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BEFORE THE
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 36844

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

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# METRA REPLY TO UNION PACIFIC SUBMISSION ADDRESSING ADEQUATE SECURITY OF COMPENSATION

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Dated: October 22, 2026

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**METRA REPLY TO UNION PACIFIC SUBMISSION ADDRESSING ADEQUATE SECURITY OF COMPENSATION**

UP's submission addressing how the Board may adequately secure compensation under § 11102(a) is a naked attempted exercise of economic power against the public interest. Metra proposed following Judge Kelly's concurrence to the Eighth Circuit opinion and Board precedent for adequately securing trackage rights compensation or, alternatively, relying on UP's prior statements to the Board on what "would be adequate interim compensation and security sufficient to satisfy the statute."[1] In contrast, UP's submission (1) misreads the Eighth Circuit's opinion regarding the compensation or adequate security requirement of § 11102(a), (2) incorrectly demands that Metra disgorge cash in lieu of posting security, and (3) seeks additional "security" amounting to more than 1,200% of the parties' last-agreed fee for Metra's use of the UP Lines. In the event compensation cannot be established by March 1, 2027, the Board should adopt Metra's proposal and deny the windfall relief requested by UP.

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[1] UP Reply St. & Evid. at 27-28; *see also id.* at 38.

### A. UP's Representations About the Eighth Circuit Opinion Are Incorrect and Have No Bearing on Adequately Securing Compensation under § 11102(a)

UP's submission substitutes excerpts and partial quotes for the language of the Eighth Circuit opinion to derive incorrect conclusions that misstate what the Eighth Circuit held regarding the "Extent of the Terminal Trackage Rights" and "Compensation and Conditions" issues on review. *Compare* UP Submission at 2-3 and *Union Pac. R.R. Co. v. STB*, No. 25-2919, 2026 WL 2564829, at *4-9 (8th Cir. Aug. 31, 2026). Metra identifies and briefly discusses UP's reworked references to the Eighth Circuit opinion below for purposes of clarity.

The Eighth Circuit agreed with UP in part on only one issue: the statute requires that compensation be "paid or adequately secured" before use begins (49 U.S.C. § 11102(a)), and the STB's "pledge" to set compensation if needed at some future point did not constitute "adequate security." *Id.* at *8. The Eighth Circuit expressly delayed the effective date of its decision by 180 days to allow the Board to address the issue. *Id.* at *9. The Board's October 1, 2026, Decision (at 3), precisely followed the Eighth Circuit's opinion: it directed that the parties "file . . . a proposal (jointly, if possible) regarding how the Board may adequately secure compensation to UP consistent with § 11102(a) and the Eighth Circuit's order, in the event compensation cannot be established by March 1, 2027."

UP incorrectly claims that the Eighth Circuit "acknowledged that the Board may be unable 'to set compensation without determining what rights the grantee carrier will receive'" and suggests that § 11102(a) thus "imposes a distinct

obligation" on the Board to "set conditions." UP Submission at 2-3. The Eighth Circuit actually stated: "We agree that, to the extent the Board must set conditions to ensure that the *compensation* is paid or adequately secured, it must do so. But § 11102(a) does not require the Board to set other conditions before Metra begins exercising its terminal trackage rights." 2026 WL 2564829, at *9 (original emphasis).

Similarly unfounded is UP's representation that "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." UP Submission at 3.[2] Rather, the Eighth Circuit said: "The Board could make the terminal trackage rights effective only after a negotiation period or find some other way to secure compensation during negotiations. But the Board cannot get by merely by pledging to set compensation in the future." 2026 WL 2564829, at *8.

