

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

ENTERED  
Office of Proceedings  
August 9, 2017  
Part of  
Public Record

STB Docket Nos. NOR 42144, *et al.*  
(Consolidated)

V.

Defendant.

August 9, 2017

NORTH AMERICA FREIGHT CAR  
ASSOCIATION; AMERICAN FUEL &  
PETROCHEMICALS MANUFACTURERS;  
THE CHLORINE INSTITUTE; THE  
FERTILIZER INSTITUTE; AMERICAN  
CHEMISTRY COUNCIL; ETHANOL  
PRODUCTS, LLC D/B/A POET ETHANOL  
PRODUCTS; POET NUTRITION, INC.; and  
CARGILL INCORPORATED,

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

STB Docket Nos. 42144, *et al.*  
(Consolidated)

Pursuant to 49 C.F.R. §§ 1100.3 and 1117.1, Union Pacific Railroad Company hereby requests that the Board consolidate the already-consolidated proceedings in STB Docket Nos. NOR 42144, NOR 42150, and NOR 42152 with the just-filed proceeding in STB Docket No. NOR 42153, *Arkema Inc. v. Union Pacific Railroad Company*.

Accordingly, Union Pacific requests that the Board consolidate the proceedings.

Respectfully submitted,

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*Attorneys for Union Pacific Railroad Company*

August 9, 2017

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of August, 2017, I caused a copy of the foregoing document to be served by e-mail or first-class mail, postage prepaid, on all of the parties of record in STB Docket Nos. NOR 42144, 42150, 42152, and 42153.

I also caused a copy of the foregoing document to be served by hand on Administrative Law Judge John P. Dring, Federal Energy Regulatory Commission Office of Administrative Law Judges, 888 First Street, N.E., Washington DC 20426.

/s/ Michael L. Rosenthal

Michael L. Rosenthal

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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| ARKEMA INC.,                    | ) |                          |
|                                 | ) |                          |
| Complainant,                    | ) |                          |
|                                 | ) |                          |
| v.                              | ) | STB Docket No. NOR 42153 |
|                                 | ) |                          |
| UNION PACIFIC RAILROAD COMPANY, | ) |                          |
|                                 | ) |                          |
| Defendant.                      | ) |                          |
| _____                           | ) |                          |

UNION PACIFIC'S MOTION FOR CONSOLIDATION

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| ARKEMA INC.,                    | ) |                          |
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| Complainant,                    | ) |                          |
|                                 | ) |                          |
| v.                              | ) | STB Docket No. NOR 42153 |
|                                 | ) |                          |
| UNION PACIFIC RAILROAD COMPANY, | ) |                          |
|                                 | ) |                          |
| Defendant.                      | ) |                          |
|                                 | ) |                          |

**UNION PACIFIC’S MOTION FOR CONSOLIDATION**

In the interest of promoting fair, accurate, expeditious, and efficient regulatory decisions, the Board should consolidate this case with the already-consolidated proceedings in Docket Nos. NOR 42144, NOR 42150, and NOR 42152 (“NAFCA Case”), in which the procedural schedule has been stayed to permit the parties to complete discovery. Arkema’s tactics present the same issues the Board appropriately addressed by consolidating NOR 42144, NOR 42150, and NOR 42152 in its decision served March 31, 2017 (“*Consolidation Decision*”). The Board should reach the same result here.

Arkema is testing the Board’s tolerance for gamesmanship, just like Valero and Tesoro did before the *Consolidation Decision*. If the Board allows these tactics to succeed, parties in future cases will follow the same roadmap in other cases raising industry-wide issues. They will try to shield themselves from discovery by initially litigating cases through trade associations, and then later seek to reap the benefits of potentially favorable rulings by later filing copycat claims. Such tactics would prejudice defendants, impoverish the record, and reduce the efficiency and effectiveness of Board proceedings. If parties are allowed to get away with this,

the Board's ability to rely on the party discovery process to unearth the facts relevant to its proceedings will be seriously compromised.

