53316 SERVICE DATE – NOVEMBER 9, 2026
ALJ

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[1]

ORDER GRANTING UP'S MOTION TO COMPEL METRA'S ANSWER TO INTERROGATORY NUMBER 1(A)

Decided: November 9, 2026

On December 1, 2025, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) requested the Board 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 the Board's 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 were unable to reach resolution absent Board intervention (hereafter, Joint Report). In a decision served on August 19, 2026, the Board set a procedural schedule and referred discovery matters to the undersigned for resolution. Commuter Rail Div. of the Reg'l Transp. Auth.—Terminal Trackage Rts.—Union Pac. R.R. (August 2026 Decision), FD 36844 (STB served Aug. 19, 2026). By its decision served on October 1, 2026, the Board extended the procedural schedule, and the close of discovery is now January 4, 2027. Commuter Rail Div. of the N. Ill. Transit Auth.—Terminal Trackage Rts.—Union Pac. R.R., FD 36844 (STB served Oct. 1, 2026).

The Board provided the background about the facilities (other than rail lines) relevant to the discovery dispute here in its August 2026 Decision. See August 2026 Decision, FD 36844, slip op. at 2-5. In September 2025, the Board granted Metra's application under 49 U.S.C.

[1] As of June 1, 2026, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra is now the Commuter Rail Division of the Northern Illinois Transit Authority d/b/a Metra.

§ 11102(a) to continue commuter rail service over the UP Lines. See September 2025 Decision, FD 36844. The Board directed the parties to attempt to reach an agreement on the conditions and compensation for Metra's use of the UP Lines. Id. at 33. The Board directed the parties to file status reports every 60 days stating whether they reached agreement, needed more time, or were unable to agree. Id. The parties began filing status reports in November 2025. See August 2026 Decision, FD 36844, slip op. at 2.

On December 1, 2025, Metra filed a request for the Board to establish conditions and compensation, claiming the parties could not reach an agreement on disputed issues that would "remove the need for Board involvement." Id. (quoting Metra Request 1-2, Dec. 1, 2025). UP opposed Metra's request, argued the parties were making progress, and should continue their efforts to reach mutual agreement before proceeding to litigate the conditions and compensation. Id. (citing UP Reply 4, Dec. 15, 2025). UP's reply noted that one of issues on which the parties could not agree was what real estate and facilities were covered by the Board's September 2025 Decision. Id. (citing UP Reply 5, Dec. 15, 2025).

According to their next two status reports (January 2026 and March 2026), the parties continued to exchange proposals. See August 2026 Decision, FD 36844, slip op. at 2. In the March 2026 Decision, the Board denied Metra's request to establish conditions and compensation as premature, directed the parties to continue negotiations for 60 days (or longer if jointly requested), and then to file a joint status report. March 2026 Decision, FD 36844, slip op. at 4-6. The Board also granted UP's motion for a protective order delaying the start of discovery, because negotiations were proceeding productively and discovery might have been unnecessary. Id. at 6.

On May 22, 2026, the parties filed their Joint Report and advised the Board that they "agree that they are unable to reach resolution absent Board intervention." (Joint Report 1, May 22, 2026.) In the Joint Report, UP renewed an earlier request to bifurcate the parties' dispute so that the Board could determine which facilities are encompassed by the September 2025 Decision before the parties litigate conditions and compensation. (Id., Ex. B at 1.) Metra objected. (Id.)

UP argued that this proceeding should be bifurcated into two phases, because UP assumed Metra would seek to expand the September 2025 Decision from the UP Lines to other real estate and/or other facilities and that scope-of-facilities issues needed to be resolved before compensation and conditions are addressed. See August 2026 Decision, FD 36844, slip op. at 3-4. UP argued, as a preliminary matter, Metra must identify with specificity the facilities to which it seeks access. Id. at 3. In response, Metra argued that it does not seek to expand the scope of the September 2025 Decision, but Metra disagrees about the term "terminal facilities" and argues it is applied broadly, per the September 2025 Decision. Id. at 4.

The Board denied UP's request to bifurcate the proceeding into two phases. Id. at 4. The Board ordered: "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." Id. The Board also decided that discovery about the scope-of-facilities issues could start with the service of its decision. See id. at 5.

On August 26, 2026, Metra filed its List of Facilities, (Other than Rail Lines) to Which Metra Seeks Access Pursuant to the September 3, 2025, Decision (List of Facilities), by the deadline set in the August 2026 Decision.