Additionally, UP asserts that the Eighth Circuit "affirmed the validity" of UP's alleged concerns regarding which facilities used in Metra's commuter operations are subject to the Board's September 3, 2025, Decision. UP Submission at 3-4. This representation is incorrect, too. The Eighth Circuit's opinion did not

[2] As the Board stated in its October 1, 2026, Decision (at 2), the Eighth Circuit "delayed the effective date of its order by 180 days, or until March 1, 2027, '[t]o give the parties time to set compensation.'" In connection with this section of its submission, UP states (at 3) that the Eighth Circuit's order "set the [September 3, 2025] trackage rights order to be vacated on February 27, 2027," a Saturday. To ensure non-impairment of Metra's rights, the Board should clarify that, in the event compensation cannot be established by February 26, 2027 (a Friday), it will order adequate security by that same date, February 26, 2027.

reach or address any alleged "ambiguity regarding the rights the grantee will receive" (*id.*), as UP argues, in discussing the compensation or adequate security requirement of § 11102(a), because the issue was not raised on appeal. This incorrect representation is just another formulation of UP's *post-appeal* requests to bifurcate and delay resolution of the conditions and compensation phase of this proceeding, which the Board has denied twice in decisions served August 19, 2026, and October 1, 2026.[3]

### B. UP's Windfall Security Proposals Find No Support under § 11102(a) or Board Precedent

The Eighth Circuit did not specify how the Board may adequately secure compensation beyond clarifying that it "cannot get by merely by pledging to set compensation in the future." *Id.* at *8. Metra's proposal follows and comports with Judge Kelly's concurrence and agency precedent that the Board can adequately secure compensation consistent with § 11102(a) by directing Metra to continue

[3] UP also is making a strawman argument. UP is being fully compensated for Metra's use of the facilities (other than rail lines), which UP owns, listed in Metra's August 26, 2026, filing with the Board at an agreed price point. These facilities all have been used in the provision of commuter service for decades, including by UP under the former PSA. *See* Metra Opposition to Request for Modification of the Procedural scheduled, dated September 16, 2026, at 4-6. The issue now being adjudicated is whether Metra received access to use these facilities pursuant to the September 3, 2025, grant of trackage rights (August 19, 2026, Decision at 3-5), such that Metra will not be subject to unilateral conditions and price escalation by UP for use of these facilities along with the other UP-owned terminal facilities used in and necessary for Metra's commuter operations. UP's claimed inability to "provide arguments" (UP Submission at 5) regarding setting adequate security for these facilities (other than rail lines) is based on a false premise and incorrect facts, because UP *currently* is being compensated in full at an agreed price for their use in Metra's operations.

making the same payments it has been making since the expiration of the PSA, pending final determination of compensation for Metra's trackage rights. Alternatively, Metra proposed that the Board require security to cover the difference between the amounts Metra has paid and will continue to pay, and the escalated amounts billed by UP since July 1, 2025. UP's windfall proposals, in contrast, find no support in law and contradict UP's own prior representations regarding adequate security for Metra's use of its facilities.

**1. UP's Cash Disgorgement Proposal**

UP declares that its retroactive and going-forward monetary payment proposals should be adopted because "[a]ny 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." UP Submission at 8. UP asserts that the Board cannot order "any unilateral middle-ground of interim compensation [to] be used as a proxy for the compensation required by law." *Id*. at 3.

UP is wrong. UP proposes that Metra be required to disgorge unilateral and sharply escalated amounts to UP, that will exceed $40 million annually by the end of 2026, and more than $50 million by March 2027, both retroactively and pending resolution of this proceeding, for Metra's ongoing use of the UP Lines. UP offers no statutory or precedential support for its position, and Metra is aware of none, that the STB must require Metra to disgorge these escalated amounts or any amount of cash to UP, in lieu of Metra posting adequate security for the amount of compensation the Board deems appropriate.

In contrast, the approach outlined in Judge Kelly's concurrence relied on the statute, the record on appeal, the circumstances presented, and agency precedent. Judge Kelly recognized that "Metra is already using UP's lines, and it is doing so pursuant to a negotiated agreement – the PSA – between the two carries. Had the Board ordered Metra to continue paying UP pursuant to the terms of that agreement, that order would have satisfied the statute." 2026 WL 2564829, at *10 (Kelly, J., concurring).[4] This approach was nothing new. In *Missouri-Kansas-Texas R.R Co. v. Kansas City Terminal Ry. Co.*, as Judge Kelly observed, the ICC ordered the grantee to compensate the incumbent "in accordance with . . . the operating agreement and for the compensation therein provided" and "reserve[d] the question of ultimate compensation . . . to future agreement between the parties, or, failing agreement, to determination by [the ICC]." 104 I.C.C. 203, 230 (1925).

