

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36844

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

REQUEST FOR MODIFICATION OF THE PROCEDURAL SCHEDULE

EXPEDITED CONSIDERATION REQUESTED

In its decision served August 19, 2026, the Board ordered Metra to identify with specificity the facilities (other than rail lines) to which it seeks access. Metra has now submitted that list of property, and it is sweeping in scope. Metra is now seeking access to platforms, depots, buildings, canopies, walkways, parking lots, and all appurtenances at 62 separate station locations; the Lake Street Tower; and nine maintenance, fueling station, and storage facilities, including roadways, pedestrian access areas, fuel tanks, associated tracks, and parking areas.¹ Not to mention the unspecified and vague catch-all requests for access, such as to “any other facilities that were used in the provision of commuter service on the same lines by UP under the now-expired PSA and that continue to be useful for the public transportation services that Metra provides.”²

¹ See Metra List of Facilities, Ex. A at 1–3 (filed Aug. 26, 2026).

² See *id.* at 2.

None of these non-rail line “other facilities” were part of Metra’s application for terminal trackage rights, nor were they encompassed by the September 2025 order. Yet the Board’s current schedule would have the parties present evidence as to compensation for these facilities at the same time the Board receives argument as to whether it can even order a taking of these properties—and long before issuing an order addressing the required statutory findings and the statutorily-required opportunity for the parties to reach agreement on terms and conditions of use for these facilities.

As explained below, good cause exists for the Board to modify the procedural schedule in light of Metra’s list of additional facilities. The current schedule is inconsistent with the statutory process and precedent and conflates the burden of proof as to the grant inquiry; it is problematic given Metra’s list of facilities, which is vague and fails to identify with specificity the facilities to which it seeks access, and it would deprive Union Pacific of a fair opportunity to present evidence and argument relating to these facilities.³ For the reasons described below, Union Pacific suggests a modified schedule that would retain the briefing schedule adopted by the Board for compensation and disputed terms for the UP Lines, as well as the grant inquiry for

³ Union Pacific first raised concerns with a potential request for expanded access in December 2025 and suggested that, if that were the case, the Board adopt a schedule to address those facilities. Union Pacific does not believe this procedural motion constitutes reconsideration in these circumstances. Should the Board conclude otherwise, however, Metra’s identification of additional facilities to which it now seeks access constitutes “new evidence” that was unknown to Union Pacific or the Board prior to the August 19 order and materially affects Union Pacific’s ability to meet the current procedural deadlines because of the scope of those additional facilities. *See* 49 C.F.R. § 1115.3(b)(1).

non-rail line other facilities, but would extend discovery on the issue of compensation and terms for non-rail line facilities to address issues raised by the ambiguities in Metra's list of facilities and to ensure adequate process is provided and the statutory negotiation period is observed.

* * *

Over eight months ago, Union Pacific first raised concerns that Metra might seek access to additional properties beyond the UP Lines.⁴ In March, the Board declined to order Metra to identify these facilities yet simultaneously prohibited any discovery as to those issues. Following the Board's August order, Metra has now identified at least 72 additional Union Pacific properties (and potentially many more) to which it seeks federally-mandated access. The current schedule is unduly prejudicial and problematic for a number of reasons and should be modified.

First, the schedule is inconsistent with Board precedent and the process contemplated by the statute. Under established precedent—including the process followed in this very case—a terminal trackage rights applicant bears the burden of proof for establishing its right to access to specific property, which necessarily begins with identifying the property at issue. If the Board ultimately orders such access, the parties must attempt to negotiate, as by statute the Board can only set terms and compensation if the parties do not agree. If they cannot agree, the Board typically requires parties to submit simultaneous evidentiary briefings on terms and compensation, after which the Board establishes terms and compensation. The Board

⁴ Union Pacific Reply at 5–7 (filed Dec. 15, 2025).

itself emphasized to the Eighth Circuit that “the statute speaks directly to the sequencing of the grant inquiry and the establishment of conditions and compensation”—stating that “*after the Board grants trackage rights*, the rail carriers negotiate for *those* terms among themselves.”⁵