## **I. INTRODUCTION**

Arkema's only plausible reason for not filing its complaint long ago was to try to avoid providing discovery Union Pacific could use in the NAFCA Case. Arkema complained to Union Pacific about the empty repair move charges in UP Tariff 6004, Item 55-C ("Item 55-C") shortly after the charges were announced in December 2014. Union Pacific tried to mitigate Arkema's concerns by negotiating a special contract governing Arkema's rates for empty repair moves.<sup>1</sup> That contract expired on July 31, 2015.<sup>2</sup> Arkema then chose to wait two years to file a formal complaint, while a trade association to which it belongs pursued claims on its behalf in NOR 42144. Arkema remained on the sidelines even as Valero and Tesoro filed their own belated complaints, had their cases consolidated into the NAFCA Case, and were ordered to provide discovery in the *Consolidation Decision*.

Arkema was apparently letting Valero and Tesoro test the waters. After the Board issued its *Consolidation Decision*, Arkema continued to sit on the sidelines, hoping that by the time it made the plunge, it could preserve its damages claims while depriving Union Pacific and the Board of evidence regarding the common legal and policy issues in the NAFCA Case. The Board should not indulge such an obviously dilatory gambit by Arkema.

Union Pacific has vigorously pursued discovery in the NAFCA Case ever since the Board denied our motion to dismiss the complaint in NOR 42144 on the grounds that the case could not be decided without discovery and presentation of evidence regarding industry conditions. But

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<sup>1</sup> See Compl. ¶ 24.

<sup>2</sup> See *id.*

our ability to obtain discovery has been severely constrained. The trade association complainants in NOR 42144 possess very little relevant information, they refused to produce information from their members who had relevant information, and only three shippers (out of hundreds of trade association members) joined in the complaint and thus made themselves subject to party discovery. Even with the *Consolidation Decision*, only five shippers are subject to party discovery.

Arkema's decision to file a complaint raising the same issues presented in the NAFCA Case provides Union Pacific a significant opportunity to obtain the type of discovery the Board considered relevant in denying our motion to dismiss. Arkema is the only individual complainant from the chemical industry and thus provides potentially important diversity of experience with regard to tank car movements and the impact of Item 55-C. Denying Union Pacific the ability to use such discovery in the NAFCA Case would be unfair and prejudicial. The Board would also be depriving itself of timely, relevant information. As the Board recognized in the *Consolidation Decision*, failing to consolidate the proceedings would create "significant inefficiency" if the Board "were to resolve the NAFCA docket first, and then discovery in the [Arkema] docket[] pointed toward a different resolution." *Consolidation Decision* at 4.

Under the circumstances here, the best way to promote efficiency and fairness is to consolidate this case with the NAFCA Case. Consolidation will allow the Board to address the issues raised in all these cases in one proceeding based on the most complete record possible. Arkema will not be harmed by consolidation. The complainants in the NAFCA Case also will not be harmed. Discovery in the NAFCA Case remains ongoing—Arkema is not so far behind Valero and Tesoro—and Arkema discovery should proceed very efficiently because the most contentious issues were resolved in NOR 42144. Finally, Union Pacific will not be harmed. To

the contrary, consolidation will help mitigate the prejudice we face in the NAFCA Case, given the constraints on our ability to obtain discovery, in addressing the issues that led the Board to deny our motion to dismiss.

## **II. BACKGROUND**

In NOR 42144, five trade associations and three shippers challenge the reasonableness of Item 55-C. They allege that Item 55-C “shifts the costs of transporting empty tank cars to and from repair facilities from UP to the providers of private tank cars, including [the complainants in NOR 42144], without compensating them for UP’s use of their cars.”<sup>3</sup> They assert that Item 55-C is “(a) an unreasonable practice in violation of 49 U.S.C. § 10702 and (b) a violation of UP’s statutory obligations to compensate private car owners for the use of their tank cars set forth in 49 U.S.C. § 11122(b).”<sup>4</sup> Arkema makes essentially the same allegations.<sup>5</sup> The identical nature of the claims is no coincidence—Arkema is a member of American Chemistry Council (“ACC”),<sup>6</sup> a trade association complainant in NOR 42144, and Arkema’s legal counsel also represents ACC.