Remarkably, UP *advanced and agreed to* this exact approach in the pending *Tehachapis Line* proceeding, involving compensation for BNSF's trackage rights over UP's 67.8-mile line in California (the "Tehachapis Line"). *Atchison, Topeka & Santa Fe Ry. Co. – Operating Rights – Southern Pac. Transp. Co.*, FD 22218 ("*Tehachapis Line*"). The parties there have been operating without an agreement for use of the Tehachapis Line since January 1, 2023. Notwithstanding BNSF's

[4] Judge Kelly emphasized: "If the Board had ordered, rather than merely 'expect[ed],' Metra to continue payment under the PSA, that order, coupled with the Board's pledge that it 'will set appropriate terms under condemnation principles *with retroactive effect*' (emphasis added), would have sufficed as adequate security under the statute's plain language." *Id.* (original emphasis).

contention that UP is seeking access fees 36 times higher than BNSF paid under the prior agreement, UP itself proposed and assented to BNSF's continuing to pay the *status quo ante* amounts and simply requested that the Board "should make any revisions retroactive to January 3, 2023." UP Pet. at 2.

Ordering Metra to continue to pay the approximately $37.5 million annual payments for use of the UP Lines pursuant to the now-expired PSA comports with UP's own proposed approach for BNSF's use of the Tehachapis Line since January 1, 2023. It will assure that UP is adequately secured for Metra's continuing use until the Board establishes final conditions and compensation in accordance with § 11102(a), subject to a retroactive adjustment either way to July 1, 2025.[5]

**2. UP's $618 Million Security Proposal**

UP proposes that the Board supplement the demanded cash disgorgement by ordering Metra to post security of $618 million using an "abbreviated" analysis of the Board's Reproduction Cost New Less Depreciation ("RCNLD") method. UP's justification is that "the UP Lines traverse some of the most affluent areas in Chicago" (UP Submission at 8), and that UP is entitled to extract from Metra and taxpayers the full highest-and-best use value of the land for alternative, non-rail

[5] UP's proposal asking for security to cover the period only from September 3, 2025, ignores that the STB asserted jurisdiction from July 1, 2025, onward. The Board "pledge[d]" that it "will set appropriate terms . . . with retroactive effect" and ordered that "UP will be reimbursed retroactively (*from July 1, 2025*) if the interim amount paid by Metra is less than the final amount set." September 3, 2025, Decision at 31-32 (emphasis added).

use purposes (*e.g.*, new condominiums, high-rent office space). UP's request finds no support in the law or the record and should be denied.

*First*, UP previously represented to the Board that its $18.50 per train mile fee was "economically reasonable" and "would be adequate interim compensation and security sufficient to satisfy the statute." UP Reply St. & Evid. at 27-28; *see also id.* at 38. UP's proposed interim fee amount already was 11 times what UP reported earning on the Metra service in 2019, when UP operated Metra's trains; double the fees the parties agreed upon in the PSA and related MOUs; and at least triple a reasonable calculation using the capitalized earnings ("CE") framework under *SSW Compensation*. Metra Reply to UP Mot. to Dismiss at 19 and Ex. B. As noted in its proposal, Metra disagrees that UP's unilaterally escalated charges since July 1, 2025, which UP has billed and sought to recover from Metra, should serve as the basis for adequate security under the statute. The $18.50 fee does, *by UP's admission*, however, form an upper bound of any reasonable security necessary to secure compensation while final compensation is adjudicated, and without requiring cash payments above the PSA levels.

