

NOR 42144

242269

ENTERED
Office of Proceedings
December 15, 2016
Part of
Public Record

Date: August 22, 2016

Case: North American Freight Car Association, et al. v. Union Pacific
Railroad Company



Ace-Federal Reporters, Inc.
Phone: 202-347-3700
Fax: 202-737-3638
Email: info@acefederal.com
Internet: www.acefederal.com

BEFORE THE SURFACE TRANSPORTATION BOARD

- - - - - X
North America Freight Car :
Association; American Fuel and :
Petrochemicals Manufacturers; :
The Chlorine Institute; The :
Fertilizer Institute; American : Docket Number
Chemistry Council; Ethanol : NOR 42144
Products, LLC, d/b/a Poet :
Ethanol Products; Poet :
Nutrition, Inc.; and :
Cargill Incorporated, :
Complainants, :
vs. :
UNION PACIFIC RAILROAD COMPANY, :
Respondent. :
- - - - - X

STATUS CONFERENCE

Washington, D.C.
Monday, August 22, 2016

BEFORE:

HONORABLE JOHN P. DRING
ADMINISTRATIVE LAW JUDGE

REPORTED BY:

SARA A. WICK, RPR, CRR

1 APPEARANCES (continued):

2 PAUL M. DONOVAN, ESQ.

3 LaRoe, Winn, Moerman & Donovan

4 1250 Connecticut Avenue Northwest

5 Suite 200

6 Washington, D.C. 20036

7 202-298-8100; paul.donovan@laroelaw.com

8 On behalf of Complainant The Chlorine

9 Institute

10

11 JEFFREY O. MORENO, ESQ.

12 Thompson Hine LLP

13 1919 M Street Northwest

14 Washington, D.C. 20036

15 202-263-4107; jeff.moreno@thompsonhine.com

16 On behalf of Complainants The Fertilizer

17 Institute and American Chemistry Council

18

19 -- continued --

20

21

22

Page 4

1 APPEARANCES (continued):

2 THOMAS W. WILCOX, ESQ.

3 GKG Law

4 1055 Thomas Jefferson Street Northwest

5 Suite 500

6 Washington, D.C. 20007

7 202-342-5248; twilcox@gkglaw.com

8 On behalf of Complainants Ethanol Products,

9 LLC, d/b/a Poet Ethanol Products, and

10 Poet Nutrition, Inc.

11

12 DAVID K. MONROE, ESQ.

13 GKG Law

14 1055 Thomas Jefferson Street Northwest

15 Suite 500

16 Washington, D.C. 20007

17 202-342-5235; dmonroe@gkglaw.com

18 On behalf of Complainant Cargill

19 Incorporated

20

21 -- continued --

22

1 APPEARANCES (continued):

2 MICHAEL L. ROSENTHAL, ESQ.

3 KAVITA PILLAI, ESQ.

4 Covington & Burling LLP

5 850 10th Street Northwest

6 Washington, D.C. 20001

7 202-662-5448; mrosenthal@cov.com

8 On behalf of Respondent Union Pacific

9 Railroad Company

10

11 ROBERT D. ROSENBERG, ESQ.

12 Slover & Loftus LLP

13 1224 17th Street Northwest

14 Washington, D.C. 20036

15 202-347-7170; rdr@sloverandloftus.com

16 On behalf of American Railcar Industries,

17 Inc.

18

19 -- continued --

20

21

22

Page 6

1 APPEARANCES (continued):

2 MARC J. GOLDSTEIN, ESQ.

3 Beveridge & Diamond PC

4 15 Walnut Street, Suite 400

5 Wellesley, Massachusetts 02481

6 781-416-5700; mgoldstein@bdlaw.com

7 On behalf of Union Tank Car Company

8

9 MATTHEW J. KALAS, ESQ.

10 Locke Lord LLP

11 111 South Wacker Drive

12 Chicago, Illinois 60606

13 312-443-0458; mkalas@lockelord.com

14 On behalf of Trinity Industries, Inc.

15

16 ANNA C. STOLARZ, ESQ.

17 Nossaman LLP

18 1666 K Street Northwest, Suite 500

19 Washington, D.C. 20006

20 202-887-1400; astolarz@nossaman.com

21 On behalf of GATX Corporation

22

1 P R O C E E D I N G S

2 PRESIDING JUDGE: We are on the record. I
3 am Administrative Law Judge John Dring, and today,
4 we have a status conference in Surface
5 Transportation Board Docket Number NOR 42144, which
6 is North American Freight Car Association, et al.,
7 versus Union Pacific Railroad Company.

