

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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|                                 |   |                      |
|---------------------------------|---|----------------------|
| Sanimax USA LLC,                | ) |                      |
|                                 | ) | DOCKET NO. NOR 42171 |
| Complainant,                    | ) |                      |
|                                 | ) |                      |
| v.                              | ) |                      |
|                                 | ) |                      |
| Union Pacific Railroad Company, | ) |                      |
|                                 | ) |                      |
| Defendant.                      | ) |                      |

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ENTERED  
Office of Proceedings  
March 22, 2021  
Part of  
Public Record

**SANIMAX USA LLC'S MOTION FOR LEAVE TO FILE  
REPLY TO UNION PACIFIC RAILROAD COMPANY'S REPLY**

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Attorneys for Complainant Sanimax USA LLC

Date filed: March 22, 2021

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**SANIMAX USA LLC’S MOTION FOR LEAVE TO FILE  
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Sanimax USA LLC (Sanimax) respectfully requests leave to file the attached Reply to Union Pacific Railroad Company’s Reply (“Supplemental Reply”).\*

On February 16, 2021, Sanimax filed its initial Reply in Opposition to Union Pacific Railroad Company’s Motion to Dismiss. In that Reply, Sanimax made a request to revoke the exemptions applicable to the commodities shipped by Sanimax as the basis for its opposition to Union Pacific Railroad Company’s (UP’s) Motion to Dismiss.

On March 8, 2021, UP replied to Sanimax in a submission styled Union Pacific Railroad Company’s Reply to Sanimax USA LLC’s Request for Revocation.

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\* Sanimax believes in good faith that no Confidential or Highly Confidential information of either party, within the meaning of the November 30, 2020 protective order in this case, is disclosed in this motion or in the attached Supplemental Reply. Accordingly Sanimax is filing only Public versions of both documents.

Sanimax does not dispute that UP has the right to respond to Sanimax's request for revocation of the exemptions covering Sanimax's commodities. Rather, Sanimax seeks leave to file the short attached Supplemental Reply in order to correct a specific mischaracterization of the record in UP's March 8 submission. UP states no fewer than four times that Sanimax has provided "no evidence" of market dominance or abuse of market power to support its request for revocation of the commodity exemptions. *See* UP's March 8 submission at 1, 6, 7, 8. In fact, however, Sanimax's Verified Complaint in this proceeding unquestionably presents the evidence needed for the Board to revoke the exemptions for purposes of this case, to deny UP's Motion to Dismiss, and to move to the merits of Sanimax's complaint.

It is long established that the Board will allow an otherwise disallowed reply to a reply under 49 C.F.R. § 1104.13(c) when good cause exists; no party will be prejudiced; and the reply to a reply would assist the Board in developing a complete record. *Delaware & H. Rwy. Co. v. Consol. Rail Corp.*, 9 I.C.C. 2d 989, 990 (1993) (allowing reply to a reply despite 49 C.F.R. § 1104.13(c); reciting standards for allowing same), *aff'd in part, rev'd in part on other grounds sub nom. Consol. Rail Corp. v. ICC*, 43 F.3d 1528 (D.C. Cir. 1995).

In the instant case –

- Good cause exists for granting leave to accept Sanimax's attached submission, because Sanimax seeks only to correct a specific mischaracterization of the record by UP.
- UP will not be prejudiced because Sanimax is not introducing new arguments or adding to the evidentiary record. Sanimax's submission will not delay the case.
- Sanimax's submission will aid the Board in understanding the record and ultimately reaching a decision on Sanimax's complaint.

## CONCLUSION

Sanimax's Supplemental Reply will correct UP's misstatement that Sanimax has offered "no evidence" of market dominance and abuse of market power by UP, and will aid the Board in identifying the evidence presented in the Verified Complaint addressing the relevant market power issues.

Accordingly, Sanimax respectfully requests that the Board grant this motion for leave to file Sanimax's Supplemental Reply, which is enclosed herewith as Exhibit 1.

Respectfully submitted,

Date filed: March 22, 2021

/s/ Richard F. Riley, Jr.

