

BEFORE THE
SURFACE TRANSPORTATION BOARD

301323

ENTERED

SANIMAX USA LLC, v. UNION PACIFIC RAILROAD COMPANY	Office of Proceedings November 30, 2020 Part of Public Record STB Docket No. NOR 42171
---	---

UNION PACIFIC RAILROAD COMPANY'S ANSWER

Pursuant to 49 C.F.R. § 1111.5, Union Pacific Railroad Company (“Union Pacific”) hereby answers the Verified Complaint filed in the above-captioned docket by Sanimax USA LLC (“Sanimax”). Union Pacific is separately filing a motion to dismiss the Complaint, on the ground that all of the loaded commodities shipped by Union Pacific from Sanimax’s South St. Paul facility have been exempted from STB regulation pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1039.¹ To the extent Union Pacific does not specifically admit an allegation in the Complaint, that allegation is denied.

With respect to the allegations in the introductory paragraph on page 1 of the Complaint, Union Pacific denies that it failed to provide reasonable and adequate rail service, denies that it violated its common carrier obligations in any way, and denies that any provision of 49 U.S.C. Part IV applies to the exempt commodity

¹ See Motion to Dismiss, *Sanimax USA LLC v. Union Pacific R.R. Co.*, STB Docket No. 42171 (filed Nov. 30, 2020) (“Motion to Dismiss”).

shipments at issue in the Complaint. Any other allegations stated or implied in the introductory paragraph are denied.

For the sake of clarity, Union Pacific has numbered the unnumbered paragraphs of the Complaint and reproduced them below along with Union Pacific's responses.

I.

1. Sanimax (with its principal place of business located at 2099 Badgerland Drive, Green Bay, Wisconsin 54303) serves a crucial function in the agri-food industry by reclaiming animal by-products and rendering them into usable products. The rendering industry is a form of recycling that is crucial to keeping America's and the world's food chain safe and operational. Industry statistics show that more than 62 billion pounds of animal raw materials are rendered annually in the U.S. and Canada, keeping huge volumes of organic material out of landfills and turning it into 16 million tons of usable biofuels, pet and livestock feed and other indispensable products each year. *See* nara.org/what-is-rendering/. Sanimax is a key North American participant in the industry.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of the allegations in Paragraph 1.

II.

2. UP is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board (the Board) under Title 49 U.S. Code, Subtitle IV, Part A. UP's main office is located at 1400 Douglas Street, Omaha, Nebraska 68179.

RESPONSE: With respect to the allegations in Paragraph 2, Union Pacific admits that it is a common carrier by rail and that some of its traffic is subject to the jurisdiction of the Surface Transportation Board (the "Board"). However, the commodities at issue in the Complaint have been exempted from Board regulation. *See* Motion to Dismiss. Union Pacific further admits

that its headquarters are located at 1400 Douglas Street, Omaha, Nebraska 68179. Union Pacific denies any remaining allegations in Paragraph 2.

III.

3. The Board has subject matter jurisdiction over the Complaint under 49 U.S.C. § 11101(a), which requires a rail carrier such as UP to provide adequate rail service on reasonable request; under 49 U.S.C. § 11101(c), which requires 20 days' notice of changes to common carrier service terms; under 49 U.S.C. § 10702(2), which requires rail carriers to establish reasonable rules and practices with respect to rail transportation services; and under 49 U.S.C. § 11701(b) and 49 U.S.C. § 11704(c)(1), cited above, which authorize Sanimax to file this complaint to remedy UP's failure to provide adequate rail service to Sanimax under the foregoing statutory requirements.

RESPONSE: With respect to the allegations in Paragraph 3, Union Pacific denies that the Board has subject matter jurisdiction over the Complaint. All the commodities shipped by Union Pacific from Sanimax's facility have been exempted from STB regulation pursuant to 49 U.S.C. § 10502. *See* Motion to Dismiss. Union Pacific denies any remaining allegations in Paragraph 3.

IV.

4. Adequate rail service for a rail shipper seeking to transport perishable food industry byproducts, such as those processed by Sanimax in its continuously operating South St. Paul, MN rendering facility described below, is five scheduled days of rail service per week.