On September 18, 2026, UP moved to compel Metra to respond to subpart (a) (only) of UP's Interrogatory Number One to specify to which facilities other than rail lines that Metra seeks access. (UP Motion 1, Sept. 18, 2026.) Metra responded with many arguments to deny UP's motion: Metra objected and responded fully, Metra provided documents instead, this is a merits issue and UP cannot preview Metra's case, UP has not provided reciprocal discovery, UP's motion is untimely, UP did not meet and confer, and Metra's supplemental information renders the motion moot. (Metra Reply, Sept. 24, 2026.)

Reviewing Metra's arguments, but out of order. First up is timeliness (i.e., Metra's fifth argument).[2] The Board stated that discovery on the scope-of-facilities issues could proceed on August 19, 2026. August 2026 Decision, FD 36844, slip op. at 5. UP propounded Interrogatory Number 1(a) (among others) upon Metra on August 21, 2026, and requested Metra serve its answers three business days later (i.e., August 26, 2026). (See Metra Reply 2, Sept. 24, 2026.) Metra argued it timely filed its objections and responses on August 26, 2026. (Id.; see also UP Motion, Ex. 1.) UP filed its motion to compel on September 18, 2026. (UP Motion, Sept. 18, 2026.)

UP argued that its motion to compel was timely. (UP Motion 3 n.6, Sept. 18, 2026.) UP argued the motion was:

> filed within 10 days after expiration of the period allowed under 49 C.F.R. § 1114.26(a). See 49 C.F.R. § 1114.31(a) (a motion to compel is timely if filed "within 10 days after expiration of the period allowed for submission of answers to interrogatories"); 49 C.F.R. § 1114.26(a) (setting a period of not less than 15 days after the service of such an interrogatory).

Id. Metra argued that UP filed its motion to compel twenty-three days later, without a request for extension or agreement from Metra. (Metra Reply 5-6, Sept. 24, 2026.)

According to 49 U.S.C. § 1114.26(a), I calculate that interrogatory objections and responses would be due on Tuesday, September 8, 2026 (i.e., the fifteenth day would fall on Saturday, September 6, and Monday, September 7, 2026, was a holiday, making the following day the deadline). See 49 C.F.R. § 1104.7(a) ("In computing any period of time, the day of the act, event, or default upon which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday."). Then, the motion to compel would be due within ten days after that date or Friday, September 18, 2026, in compliance with 49 C.F.R. § 1114.31(a). UP filed its

[2] References are to Metra's arguments in its reply, and the numbered arguments are found in section "A" of Metra's reply. (Metra Reply, Sept. 24, 2026.)

motion to compel on September 18, 2026.

In support of its argument that UP's motion is untimely, Metra argued that the ten-day deadline is strictly enforced. (Metra Reply 5-6 (citing Kansas City S. Ry. Co.—Adverse Discontinuance App.—A Line of Arkansas and Missouri R.R. Co., AB 103 (Sub-No. 14) (STB served Jan. 11, 1999)).) In that matter, the Board denied a requested two-day extension for the filing of a motion to compel, which was requested due to "intervening holidays and the absence of counsel from the office during those holidays." Kansas City S. Ry. Co., AB 103 (Sub-No. 14), slip op. at 1. The discovery requests were served on December 9, 1998, and the order states that a motion to compel was due no later than January 4, 1999, pursuant to 49 C.F.R. § 1114.31. Id. From the service of the discovery, and counting objections and responses as due on December 24, 1998, a motion to compel was due January 4, 1999 (i.e., ten days later is January 3, 1999, which was a Sunday, so the deadline got moved to Monday, January 4, 1999). The motion to compel deadline stated in Kansas City S. Ry. Co., AB 103, slip op. at 2 (cited by Metra), was determined the same way I calculated the motion to compel deadline in this matter. Accordingly, UP's motion to compel was timely filed.

The Board will ultimately decide whether it agrees with Metra's or UP's scope-of-facilities argument. The Board ordered Metra to file a list of facilities that Metra claims are included within the scope of the September 2025 Decision. August 2026 Decision, FD 36844, slip op. at 4. UP also seeks that list through discovery.

