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The Honorable Martin J. Oberman, Chairman
The Honorable Karen J. Hedlund, Vice Chairman
The Honorable Robert E. Primus, Member
The Honorable Michelle A. Schultz, Member
The Honorable Patrick J. Fuchs, Member

U.S. Surface Transportation Board
395 E. Street SW
Washington, D.C. 20423

Re: *STB Docket Nos. NOR 42144, NOR 42150, NOR 42152, and NOR 42153*

Dear Board Members:

The North America Freight Car Association, American Fuel & Petrochemical Manufacturers, The Chlorine Institute, Inc., The Fertilizer Institute, and the American Chemistry Council, the trade association complainants in the captioned consolidated formal complaint proceedings, hereby implore the Surface Transportation Board, once again,¹ to expeditiously complete its review of the record evidence in these cases and issue a final decision or decisions resolving the issues presented. The original complaint was filed by these associations and several individual shippers in Docket No. NOR 42144 nearly *nine years* ago.² The evidentiary records in Docket No. NOR 42144 and the other consolidated cases closed on May 31, 2019. Although the Board requested supplemental briefs on two discrete additional statutory interpretation issues, those briefs were submitted May 21, 2021, well over two years ago.

The extraordinary delay in the Board finally deciding the issues that have been formally presented to it in these proceedings, and the uncertainty caused by such delay, has been very detrimental to the complainants and railroad tank car shippers nationwide. Specifically, the Board's inaction has enabled the defendant, Union Pacific Railroad Company ("UP"), to assess and collect tens of millions of dollars in legally disputed charges for the movement of empty tank cars to and from repair shops, from the shipper complainants and the members of the association complainants. It has also allowed UP and other Class I railroads with nearly identical tariff provisions and charges to collect hundreds of millions of dollars from other shippers over the past

¹ A letter urging action was submitted on behalf of the complainants on September 28, 2020, and a second letter asking for an update of the cases and a timeline for decision was submitted on April 24, 2023, by counsel for the American Fuel & Petrochemicals Manufacturers.

² The complaint was filed on March 31, 2015.

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eight plus years with no risk of liability to any shipper for over six of those years due to the operation of 49 U.S.C. §11705(c).

Multiple Board Members, over the past few years, have asked why shippers do not file complaints with the Board when they believe that railroads are engaged in unreasonable practices. One prominent reason shippers have pointed to is the considerable time and expense of pursuing such cases. These cases are emblematic of that response. The individual and association complainants who have invested considerable resources to litigate these consolidated cases have waited for the Board to resolve their complaints for nearly a decade. Meanwhile, other injured shippers have viewed these cases as vindication of their decision not to file complaints with the Board, and reinforcement of their general belief that rail carrier practices disputes will not be resolved in a timely and effective manner by presenting them to the Board in a formal case. We urge the Board to be cognizant of this perception and reality and act to rectify it.

The association complainants in these proceedings therefore respectfully renew their request that the Board complete its review of the evidence and argument that has been presented to it and render a final decision or decisions in these consolidated proceedings on an expedited basis.

Respectfully submitted,

/s/ Thomas W. Wilcox

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Cc: Counsel for Union Pacific Railroad Company
Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of December, 2023, a copy of the foregoing Letter was served on all parties of record in the official service lists for Docket Nos. NOR 42144, 42150, 42152, and 42153.

/ss/ Thomas W. Wilcox