RESPONSE: With respect to the allegations in Paragraph 4, Union Pacific denies that five-day-per-week service is required for every rail shipper seeking to transport perishable food industry byproducts or that such service frequency is appropriate based on the historical volumes shipped from Sanimax's South St. Paul facility. Union Pacific lacks sufficient information to form a belief as to the truth of Sanimax's allegations about operations at

its South St. Paul facility, and Union Pacific otherwise denies the remaining allegations in Paragraph 4.

V.

5. Sanimax operates a rendering facility located at 505 Hardman Avenue South, South St. Paul, Minnesota 55075, which is served by rail solely by UP. The South St. Paul facility processes restaurant grease and animal waste from slaughterhouses, meat processing plants and butcher shops (feathers, blood, viscera), and purifies these by-products to turn them into animal feed, pet food, yellow grease, soap, and industrial chemicals. Verified Statement of Greg Rawe (“Rawe VS”) at ¶ 4 (attached as **Exhibit 1**). Inbound materials arrive by trucks, with the bulk of the perishable by-products arriving between mid-days on Monday to the end of the day on Saturday each week. Rawe VS (Exhibit 1) at ¶ 8.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax’s allegations regarding its business operations and commercial practices. Union Pacific admits that it provides outbound rail transportation to Sanimax. Any remaining allegations in Paragraph 5 are denied.

6. Because the nation’s food chain never sleeps, Sanimax and both its suppliers and customers operate continuously. Rendering is a critical part of this chain, permitting slaughterhouses and other food processors and manufacturers to timely remove by-products in order to avoid serious sanitary challenges and maintain their food-grade facilities under U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA) regulatory supervision. Rawe VS (Exhibit 1) at ¶ 5. In parallel with suppliers’ need to remove these products, Sanimax must timely process these by-products to avoid its own serious challenges – the decay and rot of these materials that can degrade the quality of the raw materials used in the rendering process and that can also create environmental issues such as bacterial infections and noxious gas. Rawe VS (Exhibit 1) at ¶¶ 6, 12.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax's allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 6 are denied.

7. Delays in removing processed materials from the South St. Paul facility create significant, untenable hardships for Sanimax. The South St. Paul facility continuously receives raw materials from its suppliers, which arrive by truck. The facility does not have capacity to store the inbound animal by-products and this material must remain in the truck trailers until the facility can begin processing it. Rawe VS (Exhibit 1) at ¶ 10. Storing materials on trailers for more than approximately six hours is not a viable option. The raw materials will continue to decay on the trailers which results in serious problems for Sanimax. Rawe VS (Exhibit 1) at ¶ 11.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax's allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 7 are denied.

8. Environmentally, the noxious decaying materials create serious political, community, regulatory, and litigation risks, including nuisance complaints, regulatory enforcement actions, and class action lawsuits. Rawe VS (Exhibit 1) at ¶ 12.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax's allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 8 are denied.

9. Logistically, the South St. Paul facility has limited space to house trailers filled with the continuously arriving raw materials. Rawe VS (Exhibit 1) at ¶ 12. Parking trailers at a distant location is not a viable option. *Id.* The raw materials will decay regardless of where the trailer is parked and holding the trailers at a distant location would still require materials to be transported to the facility and raises the same regulatory challenges for decaying materials.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax's allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 9 are denied.

10. Commercially, permitting the raw materials to decay on trailers degrades the material, resulting in a lower quality, less commercially valuable rendered product. Rawe VS (Exhibit 1) at ¶ 14. The longer it takes to render the raw materials, the more the materials decompose, and, consequently, the lower the quality of the final product. *Id.* Raw material can degrade to a point at which it is no longer usable and Sanimax must dispose of the material. *Id.* Sanimax must pay to dispose of unusable products and loses the opportunity to process those raw materials. *Id.*

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax's allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 10 are denied.

11. These combined consequences risk forcing the South St. Paul plant to stop receiving raw materials from its suppliers with serious, negative financial and reputational consequences. These risks arise from the unending circular economy in which the food chain operates. Rawe VS (Exhibit 1) at ¶ 15.

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax's allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 11 are denied.

12. Reliable outbound service is a critical part of ensuring that Sanimax can continue to receive and process inbound raw materials. Because Sanimax has limited storage for finished goods, it must secure adequate outbound service to continue operating. Rawe VS (Exhibit 1) at ¶ 23. Once the storage capacity of finished products is reached, the South St. Paul facility would shut down its rendering process triggering these serious environmental, logistical, and commercial risks. *Id.*

RESPONSE: Union Pacific lacks sufficient information to form a belief about the truth of Sanimax’s allegations regarding its business operations and commercial practices. Any remaining allegations in Paragraph 12 are denied.