Union Pacific moved to dismiss the complaint in NOR 42144 on the grounds that Board precedent supported our adoption of Item 55-C.<sup>7</sup> In the alternative, Union Pacific asked the

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<sup>3</sup> First Am. Compl. ¶ 18, *N. Am. Freight Car Ass’n v. Union Pac. R.R.*, NOR 42144 (June 2, 2015).

<sup>4</sup> *Id.* ¶ 29. Valero and Tesoro make substantially the same allegations. See Compl. ¶¶ 9, 21, *Valero Mktg. & Supply Co. v. Union Pac. R.R.*, NOR 42150 (Dec. 19, 2016); Compl. ¶¶ 9, 21, *Tesoro Refining & Mktg. Co. LLC v. Union Pac. R.R.*, NOR 42152 (Dec. 30, 2016).

<sup>5</sup> See Compl. ¶¶ 13, 28, *Arkema Inc. v. Union Pac. R.R.*, NOR 42153 (Aug. 1, 2017).

<sup>6</sup> See American Chemistry Council, Member Companies, available at <https://www.americanchemistry.com/Membership/MemberCompanies/> (last visited Aug. 9, 2017).

<sup>7</sup> See Mot. to Dismiss at 8-17, *N. Am. Freight Car Ass’n v. Union Pac. R.R.*, NOR 42144 (Apr. 20, 2015).

Board to require the complainants to make their complaint more definite to clarify their allegations and simplify discovery.<sup>8</sup>

In opposing our motion to dismiss, the complainants said the case requires “development of facts *through discovery* and the presentation of evidence.”<sup>9</sup> They said the precedent we relied upon is “inapposite due to different facts and circumstances, including substantial changes that have occurred in the rail industry over the past 25 years.”<sup>10</sup> They said a proper consideration of the arguments “can only proceed after discovery and presentation of evidence of applicable industry conditions.”<sup>11</sup>

In denying Union Pacific’s motion, the Board said arguments about “whether UP is complying with [Board] precedent and whether that precedent is applicable” are “fact-specific and, as such can only be sufficiently addressed after the development of a full record.”<sup>12</sup> The Board also suggested it would consider arguments about “whether that precedent should stand given changes in the railroad industry, an issue that has not been fully briefed.”<sup>13</sup> Finally, the Board declined to order complainants to make their complaint more definite, agreeing with complainants that Union Pacific was seeking “*information more appropriately obtained in discovery.*”<sup>14</sup>

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<sup>8</sup> See *id.* at 21-24.

<sup>9</sup> Reply to Mot. to Dismiss at 5, *N. Am. Freight Car Ass’n v. Union Pac. R.R.*, NOR 42144 (June 1, 2015) (emphasis added).

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 15 (emphasis added).

<sup>12</sup> *N. Am. Freight Car Ass’n v. Union Pac. R.R.*, NOR 42144, slip op. at 3 (STB served Dec. 21, 2015).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5 (emphasis added).

The NAFCA Case remains in the discovery phase. In NOR 42144, the parties engaged in extensive negotiation and litigation regarding the scope of discovery. The parties appear to have resolved all of their disputes regarding the scope of discovery through negotiations and motions practice before Administrative Law Judge John P. Dring. However, discovery in NOR 42144 is still not complete. Union Pacific's deposition of Cargill's witness is not scheduled to occur until September 20. Our experience in deposing POET's witnesses suggests the deposition may lead to the production of at least some additional documents. Nonetheless, the progress made in NOR 42144 is helping expedite discovery in NOR 42150 and NOR 42152. Discovery in those dockets is proceeding in an orderly fashion, as the parties' status reports attest. However, discovery is far from complete. Valero and Tesoro have begun producing documents—primarily copies of their many lease agreements—but as described in the parties' most recent status report, the parties are still in the process of discussing the scope of production and potential stipulations that would affect the scope of production. Union Pacific also plans to depose Valero and Tesoro witnesses within a reasonable period of time after the complainants complete their document productions. To place the timing issue in perspective, Union Pacific served our first discovery requests in NOR 42144 in April 2015. Discovery in that docket will not be completed before the Cargill deposition on September 20, 2017. By contrast, discovery in NOR 42150 and 42152 began in earnest only after the Board's *Consolidation Decision* on March 31, 2017. While the parties in those dockets are proceeding in a timely manner, discovery is not complete, and it will be some time before briefing on the merits can begin in the NAFCA Case.

