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SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36844

COMMUTER RAIL DIVISION OF THE NORTHERN ILLINOIS TRANSIT AUTHORITY D/B/A METRA —TERMINAL TRACKAGE RIGHTS— UNION PACIFIC RAILROAD COMPANY

UNION PACIFIC SUBMISSION ADDRESSING ADEQUATE SECURITY OF COMPENSATION

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In response to the Board's October 1, 2026 order, Union Pacific submits its proposal for adequate security of compensation, consistent with 49 U.S.C. § 11102(a) and the Eighth Circuit's August 31 decision. *First*, Union Pacific summarizes the Eighth Circuit's relevant holdings. *Second*, Union Pacific explains that its proposal for adequate security necessarily only addresses the three rail lines covered by the Board's September 3 access order ("UP Lines") because the Board has declined to clarify the scope of the taking with respect to the "other facilities" to which Metra seeks access. *Third*, Union Pacific sets forth its proposal to cure the violation for the UP Lines through three measures: (1) monetary payments based on the base rate of $18.50 per train mile (increased 2.9% annually) going forward; (2) back payment to cure the underpayment since September 3, 2025; and (3) a bond of $618 million to secure compensation over a two-year period (assuming a final decision in late 2027).

Counsel for Union Pacific and Metra conferred but were unable to come to agreement on a joint proposal. Union Pacific will respond to Metra's proposal according to the procedural schedule.

I. The Eighth Circuit confirmed that compensation must be paid or adequately secured before use—and that the scope of the rights must be determined to the extent necessary to secure compensation.

In empowering the Board to grant terminal trackage rights, Congress specified both the amount and timing of the compensation required for such a condemnation. 49 U.S.C. § 11102(a). As to amount, § 11102 requires the Board establish compensation "under the principle controlling compensation in condemnation proceedings." *Id.* And for timing, the statute requires that "compensation shall be paid or adequately secured *before* a rail carrier may begin to use the facilities of another rail carrier." *Id.* (emphasis added).

In its August 31 decision, the Eighth Circuit emphasized that the statute means what it says: The temporal requirement that compensation be adequately secured "'*before*' a grantee rail carrier may use the facilities of the incumbent" imposes an "additional obligation on the Board." *Union Pac. R.R. v. Surface Transp. Bd.*, No. 25-2919, 2026 WL 2564829, at *8 (8th Cir. Aug. 31, 2026). Because the Board granted Metra access to the UP Lines before it ever "decided how much Metra would owe Union Pacific," "the Board's decision enable[d] Metra to exercise those rights before it [knew] whether it [could] afford them," and therefore "violated § 11102(a)." *Id.*

The court acknowledged that the Board may be unable to "set compensation without first determining what rights the grantee rail carrier will receive." *Id.*

at *9. That fact, too, imposes a distinct obligation on the agency: "to the extent the Board must set conditions to ensure that the *compensation* is paid or adequately secured, it must do so." *Id.* And were it not possible for the Board to determine compensation quickly enough, the court suggested that the solution would be to delay the effective date of the terminal trackage rights. *Id.* at *8. It did not suggest that any unilateral middle-ground of interim compensation could be used as a proxy for the compensation required by law. To the contrary, the court emphasized that "§ 11102(a) does not speak in terms of 'some compensation,' it specifies 'the compensation'—that is the compensation that the parties agree to or that the Board unilaterally orders." *Id.* at *8 n.3 (cleaned up).

Because the court found the Board's assurances regarding Metra's ability to pay some to-be-determined amount of compensation in the future insufficient, the court set the trackage rights order to be vacated on February 27, 2027. *Union Pac. R.R. v. Surface Transp. Bd.,* No. 25-2919 (8th Cir. Aug. 31, 2026) (judgment).

II. The scope of the taking in this case remains unclear, which prevents Union Pacific from estimating adequate security for anything other than the UP Lines.

Although Union Pacific appreciates that the Board granted Union Pacific's alternative request regarding extension of the procedural schedule, Union Pacific's concerns underlying its bifurcation requests remain. The Eighth Circuit affirmed the validity of Union Pacific's concern that the Board "cannot set compensation without first determining what rights the grantee rail carrier will receive." *Union Pac. R.R.*, 2026 WL 2564829, at *9. Here, the ambiguity regarding the rights the

grantee will receive goes to the heart of the compensation inquiry; it is impossible to value the property being taken without knowing what property that is.

As Union Pacific has previously explained, the Board's September 3 access order only granted Metra trackage rights over the UP Lines. So, to the extent the Board seeks to determine compensation for Metra's use of the rail lines themselves, that is appropriate. However, Metra has sought access to additional facilities beyond the UP Lines, and the Board has requested briefing "concerning which specific facilities are encompassed by the Board's grant of trackage rights." August 19 Decision at 4. That request suggests that the Board is considering enlarging the scope of its access order after-the-fact to include some undetermined quantity of additional Union Pacific property at some undetermined point in the future.[1] The Board's posture threatens to repeat the same error the Eighth Circuit identified in its recent judgment.