8 Before I ask for an update on how you all
9 are doing, I want to state that I really hope to get
10 through all of our issues here today. If we can do
11 that, that's great. If we can't, I will schedule
12 another day, and we can come back. But I'm prepared
13 to go as long as it takes today, within reason.

14 Mr. Rosenthal, I understand that, from
15 last time we were here, you were going to look into
16 what it would take for you to get a subscription to
17 Railinc; is that correct?

18 MR. ROSENTHAL: Your Honor, there were
19 certain of our subpoena requests that encompassed
20 information that we thought we might be able to
21 obtain from a company called Railinc. There were
22 maybe four or parts of four out of our 13 requests.

Page 8

1 And that's right, what we agreed to do was
2 we agreed to take our requests and, number 1, try to
3 pair them down and make them more precise, and then
4 with regard to the requests that were for data that
5 we thought Railinc might have, we agreed to go to
6 Railinc and explore the possibility of obtaining the
7 data from them, and we have done that.

8 PRESIDING JUDGE: Are you able to obtain
9 data from them now?

10 MR. ROSENTHAL: We are able to obtain some
11 of the data from them now. Most of our requests,
12 the majority of our requests involve matters that
13 involve things that we can't get from Railinc. They
14 asked for leases from companies, e-mails, documents,
15 things that Railinc wouldn't have. There were
16 certain questions about mileages, loaded and empty
17 movements of cars. There were questions about data
18 that had actually been submitted to Railinc on
19 costs.

20 And we've determined that we can get some
21 of that fairly easily. Some of that, we are still
22 exploring the cost.

1 But Railinc was a portion of what --

2 PRESIDING JUDGE: Yes.

3 MR. ROSENTHAL: But we have done that. We
4 have pursued that. We have updated the other side
5 on our progress.

6 PRESIDING JUDGE: So when Mr. Wilcox
7 offered to supply, on behalf of the non-party tank
8 car owners, 15 years of data from Railinc, you could
9 get that?

10 MR. ROSENTHAL: I'm sorry, your Honor?

11 PRESIDING JUDGE: Mr. Wilcox offered to
12 provide you, on behalf of the tank car owners, 15
13 years of a certain subset of data, as I recall.

14 Isn't that correct, Mr. Wilcox?

15 MR. WILCOX: Yes, sir. One of the
16 discussions we had early on with --

17 PRESIDING JUDGE: Some of it was O&M. I
18 know that.

19 MR. WILCOX: Well, it was four Car Owners
20 who submit their data under Ex Parte 328, they
21 agreed that they would give their aggregated data to
22 UP that they submit to Railinc.

Page 10

1 PRESIDING JUDGE: Do you recall that,
2 Mr. Rosenthal?

3 MR. ROSENTHAL: There were a couple of
4 different types of data. So one of the things that
5 the car owners have is car movement data and tracks
6 cars when they go loaded and empty over the
7 railroads.

8 And what we have determined is that
9 Railinc can provide data going back to, I believe,
10 2009, and compile things like total loaded and empty
11 movements, and they can do that for a cost.

12 Railinc can also provide us from 2009
13 forward information on how much each of the tank car
14 owners has paid as a part of this program called
15 mileage equalization. So the payment amounts in
16 2009, they have those records.

17 The tank car owners also submit
18 information about the costs of essentially repairing
19 cars that they own, and that data is used as a part
20 of a different calculation. And Railinc can provide
21 that, again at a cost, going back to 2009.

22 There is also a broader request that we

1 have that doesn't just deal with loaded and empty
2 miles, but it's a request for data that we would use
3 to try to determine whether cars are moving to and
4 from repair shops. And that involves a larger set
5 of data, and we are still exploring the costs of
6 that.

7 So those --

8 PRESIDING JUDGE: But those data are
9 available through Railinc; is that correct?

10 MR. ROSENTHAL: Those data are available
11 through Railinc with the tank car owners'
12 permission, or if we have to, I suppose we can
13 subpoena Railinc and get it without them.

14 PRESIDING JUDGE: Well, if all goes well
15 for the non-party tank car owners today, would you,
16 within reason, allow Mr. Rosenthal to obtain that
17 information through Railinc? He says he needs your
18 permission.