VI.

13. For at least 10 years, Sanimax has consistently scheduled outbound common carrier rail service from UP at its South St. Paul facility for five days per week – Sunday through Thursday. Verified Statement of Todd Strickler (“Strickler VS”) at ¶ 5 (attached as **Exhibit 2**). During the parties’ relationship, UP has routinely missed one or more days of scheduled service per week by simply not showing up for the scheduled service or failing to provide service as requested. Strickler VS (Exhibit 2) at ¶ 6.

RESPONSE: With respect to the allegations in Paragraph 13, Union Pacific admits that Union Pacific has served Sanimax at its South St. Paul facility Sunday through Thursday, five days per week, from at least January 2016 through July 2020. Union Pacific lacks readily available information on service schedules prior to January 2016. Union Pacific further admits that it has occasionally missed service, but denies that service problems were “routine.” Union Pacific also has actively worked with Sanimax to ensure that service issues are remedied as soon as practicable, including by providing additional switches on non-scheduled days at no extra charge. Union Pacific denies the remaining allegations in Paragraph 13.

14. Sanimax has repeatedly submitted service complaints to UP in the hopes of resolving UP’s failure to arrive at the Sanimax plant to provide correct rail service on the scheduled days, which UP well knows is necessitated by Sanimax’s operations. Strickler VS (Exhibit 2) at ¶¶ 7-10. On many occasions, these complaints have been escalated through UP’s servicing groups, which have frequently offered empty promises to improve the service. *Id.* In response to these escalated complaints, UP has sometimes temporarily improved service, but UP’s service soon regresses to its usual pattern of missed service. For example, following

a series of complaints about service frequency issues, Sanimax had an on-site meeting at the South St. Paul plant in August 2017 with several UP operational and supervisory personnel. *Id.* Following this on-site meeting, UP placed Sanimax in the railroad's Customer Care program for 60 to 90 days. *Id.* During the weeks Sanimax was in the Customer Care program, UP's weekly service improved with fewer missed days of service. *Id.* Following the end of the program, however, UP's service quickly regressed and it again routinely missed two or more days of service per week. *Id.*

RESPONSE: With respect to the allegations in Paragraph 14, Union Pacific admits that Sanimax occasionally has submitted service complaints to Union Pacific and that Union Pacific has responded to Sanimax's concerns by taking actions to remedy service issues. Union Pacific admits that Union Pacific personnel attended an on-site meeting at Sanimax's South St. Paul facility on August 29, 2017, as part of Union Pacific's Customer Care Health Check ("Health Check") program. As part of the Health Check program, Union Pacific monitored Sanimax's shipments and trained Sanimax on Union Pacific Shipment Management and the importance of adhering to cutoff times. After follow-ups at 30 days, 60 days, and 90 days, service had improved, and Sanimax agreed to transition out of the Health Check program on December 6, 2017. Union Pacific denies the remaining allegations in Paragraph 14.

15. Sanimax's ability to maintain continuous operations has been hampered by UP's consistent service failures. With service scheduled for five days per week, Sanimax's limited storage capacity may have enough margin to avoid disrupting plant operations but at considerable risk and cost. When UP misses service Sanimax scrambles to essentially "catch-up" on the remaining three to four days that week. But this margin for missed service is eliminated with scheduled three-days-per-week outbound service. Any service days that UP misses during three-days-per-week service forces Sanimax to find alternate transportation, at an increased cost and financial loss or to halt operations until UP shows up again.

RESPONSE: With respect to the allegations in Paragraph 15, Union Pacific denies that it has had consistent service failures and denies that any missed switches necessarily require Sanimax to seek alternative transportation. Union Pacific has offered Sanimax additional switches to remedy service disruption in the event that a switch is missed. Union Pacific lacks sufficient information to form a belief about the truth of the allegations regarding Sanimax's business operations, and denies the remaining allegations of Paragraph 15.

16. UP's consistent failure to arrive at Sanimax's South St. Paul facility and provide trains for the scheduled five-days-per-week outbound service violates UP's common carrier rail service obligations under 49 U.S.C. § 11101.

RESPONSE: Union Pacific denies the allegations in Paragraph 16.

VII.