The Board has declined to address the scope of additional facilities subject to the taking in this case before addressing compensation. Instead, the Board has requested concurrent briefing on both compensation and the scope of additional facilities, with proceedings due to conclude in March 2027. Having not even received briefing on the scope of rights, the Board cannot address—and Union

[1] As Union Pacific has explained, and will expand upon further in its opening evidence, its position is that the Board lacks the authority to expand the scope of its order without making the requisite statutory findings for any additional property.

Pacific cannot provide arguments on—adequate security for anything other than the UP Lines.

Accordingly, Union Pacific maintains its objections that the procedures the Board has adopted in this proceeding as they pertain to non-rail line facilities are inconsistent with the statute and the Eighth Circuit's opinion.

III. Union Pacific proposes adequate security in the form of annual payments, back payment, and a bond.

Without waiving those objections related to other properties, Union Pacific provides its proposal for securing compensation for the UP Lines: (1) annual monetary payments based on the base rate of $18.50 per train mile (increased 2.9% annually) going forward; (2) back payment to cure the underpayment from the September 3 access order; and (3) a bond to secure $618 million, which represents a conservative estimate of the amount of money Metra might owe over a two-year period less the annual monetary payments proposed herein.

A. Metra should make monetary payments based on the base rate of $18.50 per train mile (increased 2.9% annually) going forward.

Last year, Union Pacific explained that the rate it had offered to Metra—$18.50 per train mile—was not only demonstrably economically reasonable, but also conservative (*i.e.*, low). That assessment was supported by economic testimony and evidence. Indeed, Union Pacific cautioned that that amount was "substantially lower than the amount that Union Pacific would be due if it were calculated under principles applicable in condemnation proceedings." UP Reply Statement & Evid. at 36–37 (filed June 3, 2025). Union Pacific explained that it was willing to accept

that amount as interim compensation until final terms could be established, "subject to Union Pacific's right to advocate for higher compensation under condemnation principles in any subsequent court or agency proceeding." *Id.* at 35. As such, Union Pacific's proposed interim compensation was $18.50 per train mile, with the rate increasing 2.9% annually each year. *Id.*, Ex. B.[2]

Consistent with its position last year, Union Pacific continues to believe that this rate reflects a significant discount from the fair market value of the UP Lines. Accordingly, it does not reflect the level of compensation that the Board is required to set under § 11102(a), which requires the Board to set compensation "under the principle controlling compensation in condemnation proceedings," which, here, means fair market value. *See also New England Cent. R.R.—Trackage Rts. Ord.—Pan Am S. LLC*, Docket No. FD 35842, at 5 (STB served Oct. 31, 2017) (explaining that compensation for trackage rights "is determined based on fair market value" of the property at the time it is taken).

Thus, while Union Pacific remains willing to accept monetary payments in this amount on a going-forward basis, those payments should be in conjunction with additional measures to ensure that the full amount of compensation is adequately secured, consistent with the Eighth Circuit opinion. Those measures are described below.

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[2] At the 2.9% annual adjustment, the current rate for 2026 is $19.04 per train mile.

B. Metra should make back payment to cure the underpayment since September 3, 2025.

From September 3, 2025 on, Metra has paid Union Pacific the amount it *would have* owed under the parties' former, now-expired contract (the "PSA")—approximately $22.5 million annually (2025).[3] This "amount that Metra unilaterally decided to be appropriate," as the Eighth Circuit held, "does not provide or secure [adequate] compensation." *Union Pac. R.R.*, 2026 WL 2564829, at *8 n.3. Evidence submitted to the Board last year also showed that the PSA amount was inadequate.[4] That amount does not comport with § 11102 because, as demonstrated in Union Pacific's prior submission and herein, the amount owed under condemnation principles for that period is likely far higher.

Thus, to comply with the statute, the Board must separately ensure that Union Pacific receives compensation or adequate security for the period since September 3, 2025. That is, to cure the violation of § 11102 that the Eighth Circuit found, the Board should also require Metra to provide the security of which Union Pacific has been (and continues to be) deprived for the period since the violation.

The amount that Union Pacific will be owed under condemnation principles far exceeds the amount Metra has been paying. *See infra* Part III.C. Accordingly,

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[3] *See also* Metra Rebuttal Statement & Evid., at 14 (filed June 23, 2025) (proposing to pay interim compensation of only $22 million annually).

[4] *See* UP Reply Statement & Evid., Carey V.S. at 2 & nn.8–9, 26, Fig. 4; *see also id.*, Carey V.S. at 15–20 & Fig. 2. Metra's purported evidence of what "Metra believes is a reasonable rate" under the SSW methodology was deeply flawed and in any event stricken from the record as improper rebuttal. September 3 Order at 12.

Metra should be required to pay the difference between what Metra has voluntarily paid to Union Pacific since September 3, 2025 at the PSA level and the base rate of $18.50 per train mile amount (increased 2.9% annually) that Union Pacific is willing to accept as monetary payment on a going forward basis. Any other choice would allow Metra to benefit—at Union Pacific's expense—from the Board's failure to accord Union Pacific its rights under the law. As with the proposal in Section A, however, the back payment proposed herein should also be in conjunction with an additional measure—specifically, the bond discussed below—to ensure that the full amount of compensation is adequately secured, consistent with the Eighth Circuit opinion.

