

BEFORE THE
SURFACE TRANSPORTATION BOARD304839
ENTERED
Office of Proceedings
June 23, 2022
Part of
Public Record

SANIMAX USA LLC,

v.

UNION PACIFIC RAILROAD
COMPANY

STB Docket No. NOR 42171

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

Union Pacific Railroad Company respectfully submits this motion for leave to file the following brief reply to the opposition that Sanimax USA LLC ("Sanimax") filed to Union Pacific's motion to dismiss this case as moot.¹ Sanimax's Opposition attempts to revise Sanimax's past positions to avoid the fact that Sanimax has received the precise relief it asked the Board to grant in its Opening and Rebuttal Statements. There is good cause for the Board to permit Union Pacific to submit this Reply to Reply to complete the record.² The Reply to Reply is contained in the following paragraphs.

¹ See Sanimax USA LLC's Opposition to Union Pacific Railroad Company's Motion to Dismiss, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, at 2 (filed June 13, 2022) ("Sanimax Opposition").

² See, e.g., *Soo Line R.R. Co.—Pet. for Declaratory Order and Preliminary Injunction—Interchange with Canadian Nat'l*, FD 36299, at 1 n.1 (STB served July 19, 2019); *National Ass'n of Reversionary Prop. Owners—Pet. for Declaratory Order*, EP 749, at 1 n.1 (STB served Aug. 13, 2018); *City of Alexandria—Pet. for Declaratory Order*, FD 35157, at 2 (STB served Nov. 6, 2008).

In its Opening Statement, Sanimax told the Board that “UP ... resum[ing] providing rail service to Sanimax’s plant five days per week” would “remedy [the] [purported] statutory violations.”³ Likewise, in its Rebuttal Statement, Sanimax stated that Union Pacific could “meet its legal obligation” and the “problem” would “be resolved” if Union Pacific provided “five-days-per-week service to Sanimax’s South St. Paul facility.”⁴ In both statements, Sanimax asked only that the Board “order UP to return to the scheduled five days of rail service each week.”⁵ Yet now that

}, Sanimax is not satisfied with what would “remedy [the] [purported] statutory violations.”⁶

Sanimax now argues that

} However, Sanimax’s Opposition does not acknowledge this Board’s precedent in *CF Industries, Inc.*, where the complainants made essentially the same argument Sanimax has made in its Reply. In *CF Industries, Inc.*, complainants challenging a tariff provision claimed the case was not mooted by a railroad’s withdrawal of that provision, arguing the tariff could be re-adopted in the future and that complainants had expended resources on the litigation.⁷ The Board

³ Sanimax USA LLC’s Opening Statement, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, at 10 (filed Mar. 2, 2022) (“Sanimax Opening”).

⁴ Sanimax USA LLC’s Rebuttal Statement, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, at 2, 10 (filed Apr. 18, 2022) (“Sanimax Rebuttal”).

⁵ Sanimax Rebuttal at 13; *see* Sanimax Opening at 18.

⁶ Sanimax Opening at 10.

⁷ *CF Industries, Inc. v. Indiana & Ohio Railway, et al.—Petition for Declaratory Order*, Fin. Docket No. 35517, at 3–4 (served June 21, 2013) (“*CF Industries*”).

nevertheless dismissed the case as moot, and held that if the complained-of tariff was later reinstated, the case could be reopened and the existing record used if needed.

Sanimax's attempts to undo its decision not to pursue damages in its Opening and Rebuttal are unavailing.⁸ Sanimax cites a footnote in its Opening Statement in which it asked to hold any damages claim "in abeyance...."⁹ However, this unusual request was not authorized by the STB and is inconsistent with the procedural schedule the parties proposed and the Board adopted.¹⁰ Sanimax's assertion that it submitted "initial evidence of damages" is similarly unsupported. Sanimax points to a single spreadsheet attached as Exhibit 10 to its initial evidence, which describes a variety of truck shipments in 2020, 2021, and 2022 that Sanimax contends were necessary due to Union Pacific's rail service. But Sanimax's evidence was not characterized as "initial evidence of damages," nor were any workpapers or methodology descriptions included in this document. Indeed, Exhibit 10 mostly refers to pre-November 2, 2021 truck shipments, a time period for which the Board has already held Sanimax cannot seek damages.¹¹

⁸ Sanimax appears to also seek reimbursement of attorney fees, Sanimax Opposition at 6, n.8, but the Board has no authority to award attorneys' fees without specific statutory authority. *See, e.g., GS Roofing Prods. Co. v. Arkansas Midland R.R. Co.*, STB Docket No. 41230, slip op. at 21 (STB served May 5, 2000); *Groome & Assocs., Inc. v. Greenville Cnty. Econ. Dev. Corp.*, STB Docket No. 42087, slip op. at 1, 18 (STB served July 27, 2005).

⁹ Sanimax Opposition at 17, n.14.

¹⁰ *See* Decision, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, slip op. at 7 (STB served Nov. 2, 2021) ("Nov. 2, 2021 Decision") (setting forth procedural schedule with Sanimax's rebuttal statement as final filing).

¹¹ *See Sanimax USA, LLC v. Union Pac. R.R. Co.*, NOR 42171, at 4 (served Feb. 24, 2022). Exhibit 10 is also fundamentally unreliable support for any damage claims.

Finally, Sanimax’s assertion that the case is not moot because the Board needs to determine application of the commodity exemption going forward¹² is also misguided. The Board partially revoked the applicable exemptions only “to the extent necessary to consider the issues raised in Sanimax’s complaint.”¹³ Now that Sanimax’s complaint and final prayer for relief have been resolved, the partial revocation “to consider the issues raised in Sanimax’s complaint” should be terminated in accordance with the November 2 decision. If Sanimax and Union Pacific have some future dispute, Sanimax may claim an exemption revocation is appropriate and use evidence developed in this record to support that claim.¹⁴

Respectfully submitted,

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¹² Sanimax Opposition at 8.

¹³ See Nov. 2, 2021 Decision at 7.

¹⁴ See *CF Industries* at 4.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June 2022, I served a copy of Union Pacific Railroad Company's Reply to Sanimax USA LLC's Opposition to Union Pacific Railroad Company's Motion to Dismiss by first class mail and email on the following parties of record:

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