Arkema's complaint duplicates the complaints in the NAFCA Case. Like the parties in the NAFCA Case, Arkema claims Union Pacific committed an unreasonable practice by adopting the charges in Item 55-C without compensating shippers for the costs imposed by Item

55-C and seeks damages for the charges imposed under Item 55-C.<sup>15</sup> And like the parties in the NAFCA Case, Arkema links its challenge to Item 55-C to more general allegations regarding Union Pacific's alleged failure to compensate tank car owners for use of their cars.<sup>16</sup>

On August 3, 2017, Union Pacific served discovery requests on Arkema. As was the case with Valero and Tesoro, Union Pacific is willing to agree that Arkema could simply search for and produce the same materials the shipper parties agreed to search for and produce in NOR 42144 based on the parties' negotiations and the guidance provided by Judge Dring.

### **III. ARGUMENT**

The most fair and efficient way for the Board to address the issues raised by Arkema's complaint is to consolidate this proceeding with the NAFCA Case. "In deciding whether to grant a request for consolidation, the Board considers whether the proceedings involve common facts, issues, and parties; whether consolidation would promote efficiency; and whether consolidation would unduly delay the proceedings or prejudice any party." *Consolidation Decision* at 3; see also *Honey Creek R.R.–Pet. for Declaratory Order*, FD 34869, slip op. at 3 (STB served June 4, 2008).

The issues raised in Arkema's complaint are plainly the same as the issues in the NAFCA Case. The facts in both cases should be the same, since these proceedings all raise the same industry-wide legal and policy issues. Union Pacific is the sole defendant in each case.

Consolidation of these proceedings is the most fair and efficient way to move forward. Union Pacific should be allowed, as a matter of basic fairness, to obtain discovery from Arkema to defend its challenged practices in this proceeding and the NAFCA Case. In NOR 42144, the

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<sup>15</sup> See Compl. ¶ 19-28.

<sup>16</sup> See *id.* ¶¶ 6, 8, 10, 13, 15, 26, 27, & 28.

Board agreed with the complainants that the legal and policy issues raised by that case could not be decided without the presentation of evidence regarding industry conditions and changes in industry conditions over time.<sup>17</sup> Arkema's allegations parallel the allegations in the NAFCA Case. Union Pacific has thus asked Arkema to search for and produce the same categories of information the shipper parties are searching for and producing in the NAFCA Case.

Union Pacific would prefer not to have to seek discovery from individual shippers. We tried asking the trade association complainants in NOR 42144 for information on industry-wide conditions relating to empty tank car repair movements and compensation for tank car ownership costs. But attempts to obtain that important information were stymied. In response to discovery requests, the associations nearly universally and uniformly said they did not have the requested information.<sup>18</sup> Rather, they said any information would be in their members' possession. ACC, of which Arkema is a member, produced just 38 pages of discovery material, consisting mostly of a presentation regarding tank car regulations. None of the other shipper complainants is an ACC member.<sup>19</sup>

Administrative Law Judge Dring acknowledged Union Pacific's difficult position in discussing a motion we filed in an attempt to compel the trade associations to produce documents on behalf of their members:

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<sup>17</sup> See *N. Am Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144, slip op. at 3 (STB served Dec. 21, 2015).