UP might disagree with Metra's list of facilities. See August 2026 Decision, FD 36844, slip op. at 5 ("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 may have a factual dispute about a facility (or a portion of a facility). The discovery process is available to develop the record about any such dispute, and if necessary, present it to the Board for the Board to decide. But right now, UP seeks to compel Metra to provide its list with specificity in discovery.

To explain the discovery issue, as I understand it, with a finer point. UP is requesting what I call Metra's "definitive" list of facilities and with specificity. UP wants a very clear starting point of what Metra claims falls under the scope-of-facilities issues pursuant to the September 2025 Decision (not Metra's legal theory), just the clear identification of those facilities by name or location of named station. (See UP Motion, Ex. 1.) Once UP has Metra's definitive list, then UP might disagree about some of those listed facilities. Then, the parties can work to resolve any disputed issues or clearly identify any disputed facilities. But Metra has not provided a definitive list. Metra's list has too many variables.

Let me explain with an even finer point. Maybe Metra and UP could agree on the facilities that Metra claims are subject to the September 2025 Decision, under Metra's argument, even if UP does not agree with Metra's scope-of-facilities legal interpretation. If the Board agrees with Metra's legal interpretation on the scope-of-facilities issues, then the Board would set conditions and compensation on the merits. See August 2026 Decision, FD 36844, slip op.

at 4. The Board should have a definitive list of facilities for that purpose.[3] See id. Where Metra and UP do not agree, then each would have definitive list. Id. at 5. In my opinion, however, the best scenario would be for the parties to file with the Board a Joint definitive list highlighting any dispute(s) for the Board to decide.

To get to the merits determination, the Board permitted discovery on the scope-of-facilities issues. August 2026 Decision, FD 36844, slip op. at 5 ("If necessary, discovery pertaining to scope-of-facilities issues may commence upon service of this decision.") Discovery enables the parties to develop the record when necessary. But more importantly, discovery narrowly focuses the disputed issues for the Board to decide.

Now, turning to UP's Interrogatory Number 1(a), which sought Metra's definitive facilities list with specificity.

Metra argued that UP did not meet and confer with Metra about the discovery requested in an attempt to resolve the issues without Board intervention (sixth argument). (Metra Reply 6, Sept. 24, 2026.) In reviewing the procedural history of this matter, the parties have been negotiating the disputed issues in this matter for some time. UP raised the scope-of-facilities issues with the Board nearly one year ago. See August 2026 Decision, slip op. at 2 (citing UP Reply 4, December 15, 2025). Therefore, this is not a sufficient reason to deny UP's motion to compel to require the parties to meet and confer some more in this matter. The parties are encouraged to meet and confer following the service of this order.

Metra complained that UP is not engaging in reciprocal discovery or cooperating in discovery (fourth argument). If UP is not cooperating in discovery, then Metra can file a motion to compel UP's discovery responses pursuant to 49 C.F.R. § 1114.31.[4] I have considered Metra's argument and will order Metra to supplement its interrogatory answer prior to the close of discovery (discussed later).

In another argument, Metra replied that "to the extent that UP believes that the specific facilities Metra has identified should not be included in those encompassed by the September 3, 2025, decision, that is an issue UP can raise in its evidentiary filings." (Metra Reply 4, Sept. 24, 2026) (third argument).) Metra further complained that UP is seeking a "sneak peek" of its case in discovery. Id. UP's Interrogatory Number 1(a) does not seek Metra's work product, which would be protected from disclosure. UP seeks a list, "identified with specificity of facilities (other than rail lines) to which [Metra] seeks access pursuant to the September 2025 Decision" and as the Board ordered in its August 2026 Decision. August 2026 Decision, FD 36844, slip op. at 4. UP's Interrogatory Number 1(a) requests the "Name of every Facility or descriptor sufficient to identify every Facility[.]" (UP Motion, Ex. 1.) The result would be a list, which

[3] I understand that Metra wants to be thorough. I understand that lawyers always want to leave some "wiggle room." But there is a spectrum between some reasonable clause and something that is so expansive that it cannot be defined. Right now, Metra's answer to Interrogatory Number 1(a) with reference to the List of Facilities and objections falls in that second category.

[4] This order does not extend any deadline for Metra to file a motion to compel.

leads to the next group of arguments.