*Second*, if ultimate compensation under *SSW Compensation* is to be considered for purposes of determining adequate security, the appropriate approach is, as Metra noted in its proposal, to utilize the Board's preferred CE framework, used in the Board's last three trackage rights compensation cases, that "is preferable . . . because it values the [line] on a going-concern basis (*i.e.*, its ability to generate revenue), whereas the RCNLD method would value the line based on the

replacement value of the structures on the property and underlying land." *BNSF Ry. Co. – Terminal Trackage Rights – Kansas City S. Ry. Co & Union Pac. R.R. Co.*, FD 32760 (Sub-No. 46) (STB served July 21, 2026) at 36. The CE framework accounts for the value of all of UP's road property assets, including land. UP's land valuation approach contradicts its own evidence in the *Tehachapis Line* proceeding, where UP is using the preferred CE method and opposing the use of a land valuation approach.

*Third*, UP's abbreviated and untested land value approach and excessive $618-million security demand represent a *1,200% increase* over the PSA and MOU protocols that Metra and UP established. They represent a *659% increase* over the interim compensation proposal that UP previously advised the Board was "economically reasonable" and "security sufficient to satisfy the statute." UP Reply St. & Evid. at 27-28. The security being demanded is both unsupportable and prejudicial, because Metra cannot recoup the significant costs associated with obtaining a bond or other security interest in that extreme amount.

*Fourth*, rather than simply looking to the unilateral assessment of the party whose interest is being protected, concepts of adequate security as applied in a variety of judicial contexts reflect a flexible approach that balances issues such as the financial condition of the party posting the bond and the other party's ultimate ability to recover under the bond. *E.g.*, *Stockslager v. Carroll Elec. Coop. Corp.*, 528 F.2d 949, 951 (8th Cir. 1976). Bond amounts need not be based on the unilateral assessment of the party whose interest is being protected. *E.g.*, *Jim Daws Trucking,*

*LLC v. Daws, Inc.*, __ F.4th __, 2026 WL 2564825, at *6-7 (8th Cir. 2026); *Heekin v. Anthem, Inc.*, 2013 WL 752637, at *4 (S.D. Ind. Feb. 27, 2013). Likewise, "what constitutes adequate protection" of a secured creditor's interest in property that the debtor continues to use during a bankruptcy proceeding "is a question whose resolution is best left to the knowledge and expertise of the . . . court." *In re Briggs Transp. Co.*, 780 F.2d 1339, 1350 (8th Cir. 1985); *see* 11 U.S.C. § 361.

*Finally*, UP has wrongly analogized its windfall approach to Board procedures in rate disputes, which require shippers to pay the challenged tariff rates until the proceeding is completed, with the defendant rail carrier required to reimburse any amounts found in violation of the statute, plus interest. *See* UP Reply St. & Evid. at 38 n.59. Common carriers have the statutory duty to provide transportation service over all of their lines, to establish responsive rates to requests for that service, and to provide service in accordance with the established rates. 49 U.S.C. § 11101. When it stopped providing commuter rail service itself, UP forswore any common carrier responsibility for its service to Metra.[6] That decision by UP to discontinue commuter operations is why Metra needed a Board decision for the use of UP's facilities in the first place.

[6] UP made clear that "no rates provided by Union Pacific, now or in the future, are pursuant to 49 U.S.C. § 11101, as Union Pacific does not have a common carrier obligation to provide commuter service." Ltr. from UP counsel (May 23, 2025), attached as Exhibit D to Metra's June 12, 2025, Reply to Motion to Dismiss.

## Conclusion

For these reasons, in the event compensation cannot be established by March 1, 2027, Metra requests that the Board deny UP's submission and adequately secure compensation to UP consistent with 49 U.S.C. § 11102(a) under the proposals made by Metra on October 15, 2026.

Respectively submitted,

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Dated: October 22, 2026

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of October, 2026, a copy of the foregoing has been served by first-class U.S. Mail, or more expeditious means, on counsel for all parties of record.

/s/ Peter A. Pfohl