<sup>18</sup> See, e.g., Responses and Objections of The American Chemistry Council, *N. Am. Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144 (June 23, 2015) (Responses to Interrogatory Nos. 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35 & 36, and Responses to Document Request Nos. 14, 15, 16, 18, 19, 20, 21, 22 & 23) (Exhibit A hereto).

<sup>19</sup> See American Chemistry Council, Member Companies, available at <https://www.americanchemistry.com/Membership/MemberCompanies/> (last visited Aug. 9, 2017).

Presiding Judge: Thank you. Mr. Rosenthal, I believe I said the last time we were here essentially what Mr. Donovan has just said, that ***I can't grant motions to compel against the Complainants when they don't have the information, they don't have what you're seeking, their members have that.*** I can't reach their members through a motion to compel. Okay? So let's -- go ahead.

...

Mr. Rosenthal: And we want to be prepared. When they file their evidence, we want to be able to respond. As you point out, we're in a bit of a bind, because most of the people on the other side are associations.

Presiding Judge: I can't help you with that.

Mr. Rosenthal: I understand.

Presiding Judge: I would love to help you. I don't mind getting down into the weeds with folks, but I can't do this.<sup>20</sup>

Because the trade associations have steadfastly refused to collect and produce information from their members who have relevant information, Union Pacific stands to obtain discovery from only five of the hundreds of shippers represented by those trade associations—the three shipper complainants in NOR 42144, Valero, and Tesoro.<sup>21</sup>

Consolidation would also promote efficiency because of the interactions among these closely related cases. Arkema's decision to file a complaint gives Union Pacific the opportunity to obtain some of the discovery we could not otherwise get. That discovery could be critical to

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<sup>20</sup> Transcript of Status Conference at 35:18–37:11, *N. Am. Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144 (Aug. 22, 2016) (emphasis added).

<sup>21</sup> Union Pacific has also obtained discovery from four companies that own tank cars and lease them to shippers, but they do not have the same types of information that shippers have, and Judge Dring strictly limited Union Pacific's discovery from non-parties. See, e.g., Transcript of Oral Argument at 48:16-18, *N. Am. Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144 (Sept. 20, 2016) (“But I have to balance my sympathy for your understandable desire to get this information against the burden imposed on the car owners.”).

the Board's decision in the NAFCA Case, especially given the paucity of information we have been able to obtain from individual shippers. Significantly, Arkema ships a very different set of commodities in tank cars than the shippers producing discovery in the NAFCA Case. Arkema is a chemical manufacturer.<sup>22</sup> The other shipper complainants have businesses focused on ethanol, petroleum products, and grain and food products.<sup>23</sup> To the extent that discovery Union Pacific obtains from Arkema reveals meaningful differences between Arkema and those other shippers, it would be very inefficient for the Board to issue a decision in the NAFCA Case only to have to backtrack or qualify that decision once additional evidence becomes available from Arkema. By contrast, including Arkema in a more diverse shipper portfolio of discovery conducted in consolidated proceedings would promote the completeness of the record, the reliability of conclusions adduced from that record, and the accuracy of the Board's decision-making.

Consolidation would not unduly delay proceedings. Discovery in the NAFCA Case has not been completed. Because of Cargill's delays in producing documents, Union Pacific has not yet deposed a witness from Cargill, one of the original complainants in NOR 42144. Moreover, although discovery in NOR 42150 and NOR 42152 is proceeding efficiently, the parties are still working to resolve issues regarding the scope of production, and depositions cannot take place until document production is complete.

If Arkema's case is consolidated with the NAFCA Case, Arkema can move expeditiously to provide discovery because of the already existing framework established by Union Pacific, the

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<sup>22</sup> Compl. ¶ 1.