C. Metra should provide a $618 million bond to secure the outstanding amount based on a conservative estimate of the value of the UP Lines.

While monetary payments (both on a going-forward basis and retrospectively since the September 3 access order) will provide Union Pacific with some interim monetary compensation, that amount will not adequately secure compensation under condemnation principles because—as Union Pacific previously cautioned—the amount that will be owed is likely substantially higher. Indeed, Union Pacific submitted economic testimony explaining that the UP Lines traverse some of the most affluent areas in Chicago and that a valuation of the land alone (not including

track improvements) was approximately { [redacted] }, thus providing "substantial and strong quantitative evidence of a high economic value of the corridor."[5]

Assuming the Board orders final terms and compensation in September 2027 (six months from the close of the record), Metra will have been using its federally-granted access to the UP Lines for two years. The risk to Union Pacific, as the Eighth Circuit explained, is that Metra will have exercised those rights "before it knows whether it can afford them." *Union Pac. R.R.*, 2026 WL 2564829, at *8. To guard against that risk, the Board should thus also require Metra to secure a bond covering Metra's potential liability, as calculated using the Board's SSW methodology, over that two-year period.

For purposes of estimating Metra's potential liability for this submission, Union Pacific is calculating a conservative estimate based on one of the Board's established SSW methods of determining the value of rail lines in trackage rights cases: Reproduction Cost New Less Depreciation ("RCNLD").[6] That method bases interest rental payments on "the replacement value of the structures on the property and underlying land."[7]

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[5] UP Reply Statement & Evid., Carey V.S. at 22.

[6] *BNSF Ry.—Terminal Trackage Rights—Kansas City S. Ry., et al.*, Docket No. FD 32760 (Sub-No. 46), Decision No. 16, at 35 (STB served July 21, 2026) ("the Board has identified four possible methods for determining the appropriate valuation base for the interest rental: (a) CE; (b) comparable line segments; (c) RCNLD; and (d) SAC.").

[7] *Id.* at 36.

In its reply evidence filed on June 3, 2025, Union Pacific submitted into evidence a third-party appraisal of *just the land* underlying the UP Lines. The value was estimated to be approximately {[redacted]}.[8] Union Pacific's proposal uses that estimate to develop an overall initial estimate of the adequate security necessary to secure access to the UP Lines. That approach is necessarily conservative because the foundational valuation does not account for the value of improvements on the property.

Under its established methods, the Board then multiplies the value of the asset by a rate of return equal to the pre-tax nominal cost of capital.[9] For purposes of this calculation—which is being provided on an abbreviated two-week timeline to estimate adequate security—Union Pacific is employing the Board's published 2025 (after-tax) cost of capital, which requires no calculation and is conservative, thus resulting in a lower imputed interest rental payment.[10]

Finally, under the Board's established methods, it must then allocate usage between the tenant and the landlord. To allocate usage between Union Pacific and Metra, Union Pacific has relied on the percentage of train miles allocated to Metra

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[8] UP Reply Statement & Evid., Carey V.S., Workpaper No. 13, "Valuation of Union Pacific Railroad Company's Metra Lines … In Illinois and Wisconsin, RMI Valuation, September 5, 2024 (RMI Report)".

[9] *See, e.g., BNSF Ry.*, Docket No. FD 32760 (Sub-No. 46), Decision No. 16 at 35.

[10] Again, Union Pacific reserves its rights to present more refined analyses. For purposes of this abbreviated filing, Union Pacific is employing assumptions that are conservative (*i.e.*, to the benefit of Metra).

based on the 2025 CGS report.[11] The use of train miles is appropriate as the parties have agreed to the use of train miles for compensation purposes. *See* Joint Report (filed May 22, 2026), Exhibit A, Section 1.73.

Using this Board-established methodology with conservative inputs results in an estimated annual payment that Metra may owe for its use of the UP Lines. That amount, less the annual monetary payments proposed above,[12] is approximately $309 million per year. To secure compensation over a two-year period, Union Pacific is doubling that annual amount such that the total bond amount should be $618 million.[13]

IV. Conclusion

For the foregoing reasons, Union Pacific respectfully requests that the Board require Metra to secure compensation for its use of the UP Lines as proposed in this submission.

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[11] CGS reports are reports that Union Pacific and Metra have historically used and continue to use for a variety of functions as part of their on-going relationship. These reports provide information on both freight and commuter traffic on the UP Lines, including information on total annual train miles. The 2025 CGS report is being submitted as a confidential workpaper.

[12] For purposes of this calculation, Union Pacific is calculating the annual amount using 2025 train miles and the $18.50 per train mile rate and then doubling that amount for a two-year period. Union Pacific notes that this is a conservative estimate insofar as it does not adjust for inflation.

[13] *See* confidential Workpaper "RCNLD Interest Rental Calculation for Bond.xlsx".

Respectfully submitted,

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Dated: October 15, 2026

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CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of October 2026, the foregoing filing was served by first-class mail or more expeditious means on all parties of record in this proceeding.

/s/ Stephen S. Laudone
Stephen S. Laudone