Yet the Board’s procedural schedule turns that process on its head for the non-rail line “other facility” properties. It skips over party pleadings addressing the grant inquiry, over a Board decision granting and defining the scope of access, and over the statutorily-required opportunity for the parties to negotiate terms and conditions for the other facilities. Instead, the adopted schedule would have the parties submit evidence regarding compensation and terms for access to property for which the Board has not even ordered access.⁶

Further, the schedule is inconsistent with the Board’s practice of requiring sequential briefing when a party bears the burden of proof. The proponent of an order for terminal trackage rights bears the burden of proof.⁷ Because Metra now seeks access to non-rail line facilities, it bears the burden of proof on that issue—the same as it did when it was seeking access to the rail lines. The Board has rejected

⁵ See Respondents’ Joint Brief, *Union Pac. R.R. v. STB*, No. 25-2919 (8th Cir.), 2026 WL 676724, at *3 (Feb. 25, 2026) (some emphasis added).

⁶ The Board’s August decision stated that bifurcation is “at odds with the agency’s assessment of such issues in comparable cases.” August 19 Decision at 4. Respectfully, none of the cited cases involved a situation where the Board required a party to present evidence on compensation prior to the Board having determined whether or not access is to be granted.

⁷ See, e.g., *Midtec Paper Corp., et al. v. Chi. & N. W. Transp. Co. (Use of Terminal Facilities & Reciprocal Switching Agreement)*, 3 I.C.C.2d 171, 182 (1986); *Mo. Pac. R.R. v. La. & Ark. Ry. & Ill. Cent. R.R.*, 332 I.C.C. 569, 583 (1968).

simultaneous briefing and opted for consecutive briefing to ensure that the party that bears the burden of proof has the opportunity to open and close.⁸ The consecutive briefing that occurred in the first phase of this proceeding was consistent with the allocation of the burden of proof. Yet the current schedule would have both Union Pacific and Metra submit opening evidence as to the grant inquiry for these non-rail line facilities.

Second, the schedule is problematic in light of the list of facilities submitted by Metra. A number of the facilities identified by Metra are under current contract or are not even owned by Union Pacific (a fact acknowledged by Metra). Metra's request would have the Board displace contractual arrangements—with municipalities, Metra, and others—that Union Pacific entered into that reflect bargained-for allocations of rights and responsibilities. For properties owned by municipalities or other third parties, Metra's request would apparently have the Board direct a taking of their property without their participation in this proceeding.

Further, Metra has failed to specifically identify all of the additional properties to which it seeks access. For example, Metra seeks access to “any other facilities” previously used by Union Pacific under the now-expired PSA that “continue to be useful” to Metra's commuter service.⁹ And while it points to a Right of Entry to Improved Property (Station Property) agreement to define its list, Metra simultaneously asks for “all other relevant station property not included in the Right

⁸ See, e.g., *Duke Energy Corp. v. Norfolk S. Ry.*, Docket No. NOR 42069, at 2 (STB served Jan. 6, 2005).

⁹ Metra List of Facilities at 2.

of Entry.”¹⁰ In so doing, Metra inappropriately shifts the burden to Union Pacific to identify properties to which Metra seeks access.

Even where Metra more specifically identifies facilities, the list is ambiguous. For example, Metra purports to seek access to “UP trackage and underlying realty” at the Kinzie/Clinton Fueling Facility as defined in a Right of Entry to Track agreement yet that agreement does not mention the facility let alone identify what tracks beyond the mainline Metra has access to.¹¹

Third, the Board’s current schedule arbitrarily and unreasonably allows Union Pacific only **40 days** to conduct discovery after Metra’s identification of additional properties to which it seeks access.¹² This contrasts starkly with the **136-day** discovery period allowed for the compensation inquiry for the UP Lines under the current schedule. There is no basis for treating these other facilities differently from the UP Lines. They are all the property of Union Pacific and, if subject to a federally-mandated taking, are all entitled to just compensation. The 40-day period is inadequate, especially given the deficiencies in Metra’s list of additional facilities.

Under Board precedent, Union Pacific is entitled to “have an opportunity to build a record through discovery and obtain the data it needs to make its case on the

¹⁰ *Id.*, Ex. A at 1.