17. UP's failure to schedule adequate rail service in violation of its statutory common carrier obligation is aggravated by its regular misplacement of railcars at the South St. Paul plant, which demonstrates UP's lack of credibility in promising improved service and further taxes Sanimax's margins for missed outbound service.

RESPONSE: With respect to the allegations in Paragraph 17, Union Pacific admits that Sanimax occasionally complains about where railcars are spotted, but denies that such service problems are "regular." Union Pacific also has actively worked with Sanimax to ensure that service issues are remedied as soon as practicable, including by providing additional switches at no extra charge. Union Pacific denies the remaining allegations in Paragraph 17.

18. The South St. Paul facility has two tracks within the plant. Track 826 is used for loading with three positions (positions one through three) that accommodate loading tanker railcar and two positions (positions

four and five) that accommodate loading hopper railcars. Rawe VS (Exhibit 1) at ¶¶ 19-20. Track 827 is a storage track that can store up to five railcars, a combination of tanker and hopper railcars, but this track does not have the infrastructure for loading railcars. *Id.*

RESPONSE: With respect to the allegations in Paragraph 18, Union Pacific admits that Sanimax’s South St. Paul facility has two tracks—Track 826 and Track 827. Union Pacific admits that Track 826 has loading infrastructure and a five-car capacity, with three positions that accommodate tanker railcars and two positions that accommodate hopper railcars. Union Pacific admits that Track 827 does not have loading infrastructure and has capacity for a combination of tanker and hopper railcars, but denies that Track 827 has a five-car capacity. Rather, Track 827 has a four-car capacity due to impaired clearance concerns. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 18.

19. UP has regularly misplaced railcars ordered for the loading track (826) onto the storage track (827), and placed hopper railcars in a tanker loading position and vice versa. These service defaults make it slow and difficult, and sometimes impossible, for Sanimax to ready the railcars for movement away from the plant. This situation exacerbates UP’s common carrier service default and is another reason that five-days-per-week service is mandatory. Rawe VS (Exhibit 1) at ¶ 21.

RESPONSE: With respect to the allegations in the first sentence of Paragraph 19, Union Pacific admits that Sanimax occasionally complains about where railcars are spotted, but denies that such service problems are “regular.” Union Pacific also has actively worked with Sanimax to ensure that service issues are remedied as soon as practicable, including by providing additional switches. With respect to the allegations in the second sentence of Paragraph 19, Union Pacific denies that occasional miscommunications about car placement constitute “service default” and

lacks sufficient information to form a belief about the truth of the other allegations regarding Sanimax's business. Union Pacific denies the allegations in the third sentence of Paragraph 19.

VIII.

20. On July 17, 2020, UP sent an email to Sanimax proposing a decrease in scheduled rail service to the South St. Paul facility from five days per week to three days per week. Strickler VS (Exhibit 2) at ¶ 11. UP asserted that it “continually evaluate[s] service levels around our network to optimize our resources. In this case, we are not seeing the same volumes and thus these changes will align our resources with customer demand.” Strickler VS (Exhibit 2) at ¶ 11 and Attachment 1. Between July 17 and August 3, 2020, Sanimax objected, explaining that the decrease in service days, combined with UP's abysmal service history, was unacceptable and an unreasonable decision by the monopoly rail carrier. Strickler VS (Exhibit 2) at ¶¶ 12-13.

RESPONSE: With respect to the allegations in Paragraph 20, Union Pacific admits that it notified Sanimax on July 17, 2020, via email, of a proposed service change for Sanimax's South St. Paul facility from five days per week to three days per week. Thereafter, Union Pacific personnel engaged in detailed and attentive discussions with Sanimax, explaining the service change and addressing Sanimax's questions and concerns via emails and phone calls. Union Pacific denies the remaining allegations in Paragraph 20.

21. Then without further consultation, on August 3, 2020 UP told Sanimax that it had *unilaterally* reduced service at South St. Paul to three scheduled days per week. Strickler VS (Exhibit 2) at ¶ 14. UP further announced that the scheduled service days would be on Mondays, Wednesdays, and Fridays without consulting Sanimax. *Id.* Yet, even after reducing rail service to three scheduled days a week, UP has continued to miss scheduled service days.