<sup>23</sup> See First Am. Compl. ¶¶ 6, 7, & 8, *Am. Freight Car Ass'n v. Union Pac. R.R.*, NOR 42144 (June 2, 2015); Compl. ¶ 1, *Valero Mktg. & Supply Co. v. Union Pac. R.R.*, NOR 42150 (Dec. 19, 2016); Compl. ¶ 1, *Tesoro Ref. & Mktg. Co. v. Union Pac. R.R.*, NOR 42152 (Dec. 30, 2016).

complainants in the NAFCA Case, and Judge Dring. In NOR 42144, there were extensive negotiations among the parties over the scope of discovery, as well as four motions to compel, a petition for subpoenas, and four hearings before Judge Dring. Union Pacific has no intention of relitigating those issues. Union Pacific told Valero and Tesoro we were willing to agree that they could search for and produce the same materials that the shipper parties agreed to search for and produce in NOR 42144, and that approach appears to be working well in NOR 42150 and NOR 42152. Union Pacific has already served discovery on Arkema, and we would extend the same offer to Arkema.<sup>24</sup>

Even if there were some delay to the NAFCA Case, it would not constitute *undue* delay. Discovery from Arkema may provide information that is highly relevant to the NAFCA Case. Given the extremely limited number of shippers producing discovery in the NAFCA Case and the Board's interest in providing an accurate, informed, ruling on the common issues raised in the NAFCA Case and this proceeding, any delay would be well justified.

Consolidation would not prejudice any party. Arkema would be treated the same as Valero, Tesoro, and the shipper complainants in NOR 42144. Those other complainants would not be prejudiced. Arkema's complaint raises no new issues. Arkema's interests are fully aligned with the interests of all the other complainants—indeed, Arkema's counsel represents one of the association complainants in NOR 42144. Any claims of prejudice from delay would be entirely speculative, because the procedural schedule in the NAFCA Case has been stayed. In any event,

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<sup>24</sup> Arkema has not yet served discovery on Union Pacific. However, any such discovery should not cause undue delay. Union Pacific completed our production of documents in response to Valero's and Tesoro's discovery requests extremely promptly. See Joint Weekly Status Report – July 13, 2017, *N. Am. Freight Car. Ass'n v. Union Pac. R.R.*, NOR 42144 (filed July 13, 2017).

as discussed above, any delay in the NAFCA Case would be minor and would be justified by the public interest in fair, fully informed regulatory decision-making.

By contrast, a failure to consolidate these cases would prejudice Union Pacific. Not only would Union Pacific be prevented from obtaining discovery relevant to the NAFCA Case, but to the extent information obtained from Arkema reveals meaningful differences between Arkema and the shipper complainants in the NAFCA Case, Union Pacific would be required to litigate the same issues a second time.

#### **IV. CONCLUSION**

The Board should order consolidation here, just as it did in the *Consolidation Decision*. Nothing has changed to justify a different result. The Board should ensure it resolves the pending challenges to Item 55-C, and to Board precedent encouraging railroads to establish separate charges for empty repair moves, based on the best and most complete record possible.

Respectfully submitted,

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/s/ Michael L. Rosenthal

Michael L. Rosenthal

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| THE CHLORINE INSTITUTE; THE         | ) |                      |
| FERTILIZER INSTITUTE; AMERICAN      | ) |                      |
| CHEMISTRY COUNCIL; ETHANOL          | ) |                      |
| PRODUCTS, LLC D/B/A POET ETHANOL    | ) | Docket No. NOR 42144 |
| PRODUCTS; POET NUTRITION, INC.; and | ) |                      |
| CARGILL INCORPORATED                | ) |                      |
|                                     | ) |                      |
| vs.                                 | ) |                      |
|                                     | ) |                      |
| UNION PACIFIC RAILROAD              | ) |                      |
| COMPANY                             | ) |                      |

RESPONSES AND OBJECTIONS OF THE  
AMERICAN CHEMISTRY COUNCIL TO  
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS

Complainant, the American Chemistry Council ("ACC"), hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests ("Discovery Requests").

GENERAL OBJECTIONS

The following general objections and statements apply to each of the particular document requests and interrogatories propounded by Defendant and are hereby incorporated within each specific response set forth below. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by Complainant:

1. ACC objects to Defendant's Requests to the extent they seek to impose upon ACC any obligation or responsibility other than those mandated by 49 C.F.R. § 1114.21 *et seq.*

2. ACC objects to Defendant's Requests for information from members of ACC who are not named Complainants in this proceeding through discovery requests directed at ACC.