19 MR. ROSENBERG: I think that we are
20 generally willing to do so. There is some concern
21 about conditions or circumstances, and we have had
22 some discussion back and forth and not fully

Page 12

1 resolved.

2 PRESIDING JUDGE: Do you think you could
3 possibly resolve this without my help? I suppose
4 anything is possible.

5 MR. ROSENBERG: Possibly.

6 PRESIDING JUDGE: Do you think it's
7 probable?

8 MR. ROSENBERG: We had an extended phone
9 conversation about -- conference call about this and
10 other matters last Wednesday, and if I'm not getting
11 out of line, I think we did make some progress. By
12 no means did we make complete progress.

13 I think our sense and I think UP's sense,
14 although Mike can and certainly will speak for
15 himself, is that if we could have 30 more days to
16 continue this process, on this and the other
17 matters, we hope to either resolve things or figure
18 out what it is we can't resolve.

19 PRESIDING JUDGE: Well, let me ask this
20 question: Rather than put you all on a Procrustean
21 bed, if I give you 30 more days, what's going to
22 happen?

1 MR. ROSENTHAL: I think a couple things
2 might happen, but I can't guarantee it.

3 One, there is some additional data from
4 Railinc we are trying to figure out whether we can
5 get it and what the cost will be.

6 PRESIDING JUDGE: Let me ask you
7 something. UP is a fairly good sized railroad with
8 substantial resources, and you've got a member on
9 the board who is your CIO.

10 These people over here, at varying points
11 in their pleadings, say that they would have to run
12 studies and spend upwards of a half a million
13 dollars just to answer one of your interrogatories.

14 I mean, there's a frame of reference we
15 are dealing with here, and you're not without
16 resources.

17 MR. ROSENTHAL: That's absolutely true,
18 your Honor. And if it costs some money to get the
19 data, we are certainly willing to go in that
20 direction.

21 However, if it costs a lot of money -- we
22 have a member on the Railinc board. Railinc is

Page 14

1 owned by other railroads. We don't get stuff for
2 free.

3 PRESIDING JUDGE: I understand that.
4 But "a lot of money" is a rather vague term at this
5 point to me. What is a lot of money to you? I
6 mean, is it conceivable, is it probable that, to
7 obtain the information that you seek from Railinc,
8 it's going to be prohibitively expensive for your
9 litigation budget or wherever this money comes from?

10 MR. ROSENTHAL: That's what we're trying
11 to figure out.

12 PRESIDING JUDGE: So you just don't know?

13 MR. ROSENTHAL: We don't know yet. Again,
14 we've had some conversations. We're trying to
15 communicate with Railinc about what exactly it is we
16 are looking for and what they can provide. I think
17 we will have a better idea soon, certainly within 30
18 days.

19 PRESIDING JUDGE: Well, these people over
20 here, tank car owners, you submit data; Railinc
21 collects data. Have you ever had to go to Railinc
22 to obtain data and be charged for that service, or

1 is this something new, in your experience?

2 MR. ROSENBERG: Railinc collects the data
3 pretty much. As a matter of course, if you have
4 a rail -- if you put a rail car on the network, data
5 gets reported.

6 PRESIDING JUDGE: That's automatic, isn't
7 it, pretty much?

8 MR. ROSENBERG: Right. And owners have
9 certain -- tank car owners have certain access to
10 information. Railroads have access to information.
11 Shippers have access to certain information. But
12 particularly in the case of an owner, if you're
13 accessing the data, there's a usage charge.
14 Railinc, you know, recoups its costs. It doesn't do
15 things for free.

16 PRESIDING JUDGE: But we have no reason at
17 this point in this proceeding to believe, perhaps,
18 that there is an unreasonable cost associated with
19 Mr. Rosenthal's information that he seeks to obtain
20 from Railinc? Is that a stretch?

21 MR. ROSENTHAL: I have no reason to think
22 it's unreasonable. It's a matter of trying to

Page 16

1 figure out what it costs.

2 As Mr. Rosenberg said, there's a lot of
3 data that's transmitted automatically. They are
4 very large databases. My understanding is this
5 isn't something that Railinc normally does. They
6 collect the information and use it for various
7 purposes.

8 PRESIDING JUDGE: For Ex Parte 328 and
9 other matters.

10 MR. ROSENTHAL: For all sorts of things,
11 but they don't generally, you know, compile
12 information and turn it over to people.