RESPONSE: With respect to the allegations in Paragraph 21, Union Pacific admits that—after multiple discussions and email exchanges—Union Pacific

notified Sanimax on August 3, 2020, that the service change from five days per week to three days per week had become effective for Sanimax's South St. Paul facility. Union Pacific admits that it initially provided Monday-Wednesday-Friday service to Sanimax's South St. Paul facility after the service change went into effect. Union Pacific further admits that it has occasionally missed service, but notes that it has offered to provide additional switches to remedy service shortcomings at no extra charge. Union Pacific denies the remaining allegations in Paragraph 21.

22. Incredibly, the first week of the three-days-per-week outbound service UP failed to provide proper service all three days. The first day of the new service, Monday, August 3, 2020, UP failed to properly place a railcar, preventing it from being loaded. Strickler VS (Exhibit 2) at ¶ 16. The next scheduled service day (Wednesday, August 5, 2020), UP again failed to properly place a railcar. *Id.* The last day of scheduled service (Friday, August 7, 2020), UP failed to show up entirely. *Id.*

RESPONSE: Union Pacific denies that it failed to provide proper service all three days of the first week of three-days-per-week service. While unavoidable issues unrelated to the new service schedule (*e.g.*, a locomotive mechanical failure and a new crew assigned to the local train) unfortunately resulted in some service problems, including two incorrectly spotted cars, Union Pacific served Sanimax's South St. Paul facility on Monday (August 3, 2020) and Wednesday (August 5, 2020), and—to make up for service issues—on Thursday (August 6, 2020) and Sunday (August 9, 2020), both of which were non-scheduled service days. Union Pacific denies any remaining allegations in Paragraph 22.

23. These service failures and defaults demonstrate that Sanimax cannot rely on UP's promises to improve its poor service, and that scheduling service three days per week presents an unreasonable risk of disruption and would result in significant hardships for Sanimax. Indeed, UP's service history demonstrates that three days per week of scheduled

service would effectively provide at best two reliable days of adequate service per week.

RESPONSE: Union Pacific denies the allegations in Paragraph 23.

IX.

24. Following recent informal mediation at the Surface Transportation Board, UP promised two minor and insufficient accommodations (which it may or may not maintain, given past practices): UP agreed to change the three service days from Monday-Wednesday-Friday to Sunday-Tuesday-Thursday and it promised a dedicated crew for the rail service. Strickler VS (Exhibit 2) at ¶ 17. When compared to the Monday-Wednesday-Friday schedule, scheduling service on Sunday-Tuesday-Thursday may mitigate some of the hardships Sanimax faces with three scheduled days of service. Strickler VS (Exhibit 2) at ¶ 18. But this mitigation does not avoid significant hardships for Sanimax posed by the reduced three-days-per-week schedule, equally true for Sanimax's clients and customers. On September 4, 2020, Sanimax sent UP a formal demand letter requesting that the railroad restore service to five scheduled days a week. Strickler VS (Exhibit 2) at ¶ 19.

RESPONSE: With respect to the allegations in Paragraph 24, Union Pacific admits that, following recent informal mediation at the Board, it provided voluntary accommodations in response to Sanimax's concerns, including (i) altering the service schedule to Sunday-Tuesday-Thursday service, and (ii) assigning a dedicated crew. With respect to the last sentence of Paragraph 24, Union Pacific admits that Sanimax sent a formal demand letter, dated September 4, 2020, to which Union Pacific responded in writing on September 16, 2020. Union Pacific denies any remaining allegations in Paragraph 24.

X.

25. Due to UP's poor record of routinely missing service, scheduled service of three days per week has adversely affected Sanimax's business and will continue to do so. The service reduction forced Sanimax to find alternative transportation for its products that resulted in significant expense, while UP continues to routinely miss scheduled service days.

Strickler VS (Exhibit 2) at ¶ 18. Between August 3 and late October 2020, UP failed to service Sanimax on some 14% of the scheduled days. Strickler VS (Exhibit 2) at ¶ 20 and Attachment 3. UP also provided inaccurate service (misplacing railcars) some 30% of the time, *id.*, which seriously aggravates UP's unlawful failure to provide reasonable and adequate rail transportation service.

RESPONSE: With respect to the allegations in Paragraph 25, Union Pacific admits that it has occasionally missed service, but denies that service problems were "routine." Union Pacific also has actively worked with Sanimax to ensure that service issues are remedied as soon as practicable, including by providing additional switches. Union Pacific lacks sufficient information to form a belief about the truth of allegations regarding Sanimax's business. Union Pacific denies any remaining allegations in Paragraph 25.

