2025 Decision is denied.
2. The Board hereby ratifies the loan of Administrative Law Judge Jenifer Soulikias to the office of administrative law judge in the Surface Transportation Board, under terms and

conditions prescribed in 5 U.S.C. § 3344 and 5 C.F.R. § 930.208, and the Board today approves her appointment as the Board's own action under the Constitution.

3. This proceeding is assigned to Judge Soulikias for the handling of all remaining discovery disputes.

4. In addition to filing pleadings with the Board and serving copies on parties of record, parties must send a copy of all filings and documents relating to this proceeding, including submissions already filed with the Board, to Judge Soulikias at alj.soulikias.inbox@stb.gov.

5. Judge Soulikias will be added to the service list in this proceeding and a copy of this decision will be served upon her.

6. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street N.W., Suite 2469, Washington, DC 20415-9400 and electronically at lenor.thompson-watkins@opm.gov. The Board shall send a copy of the notice or order that constitutes the final disposition of the ALJ's assignment of this case to OPM at the above address.

7. The parties shall comply with the directives and the procedural schedule set forth in this decision.

8. This decision is effective on the date of service.

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