The rest of Metra's arguments can be reviewed together. Metra argued that UP failed to overcome Metra's objections (first argument), Metra answered the interrogatory by pointing to the List of Facilities and provided business records as is permitted (second argument), and Metra's supplemental information renders UP's motion to compel moot (section "B"). (Metra Reply 4-6.) When Metra responded to UP's Interrogatory Number 1(a), Metra included multiple (threshold, general, and specific) objections. (UP Motion, Ex. 1.) Metra then "refers UP to the List of Facilities" filed with the Board on the same date. (Id.) Metra also answered Interrogatory Number 1(a): "Metra will produce (or has produced previously) nonprivileged, responsive documents that are sufficient to show the requested information. [49 C.F.R.] § 1114.26(b) ('[o]ption to produce business records')." (Id.) Metra further answered Interrogatory Number 1(a) that "[w]ith respect to portions of facilities, Metra seeks access and use consistent with current operations." Id. According to UP, Metra began producing its business records on September 15, 2026, and specifying responsive records for its Interrogatory Number 1(a) answer on September 17, 2026. (UP Motion 3, Sept. 18, 2026.)

UP argued that Metra's List of Facilities fails to provide the information requested. (UP Motion 3, Sept. 18, 2026.) UP argued that Interrogatory Number 1(a) requested Metra's List of Facilities does not provide a specific facility list but rather categories of potential facilities. Id. UP gave examples of the problems with Metra's List of Facilities. (Id. at 4-6.) In its Reply, Metra provided clarification for each of UP's examples on the date it filed its reply and argued that with this supplemental information, UP's motion is now moot. (Metra Reply 6 & Ex. 4, Sept. 24, 2026.)

A party upon whom an interrogatory has been served may produce and specify records instead if the answer to the interrogatory may be derived from the records "and the burden is substantially the same for the party serving the interrogatory as for the party served[.]" 49 C.F.R. § 1114.26(b). UP argued that Metra's use of the business records option to answer Interrogatory Number 1(a) under 49 C.F.R. § 1114.26(b) was insufficient. (UP Motion 6-7, Sept. 18, 2026.) UP argued that Metra has specified Fixed Facility Agreements, Right of Entry Agreements, the parties' former Purchase of Service Agreement and related amendments and extensions, documents, concerning the transfer of commuter services to Metra, and out-of-date descriptions of station property. (Id. at 6-7.) UP further argued that the business records do not sufficiently answer the interrogatory, because the List of Facilities states Metra seeks access to facilities "not included in the Right of Entry" agreement. (Id. at 7 (quoting Listing of Facilities).) In short, Metra's answer is circular.

"Subject to and without waiving its objections," Metra argued that it fully responded to UP's Interrogatory Number 1(a). (Metra Reply 4, Sept. 24, 2026.) I disagree. The Board ordered Metra to file with specificity a list of facilities (other than rail lines) to which Metra seeks access pursuant to the September 2025 Decision. August 2026 Decision, FD 36844, slip op. at 4. Metra cannot seriously argue that it objects to UP discovering the scope-of-facilities list that the Board ordered Metra to file. UP did not ask for Metra's arguments. UP asked for the name or descriptor to identify each facility. (UP Motion, Ex. 1.)

In summary, Metra's answer is circular. It has too many expansive phrases. The documents produced raise additional questions. UP's Interrogatory Number 1(a) seeks one comprehensive list, with specificity, the identity (name or descriptor) of each facility to which Metra Seeks Access Pursuant to the September 2025 Decision. UP's motion to compel Metra to answer Interrogatory 1(a) is **granted**, without using the option to produce business records under 49 C.F.R. § 1114.26(b). Metra shall answer UP's Interrogatory Number 1(a) on or before **Friday, November 20, 2026**, unless the parties agree to a later date.

Moreover, Metra shall complete its list without phrases like "including but not limited to" "without limitation," "all other relevant," "together with," "any other," "associated with." (See List of Facilities.) Any one of these phrases defeats the purpose of creating a complete and definitive list.

Metra may reserve the right to supplement its answer to Interrogatory Number 1(a) if additional information is later learned pursuant to 49 C.F.R. § 1114.29(c) (supplementation of discovery responses may be imposed by order). Metra will serve any supplemental answer to Interrogatory Number 1(a) on or before **Friday, December 11, 2026**, unless the parties agree to a later date.

It is ordered:

1. UP's Motion to Compel Metra's Answer to Interrogatory Number 1(a) is GRANTED as set forth herein.

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

By the Board, Jenifer J. Soulikias, Administrative Law Judge.