26. UP's rail service record is simply abysmal, and decreasing the number of service days for this unreliable service will continue to impact Sanimax's operations. If allowed to continue, this service pattern would lead to a situation where Sanimax and its clients and customers will suffer greatly (beyond increased expense), such as Sanimax being forced to stop its rendering operations, with the attendant problems of decaying product and increased odor complaints, and Sanimax being unable to accept by products from its suppliers or to provide rendered products to its customer, leading these suppliers and customers to lose confidence in Sanimax, perhaps permanently. Sanimax must not be forced to wait for such ruinous consequences to its business and to its clients and customers before UP's inadequate and unreasonable service is addressed and resolved.

RESPONSE: Union Pacific denies the allegations in Paragraph 26.

XI.

27. Between August 3, 2020 and October 2, 2020, Sanimax's incurred increased shipping costs due to using trucks of at least \$13,935.27. Strickler VS (Exhibit 2) at ¶ 21 and Attachment 4. Additionally, UP has charged Sanimax \$8,555.00 in demurrage charges since UP unilaterally decreased scheduled service to three days per week. Strickler VS

(Exhibit 2) at ¶ 22 and Attachment 3. Of course, these added costs and demurrage charges do not begin to quantify the unreasonable operational and business risks that Sanimax is shouldering as a result of UP's actions. As an essential service to the food chain, and supplier of goods and services to its customers and clients in that chain, Sanimax simply does not have the luxury of allowing UP's rail service failure to continue unabated.

RESPONSE: With respect to the allegations in Paragraph 27, Union Pacific lacks sufficient information to form a belief about the truth of the allegations regarding Sanimax's use of alternative transportation. Union Pacific admits that it has billed Sanimax a total of \$8,555 in Private Empty Car Storage that accrued in August and September 2020. Union Pacific denies the remaining allegations in Paragraph 27.

With respect to Sanimax's "Conclusions and Requested Relief," Union Pacific denies that any of Sanimax's claims regarding the transportation of exempt commodities are within the Board's jurisdiction, and denies that Sanimax would be entitled to any relief even if the commodities were not exempt from Board regulation. Sanimax's Conclusions and Requested Relief otherwise state legal conclusions to which no response is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Exempt Commodities)

All the commodities that Union Pacific transports for Sanimax's South St. Paul facility are exempt from STB regulation. Specifically, Animal Grease (STCC 2013945), Lard (STCC 2013190), and Grease or Inedible Tallow (STCC 2014350)

are exempt under 49 C.F.R. § 1039.11, and Animal Refuse (STCC 2014491) and Tankage (STCC 2014490) are exempt under 49 C.F.R. § 1039.10.

Second Affirmative Defense

(Failure to State a Claim under 49 U.S.C. § 11101(a))

Even if the commodities at issue were not exempt from Board regulation, 49 U.S.C. § 11101(a) does not dictate particular service schedules, and it is not violated by occasional service failures.

Third Affirmative Defense

(Failure to State a Claim under 49 U.S.C. § 11101(c))

Even if the commodities at issue were not exempt from Board regulation, 49 U.S.C. § 11101(c) has no application to railroad service schedules or changes to service schedules.

Fourth Affirmative Defense

(Failure to State a Claim under 49 U.S.C. § 10702(2))

Even if the commodities at issue were not exempt from Board regulation, 49 U.S.C. § 10702(2) does not dictate particular service schedules. Moreover, occasional service failures do not constitute an unreasonable practice.

Union Pacific reserves the right to assert other defenses as they become apparent or available and to amend this Answer accordingly. No defense is being knowingly or intentionally waived.

WHEREFORE, Union Pacific requests that the Complaint be dismissed in its entirety with prejudice; that no relief of any kind be awarded to Sanimax; and that the Board grant Union Pacific such other and further relief as may be appropriate.

Respectfully submitted,

/s/ Raymond Atkins

Raymond A. Atkins

Matthew J. Warren

Morgan B. Lindsay

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005

(202) 736-8000

Craig V. Richardson
James B. Boles
Jeremy M. Berman
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street
Omaha, NE 68179

Counsel for Union Pacific Railroad Company

November 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November 2020, I served a copy of Union Pacific Railroad Company's Answer by first class mail and email.

Richard F. Riley, Jr.
David T. Ralston, Jr.
R. Nicholas Englund
Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington, D .C. 20007-5109

/s/ Morgan B. Lindsay
Morgan B. Lindsay