¹¹ *Id.*, Ex. A at 3.

¹² In March of this year, the Board declined to order Metra to identify the facilities to which it might seek access, yet at the same time halted discovery on the “other facilities” issue. The Board’s August decision lifted its discovery prohibition, permitting the parties to pursue “discovery pertaining to scope-of-facilities issues.” August 19 Decision at 3 n.4.

appropriate valuation method for the Board to use” in determining compensation, if the Board were to mandate access to the non-rail line properties.¹³ Union Pacific previously explained that “[k]nowing 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 conducting an additional valuation of property “could take approximately six months, depending on the scope of the property that would need to be analyzed.”¹⁴ At minimum, Union Pacific should receive the same amount of time afforded to build a record through discovery for the other facilities as it received for the rail lines, which would amount to a minimum three-month extension.

Union Pacific recognizes, however, that the Board may not wish to extend the entire procedural schedule. Therefore, Union Pacific suggests a modified schedule that would retain the briefing schedule adopted by Board for compensation and disputed terms for the UP Lines, as well as the grant inquiry for non-rail line other facilities. It would extend discovery on the issue of compensation and terms for non-rail line facilities to address issues raised by the ambiguities in Metra’s list of facilities and to ensure adequate process is provided. It would also provide the statutorily-required negotiation period should the Board grant access to other facilities.

¹³ *New England Cent. R.R.—Trackage Rts. Ord.—Pan Am S. LLC*, Docket No. FD 35842, at 4 (STB served Feb. 12, 2016); *see also Toledo, Peoria & W. Ry. Corp.—Trackage Rts. Comp.—Peoria & Pekin Union Ry.*, Docket No. FD 26476 (Sub-No. 1), 1994 WL 508802, at *3 n.8 (ICC served Sept. 20, 1994) (recognizing the importance of allowing parties an opportunity to develop objections to competing methodologies through discovery before the parties each present their case-in-chief on opening).

¹⁴ Union Pacific Reply at 7, 9 (filed Dec. 15, 2025).

Union Pacific Proposed Schedule

October 5, 2026	Close of discovery as to the UP Lines
October 8, 2026	Parties exchange then-current proposed trackage rights agreement, including agreed-upon terms and conditions (not filed with the Board)
October 19, 2026	Simultaneous opening evidence and argument as to compensation and terms for the UP Lines. Metra opening evidence as to jurisdiction and the standard for access to other facilities.
November 17, 2026	Simultaneous reply evidence and argument as to compensation and terms for the UP Lines. Union Pacific reply evidence as to jurisdiction and the standard for access to other facilities.
December 17, 2026	Simultaneous rebuttal evidence and argument as to compensation and terms for the UP Lines. Metra rebuttal as to jurisdiction and the standard for access to other facilities.
TBD	STB decision on access request for other facilities. 60-day negotiation period commences for compensation and terms for other facilities.
January 30, 2027	Close of discovery as to other facilities.

If, however, the Board is disinclined to separate briefing as between the grant inquiry and the compensation inquiry for non-rail line facilities, then at minimum Union Pacific alternatively requests that the schedule be modified to (1) promptly require Metra to address deficiencies in its list of properties to which it seeks access, and (2) extend the entire procedural schedule by three months from the date that Metra clarifies its list of properties to which it seeks access.

If the Board proceeds with simultaneous briefing on both the grant inquiry and the compensation inquiry, then it is imperative that Metra provide clarity as to ambiguities relating to the scope of non-rail facilities identified in its August 26

submission. Metra's failure to identify specific facilities would force Union Pacific to guess at the scope of these facilities for which it must present evidence. This would deprive Union Pacific of a meaningful opportunity to present its case for the compensation it would be entitled to if the Board orders a taking.

Due to the impending current deadlines and the need to develop evidence and argument relating to the newly-identified facilities, Union Pacific respectfully requests expedited consideration of this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September 2026, a copy of the foregoing Joint Status Report was served by email or first-class mail on the service list for Docket No. FD 36844.

/s/ Stephen S. Laudone

Stephen S. Laudone