13 PRESIDING JUDGE: I understand.

14 MR. ROSENTHAL: So we are trying to work
15 within that framework and figure it out.

16 I think there is also a possibility, but
17 it will depend on -- we had an informative call on
18 Wednesday dealing with a lot of the requests that
19 have nothing to do with Railinc, that have to do
20 with documents that Railinc doesn't have, Union
21 Pacific doesn't have. And we are trying to find
22 ways of minimizing the costs on the tank car owners.

1 PRESIDING JUDGE: And paring down,
2 narrowly tailoring the requests?

3 MR. ROSENTHAL: When we are here on the
4 23rd, one of the things I agreed to do was by the
5 1st of July come up with a pared-down list of
6 requests, because as you pointed out they were
7 somewhat broad. We've pared down in terms of date
8 range. Rather than asking for all documents
9 relating to an issue, we've tried to focus more
10 specifically on what it is we are looking for.

11 So we have tried to do that. We have
12 provided a copy -- actually, it was more of a memo,
13 because they wanted us to explain why we needed the
14 information, whether we had looked other places and
15 all that. So we provided that. We had an
16 informative call on Wednesday.

17 PRESIDING JUDGE: Who was on that call?
18 Were the non-party tank car owners and the
19 Complainants involved in that?

20 MR. ROSENTHAL: It was just counsel for
21 the non-party tank car owners.

22 PRESIDING JUDGE: So you are trying to

Page 18

1 work it out with the non-parties here. What about
2 the Complainants?

3 MR. ROSENTHAL: One of the things we have
4 talked about, I think, briefly during the hearing is
5 that the main reason why we have brought in the
6 non-parties is because we've gotten almost no
7 discovery at all from the associations that have
8 brought this case and, at least to this point, very
9 little other than a lot of lease agreements from
10 these individual shippers that are involved.

11 And we are trying to figure out, how do we
12 get information from the tank car owners, from the
13 shippers about what they're claiming our rules are
14 going to do. And so -- I'm sorry.

15 PRESIDING JUDGE: Let me interrupt just
16 for a second. I'm sorry. I want to be clear on
17 this, that Mr. Rosenberg said that, if I give you 30
18 more days, you might be able to resolve all of these
19 conflicts with the non-party tank car owners. Is
20 that correct? Is that correct?

21 MR. ROSENBERG: That's what I said, and
22 yes.

1 PRESIDING JUDGE: All right. So what
2 would remain, then? I'm perfectly willing to do
3 that, because as I said the last time, I think that
4 the public is well served by as complete a record as
5 possible here.

6 And if I just abbreviate this proceeding
7 by summarily going through all of the requests and
8 either granting or denying them, that doesn't
9 necessarily help the record. And I want the Board
10 to have as complete a record as possible, because it
11 seems to me that this case has substantial impact on
12 the industry.

13 Now, we still have to deal with the
14 Complainants. Mr. Wilcox, have you not had any
15 conversation since the last time we met here to try
16 to narrow the scope or come to agreement on whether
17 you would be amenable to providing Mr. Rosenthal
18 with some or all of the documents that he's
19 requesting?

20 MR. WILCOX: Well, there's -- I will lead
21 off, and then Mr. Donovan is going to speak as well.

22 In terms of UP's motion to compel, our

Page 20

1 view is that there is no --

2 PRESIDING JUDGE: You don't have the
3 documents. That's what you're going to say; right?

4 MR. WILCOX: Well, the documents, yes,
5 they are not in our possession, the associations'
6 possession and control.

7 PRESIDING JUDGE: So you can't get them
8 from your members. Is there anything else?

9 MR. WILCOX: We have two outstanding
10 motions that UP filed or a combined motion against
11 Poet, the Poet entities and Cargill. There have not
12 been discussions with UP about those issues, and the
13 reason is that a couple of those issues deal with
14 sort of the broader issues that cover the
15 waterfront, and that is, whether information from
16 other railroads is relevant and then whether the
17 costs of individual car owners is relevant. And our
18 position is that they are not.

19 Poet's motion to compel is a little more
20 narrowly tailored. Cargill has more issues --

21 PRESIDING JUDGE: But Cargill -- this
22 morning, I read what you sent over yesterday. And

1 it seems like Cargill has acceded to the requests on
2 a lot of these, although what they're saying is
3 well, we didn't go to an untoward amount of work and
4 activity to find this information, but based on our
5 best efforts we have found nothing or something to
6 that effect.