3. ACC objects to Defendant's Requests to the extent they purport to impose on ACC the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.

4. ACC objects to Defendant's Requests to the extent they call for information outside ACC's possession, custody or control.

5. ACC objects to Defendant's Requests to the extent they are not limited by date.

6. ACC objects to Defendant's Requests to the extent they seek information that is already within Defendant's possession, custody, or control; equally available to Defendant; or more appropriately sought from third parties to whom discovery requests may be directed.

7. ACC objects to Defendant's Requests to the extent they may be construed to require ACC to search for and disclose or produce information that is a matter of public record or otherwise as accessible to Defendant as to ACC.

8. ACC objects to Defendant's Requests to the extent they seek discovery more appropriately obtained by means other than requests for the production of documents or interrogatories.

9. ACC objects to Defendant's Requests insofar as they seek production or disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute or

common law. All Requests have been read to exclude discovery of such privileged information. By responding to any Request, Defendant does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or law as to that Request or as to any other Request or any future Request. Inadvertent production of any such information shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, nor shall inadvertent production waive the right of ACC to object to the use of any such information in any proceeding.

10. ACC objects to Defendant's Requests to the extent they call for the production or disclosure of trade secrets, proprietary, personal, commercially sensitive, or other confidential information. ACC will produce such confidential information that is responsive, non-privileged, relevant, and not otherwise protected from discovery, if any, only pursuant to the terms of a Protective Order issued by the Board in this proceeding, and reserves the right to seek further entrance of protective orders by the Board should the need arise.

11. By responding to any Request, ACC does not adopt Defendant's definitions of words and phrases contained in these Requests. ACC objects to words and phrases to the extent they are undefined and/or inconsistent with (a) the ordinary and customary meaning of such words and phrases and/or (b) the rules governing the permissible scope of discovery.

12. ACC objects to Defendant's Requests to the extent that they use language incorporating or calling for a legal conclusion or making an erroneous statement of law. ACC's responses herein shall be as to matters of fact only and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any discovery request or concerning any matter relevant to this Proceeding.

13. Nothing in ACC's responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in Defendant's Requests.

14. ACC's discovery and investigation into the matters specified is ongoing. These answers and objections are made as of the date stated and include information located or obtained up to that time after reasonable inquiry. ACC does not purport to have reviewed and extracted information from every potentially relevant document. Further information responsive to Defendant's Requests may be ascertained or identified at a later time, and ACC reserves the right to amend its answers and objections to rely on such information and to assert additional objections as necessary.

15. The information and documents supplied in response to Defendant's Requests are for this Proceeding only and for no other purpose.

16. The applicable foregoing General Objections are incorporated into each of the specific objections and answers that follow. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by ACC.

#### **OBJECTIONS TO DEFINITIONS**

The following objections to Defendant's Instructions and Definitions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. ACC objects to the definition of “Communication” to the extent that it exceeds the scope of discoverable material under, or imposes any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

2. ACC objects to the definition of “Document” to the extent that it exceeds the scope of discoverable material under, or imposes any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

3. ACC objects to the definitions of “Identify” to the extent that they impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. ACC objects to the definition of “ACC Member” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks discovery on ACC's members and “any subsidiary or affiliate” thereof who are not parties to this proceeding.

5. ACC objects to the definition of “Repair Facility” to the extent it applies to such facilities other than those on UP's system or has a meaning that is broader than UP Tariff 6004, Item 55-C.

6. ACC objects to the definitions of “You” and “Your” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they include ACC's members, outside attorneys, advisers, consultants, and other persons or entities not within ACC's control, as well as parent companies, subsidiaries, and other persons or entities related to ACC Members who are not parties to this proceeding.