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Attorneys for Complainant Sanimax USA LLC

## CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12, I hereby certify that on March 22, 2021, I served a copy of Sanimax USA LLC's Motion for Leave to File Reply to Union Pacific Railroad Company's Reply and the accompanying Supplemental Reply by first class mail and email to UP's attorney at the following address:

Matthew J. Warren, Esq.  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington DC 20005  
Email [mjwarren@sidley.com](mailto:mjwarren@sidley.com)

/s/ Richard F. Riley, Jr.

Richard F. Riley, Jr.

## EXHIBIT 1

### SANIMAX USA LLC'S REPLY TO UNION PACIFIC RAILROAD COMPANY'S REPLY

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**SANIMAX USA LLC’S REPLY  
TO UNION PACIFIC RAILROAD COMPANY’S REPLY**

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To aid the Board’s decision on Union Pacific Railroad Company’s (UP’s) pending Motion to Dismiss, Sanimax USA LLC (Sanimax) respectfully submits this supplemental reply in order to correct a misstatement of the record in UP’s March 8, 2021 submission styled Union Pacific Railroad Company’s Reply to Sanimax LLC’s Request for Revocation.

In its Reply in Opposition to UP’s Motion to Dismiss filed February 16, 2021, Sanimax requested, pursuant to 49 U.S.C. § 10502(d), that the Board revoke the exemptions covering Sanimax’s commodities to the extent necessary to consider the substance of Sanimax’s complaint seeking redress for UP’s rail service failures. In its March 8 responsive submission, UP concedes that the Board may consider revocation of the commodity exemptions in the context of this case. However, UP asserts over and over – literally four times in a 16-page submission – that Sanimax has provided “no evidence” of UP’s market dominance or abuse of market power supporting revocation of the exemptions to the extent necessary to consider Sanimax’s complaint. See UP’s March 8 submission at 1, 6, 7 and 8.

UP's assertion is wrong. Sanimax most definitely has placed in the record the evidence necessary to overcome UP's Motion to Dismiss and proceed to the merits of this case. The evidence is set forth *in the Verified Complaint filed by Sanimax on November 6, 2020*.

Sanimax relied upon and cited to its Verified Complaint as providing the evidence in support of revocation of the commodity exemptions sufficient to overcome UP's Motion to Dismiss. For example, in the Conclusion (page 6) of its February 16 Reply in Opposition to UP's Motion to Dismiss, Sanimax stated: "Considering *the facts described in the complaint* in the light favorable to Sanimax, *the complaint confirms* that UP has sufficient monopoly power to support a partial revocation of the exemptions for the commodities at issue" [emphasis added].

The relevant facts for this stage of the case are set forth in the sworn Verified Statements of Sanimax officials Greg Rawe and Todd Strickler that accompanied the Verified Complaint.

- The Verified Statement of Mr. Rawe, the plant manager at Sanimax's South St. Paul, Minnesota rendering facility, describes how Sanimax is captive to UP for outbound rail shipment of its products; the layout of the UP-serviced rail facilities at the plant; the risks and harm that arise when UP fails to provide the necessary rail service; and the insufficiency of outbound truck transportation as an alternative.
- The Verified Statement of Mr. Strickler, Manager of Customs Compliance and Logistics for the overall Sanimax group, explains how UP has abused its monopoly rail provider position at South St. Paul. Mr. Strickler details UP's deteriorating rail service in recent years, reaching a crisis in the summer of 2020. He describes UP's unilateral reduction to 3-days-per-week service last August, the failure to provide even that level of service despite Sanimax's continued complaints, and Sanimax's unsuccessful efforts to resolve the rail service failures that finally necessitated filing a complaint at the STB.

## CONCLUSION

Sufficient evidence of UP's market power and abuse of that power to justify a case-specific revocation of the commodity exemptions under 49 U.S.C. § 10502(d) is in the record. It was placed in the record by Sanimax as part of its Verified Complaint and expressly cited in Sanimax's opposition to UP's Motion to Dismiss. UP's assertions to the contrary ("no evidence") are not an accurate characterization of the record.

The Board should proceed to the merits of Sanimax's complaint, adopting the procedural schedule suggested by the parties in their February 16 Joint Status Report and Jointly Proposed Procedural Schedule.

Respectfully submitted,

Date filed: March 22, 2021

/s/ Richard F. Riley, Jr.

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