7 Is that correct? That's what I read this
8 morning.

9 MR. MONROE: Well, your Honor, I'm not
10 sure that's entirely correct.

11 PRESIDING JUDGE: There are some that say
12 something to that effect, others that say go take a
13 height; right?

14 MR. MONROE: No, we didn't say, Cargill
15 didn't say go take a hike. Cargill had -- believed
16 it had access to some of the data. In fact, a lot
17 of the data that was requested, Cargill believed it
18 had access to in a database that -- because it has
19 an outside vendor who keeps track of some of the
20 cars and does a lot of this stuff.

21 And when we responded, we thought -- well,
22 number 1, we can't go back to 1987 or 2001. The

Page 22

1 database started some time around 2007.

2 So generally, on the understanding that we
3 would be able to query this database and pull up a
4 lot of this data at a reasonable cost, we agreed to
5 provide a lot of the data, not all of the data,
6 particularly not things that were -- for instance,
7 if you've looked at the request at all, there are
8 requests asking for maintenance and --

9 PRESIDING JUDGE: I've read them, yes.

10 MR. MONROE: There are probably hundreds
11 of individual items requested, you know, how much
12 this cost, what that cost, whatever.

13 PRESIDING JUDGE: Yes.

14 MR. MONROE: That would be -- one, we
15 think that's totally irrelevant. But two, the cost
16 of trying to find that data, some of which might be
17 in that database but a lot of it are going to be in
18 invoices and boxes of stuff, that's just
19 prohibitively expensive to do.

20 PRESIDING JUDGE: I agree with that.

21 MR. MONROE: Now, the problem for Cargill,
22 and maybe it's Cargill's problem, is when it agreed

1 that it would produce what it can from this
2 database, it believed it could do that fairly
3 easily, not just pushing a button, but it would cost
4 them money.

5 But as it's dealt with its vendor, its
6 vendor is now telling it well, no, those aren't
7 standard reports, we have to write a program to find
8 these data points and match them up with this data
9 point. And they're quoting anywhere from \$10,000,
10 which is probably acceptable for certain data, but
11 for some data, they are saying it's 50- to 100,000.
12 And that's a lot of money.

13 PRESIDING JUDGE: Well, Mr. Rosenthal
14 would expect you to foot that; right?

15 MR. MONROE: I assume so.

16 PRESIDING JUDGE: What if Mr. Rosenthal
17 agreed to pay for that? I'm not spending his money
18 yet, but I'm just asking the question.

19 MR. MONROE: Well, let me put it this way:
20 We do have objections based upon principle.

21 PRESIDING JUDGE: Yes, I know.

22 MR. MONROE: But the biggest principle

Page 24

1 really is the burden and the cost. I mean, we don't
2 think, for instance, maintenance costs and all these
3 other things are relevant. We just don't think
4 that's true.

5 But so long as we can protect the data
6 with confidentiality, which I have no doubt that we
7 can do, it's really what's in that database, it's
8 the cost of trying to get stuff out that he needs or
9 in the way that he wants it that are not standard
10 records that we normally get.

11 PRESIDING JUDGE: In cases in which you
12 would have to develop a unique study to respond to
13 Mr. Rosenthal's questions, if he had to pay for some
14 or all of it, it would probably focus the mind
15 wonderfully. In my experience, any time I have to
16 pull out my wallet, I do think about what I'm doing.

17 So Mr. Rosenthal, do you care to comment
18 on any of that?

19 MR. ROSENTHAL: A couple of things, your
20 Honor. First, there are a couple of outstanding
21 discovery issues with regard to Cargill and Poet.
22 What you received on Friday, that we filed on Friday

1 was a motion to compel responses to certain
2 admissions, nothing to do with costs, expenses. We
3 said have you ever asked other railroads to quote
4 rates with mileage allowances.

5 And what they did with respect to UP was
6 they asked somebody. They said no, I can't
7 remember. Like you say, it was pretty simple. All
8 we're saying is well, gosh, when you're asking them
9 about UP, can you ask them about other railroads,
10 too.

11 So there's that motion out there. They're
12 standing on the principle that information about
13 other railroads is irrelevant.