### OBJECTIONS TO INSTRUCTIONS

The following objections to Defendant's Instructions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. ACC objects to Instruction No. 1 to the extent that it is overly broad, unduly burdensome, and not reasonably limited in time, as it seeks discovery "from January 1, 1987." ACC will produce responsive information or documents that can be obtained without undue burden or expense and that are located after a reasonable search, as required by 49 C.F.R. § 1114.21 *et seq.*

2. ACC objects to Instruction No. 2 to the extent that it requires ACC to produce documents in the possession, custody or control of an ACC Member.

3. Complainant objects to Instruction No. 2 to the extent that it requires identification and description of "the source of the documents" and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. ACC objects to Instruction No. 3 to the extent that it requires identification and description of documents withheld "for any reason" and documents withheld "on the basis of a claimed privilege or attorney work product," and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

5. ACC objects to Instruction No. 4 to the extent that it requires identification and indexing of "all persons who provided information for each response" and the "response(s) the person provided information for" and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current ACC Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Response**

ACC objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because ACC is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. ACC further objects to this Interrogatory as irrelevant and unduly burdensome to the extent it requests the number of tank cars that each ACC Member owns or leases because the number of such cars is irrelevant to the issue of whether UP is providing compensation for its use of those cars as required by statute. Subject to and without waiving its objections, ACC will provide a list of its members.

### **Interrogatory No. 2**

Is ACC or any ACC Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Response**

In accordance with the First Amended Complaint, filed on June 2, 2015, ACC is no longer requesting reparations or damages on behalf of its members.

### **Interrogatory No. 3**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 4.**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 5**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 6.**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 7**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 8**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 9**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by

the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 10**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 11**

Does ACC contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP. Subject to and without waiving its objections,

ACC states that the answer depends upon which entity owns the reporting marks on the subject tank car, because Freight Tariff RIC 6007-Series specifies that mileage allowances are paid only to the owner of the reporting marks.

**Interrogatory No. 12**

Does ACC contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP. ACC also objects to the phrase “costs associated with the empty miles” as vague and ambiguous because it is unclear whether this refers to UP’s actual cost of service for the empty movement, its tariff rate for the empty movement, or something else.

**Interrogatory No. 13**

Does ACC contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP.

**Interrogatory No. 14**

Separately for each ACC Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 15**

Separately for each ACC Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 16**

Separately for each ACC Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory

**Interrogatory No. 17**

Separately for each ACC Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 18**

Separately for each ACC Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific

- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 19**

Separately for each ACC Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 20**

Separately for each ACC Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 21**

Separately for each ACC Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory .

**Interrogatory No. 22**

Separately for each ACC Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. ACC
- g. Other ACC members
- h. Other Complainants

**Response**

Subject to and without waiving its objections, ACC will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 23**

Separately for each ACC Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 24**

Separately for each ACC Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 25**

Separately for each ACC Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 26**

Separately for each ACC Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 27**

Separately for each ACC Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 28**

Separately for each ACC Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Response**

ACC objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because

ACC is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Response**

See response to Interrogatory No. 28.

**Interrogatory No. 30**

Separately for each ACC Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014

- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 31**

Separately for each ACC member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014

- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 32**

Separately for each ACC Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 33**

Separately for each ACC Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 34**

Separately for each ACC Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by ACC Members and explain the basis for that amount.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Response**

ACC incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because the Complaint seeks compensation for tank cars in accordance with Ex Parte No. 328, not for any additional amounts. This Request also is overbroad and unduly burdensome because it has no date limitation.

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Response**

Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an ACC Member's furnishing tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an ACC Member's furnishing tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 14**

Produce a copy of each lease under which an ACC Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 15**

Produce a copy of each lease under which an ACC Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Response**

Subject to and without waiving its objections, ACC will produce non-privileged documents in its custody or control that are responsive to this Request.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

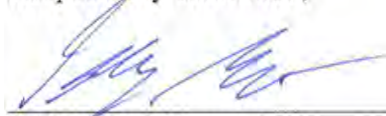
**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

Respectfully submitted,



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