14 PRESIDING JUDGE: You know Mr. Wilcox
15 offered a stipulation some time ago that is the
16 inverse of that, and that is, I believe, it
17 addressed whether other railroads are following your
18 lead in the billing process. Is that correct?

19 Mr. Wilcox, you did that, didn't you?

20 MR. MORENO: I will address that, your
21 Honor. The associations offered stipulation to the
22 point that you're raising there, and we reached

Page 26

1 agreement with UP on that stipulation. I see no
2 reason why the stipulation wouldn't also or couldn't
3 also apply to Cargill and Poet or why, with that
4 stipulation, that such discovery would be necessary.

5 PRESIDING JUDGE: That sounds reasonable
6 to me. I mean, that's why I brought it up.

7 MR. ROSENTHAL: There's a couple different
8 stipulations. What they agreed to stipulate was
9 that after Union Pacific imposed charges to move
10 cars to shops, other railroads did the same.

11 So first, that's different from whether
12 they have asked for mileage equalization. There are
13 two issues here. There's movements to shops, and
14 there's mileage allowance payments.

15 PRESIDING JUDGE: I understand.

16 MR. ROSENTHAL: So the stipulation --
17 those are different issues.

18 PRESIDING JUDGE: Could you stipulate --
19 Complainants, could you stipulate to Mr. Rosenthal's
20 point here, present point?

21 MR. MORENO: I'm not sure I understand the
22 difference, because I thought we did have some sort

1 of stipulation.

2 MR. ROSENTHAL: The present point is
3 whether Cargill -- and we have answers from Poet,
4 whether Cargill has asked railroads other than Union
5 Pacific to ship under rates that include payment of
6 mileage allowances or whether they -- aside from
7 asking whether they've shipped under rates.

8 PRESIDING JUDGE: What was Poet's
9 response?

10 MR. ROSENTHAL: He marked it as
11 confidential. If we're comfortable --

12 MR. WILCOX: That's fine.

13 MR. ROSENTHAL: They said no, they said
14 they've never asked Union Pacific and never asked
15 other railroads. Is that fair, Tom?

16 MR. WILCOX: The questions were have you
17 ever, and we said we don't know if we've ever, if an
18 employee has, but the employees who are responsible
19 for transportation didn't recall doing so.

20 PRESIDING JUDGE: And that was Poet's
21 response?

22 MR. WILCOX: There are two Poet entities,

Page 28

1 yes. We are a lot smaller than Cargill.

2 PRESIDING JUDGE: I understand.

3 MR. ROSENBERG: For the non-party tank car
4 owners, I don't believe that we've signed the
5 protective order.

6 PRESIDING JUDGE: So we shouldn't be
7 discussing this.

8 MR. ROSENBERG: Well, if you want us to
9 get out of the room.

10 PRESIDING JUDGE: Let's not discuss
11 anything that's confidential now.

12 MR. ROSENTHAL: Sure. But again, this
13 isn't a matter of -- when we're asking the tank
14 car -- I'm sorry. When we're asking the association
15 Complainants, we've asked them general questions
16 about the way they say the world works. When we're
17 asking Poet and Cargill, what we're trying to figure
18 out is these are parties who have sued us, who are
19 seeking damages, and we're trying to figure out
20 exactly what they've done and what they haven't
21 done.

22 It's a simple request for admission. It

1 really doesn't cost anything other than asking the
2 question to the same employee, I would assume, that
3 they've already asked.

4 PRESIDING JUDGE: Well, if you aren't all
5 really engaging in the types of substantive
6 discussions that Mr. Rosenberg is doing on behalf of
7 his clients, maybe I should just go through all of
8 the requests that pertain to the Complainants, and
9 we can get that out of here today, and we will see
10 what Mr. Rosenberg has in 30 days.

11 What do you think of that?

12 MR. ROSENTHAL: So what you are
13 suggesting --

14 PRESIDING JUDGE: I will give you as much
15 time as you need if I believe that you are making
16 progress, but I am not going to just sit around and
17 do nothing if you're sitting around not being
18 constructive, all of you.

19 MR. ROSENTHAL: I mean, I would prefer to
20 have my client here when we actually have a hearing
21 on the motions to compel.

22 PRESIDING JUDGE: All right. We can

Page 30

1 reschedule it, then. Because in all honesty, this
2 was scheduled as a status conference, and I don't
3 want to sandbag anyone. So we can do that, if you
4 think that's where we are. Is that where we are?
5 Mr. Donovan?

6 MR. DONOVAN: Well, it kind of depends
7 upon who you are talking about. We have Union
8 Pacific on the one hand and the non-party car owners
9 on the other.

10 PRESIDING JUDGE: Well, non-parties, I
11 think we are sort of carving them out. It looks
12 like they're going to get something done. I'm
13 giving Mr. Rosenberg, on his assertion that he can
14 get something done in 30 days, I'm going to give him
15 30 days to get his clients out of this.

16 MR. DONOVAN: Great. In the meantime --

17 PRESIDING JUDGE: Right, Mr. Rosenberg?

18 MR. ROSENBERG: Yes, your Honor. I'm
19 going to need some cooperation, but --

20 PRESIDING JUDGE: I certainly hope you get
21 it.

22 MR. ROSENTHAL: We are interested in

1 getting the information; we're not interested in
2 prolonging this.

3 PRESIDING JUDGE: All right. Now we have
4 to deal with Mr. Donovan and his group.

5 MR. DONOVAN: Your Honor, the documents
6 that Mr. Rosenthal has turned over at this point on
7 a rolling basis, and we thank him for that,
8 demonstrate, without getting into any protective
9 order question, the economic impacts of what's going
10 on right now is enormous. I mean enormous.

11 PRESIDING JUDGE: Yes. I understand that.

12 MR. DONOVAN: Therefore, the Complainants
13 here, who are the ones -- not the trade
14 associations, obviously, but their members are the
15 ones suffering that enormous economic impact.

16 It is also true that historically, in my
17 experience, and, I think, other counsel's
18 experience, the idea that the Surface Transportation
19 Board is going to award reparations at the end of
20 all of this to make them whole is, at best,
21 problematic. That has not been the normal course of
22 affairs.

Page 32

1 So we can also say, without any question,
2 that what's going on here among the non-parties and
3 the UP doesn't have a thing to do with our direct
4 evidence.

5 What we need is we need the documents that
6 are being produced, and we need to begin noticing
7 depositions to follow up on those documents. When
8 we do that -- and I think we can do that on a fairly
9 short time frame with cooperation, and I'm sure that
10 will be forthcoming from the UP. We can depose
11 those people. We have the documents that they have
12 produced that will be exhibits to those depositions.
13 And we will file our direct evidence.

14 Now, if this other stuff is going on,
15 that's fine, but it doesn't impact us in our direct
16 evidence case. If something happens six months from
17 now and Mr. Rosenthal says he needs more discovery
18 against us for whatever reason, discovery is
19 continuing. We will be happy to comply to the
20 extent that it's authorized under the law.

21 But in the meantime, there is no reason in
22 the world for us to be standing around with our feet

1 in concrete paying enormous amounts of money that we
2 are likely never to see again and not move forward.

3 PRESIDING JUDGE: So your depositions, are
4 they scheduled?

5 MR. DONOVAN: No, we haven't noticed them
6 yet, because we didn't want to do that without the
7 courtesy of telling you that we were going to do it.

8 So that's my message here today, and I'm
9 speaking for the Complainants when I say that.

10 PRESIDING JUDGE: Okay. Mr. Rosenberg has
11 30 days to get his house in order. Why don't we
12 just all come back in 30 days, and if you, the
13 Complainants, and Mr. Rosenthal, haven't reached
14 agreement, I will go through these one by one and
15 settle it.

16 How does that sound?

17 MR. DONOVAN: What is 30 days from today?

18 PRESIDING JUDGE: Well, we can take a
19 look.

20 MR. DONOVAN: I have a trial from the 26th
21 of September on.

22 PRESIDING JUDGE: Just hold on. That puts

Page 34

1 you on fair notice that if you don't want me
2 deciding your business, you can go ahead and try to
3 work it out among yourselves.

4 MR. DONOVAN: Mr. Wilcox has asked for the
5 courtesy of a brief caucus.

6 PRESIDING JUDGE: Sure. We are off the
7 record.

8 (Discussion off the record.)

9 PRESIDING JUDGE: We are back on the
10 record here.

11 MR. DONOVAN: A couple clarifying points,
12 and then we will move on, and I will graciously
13 accept your offer -- or I will accept your gracious
14 offer in 30 seconds.

15 PRESIDING JUDGE: All right. How about
16 graciously accepting my gracious offer?

17 MR. DONOVAN: Let's not go too far down
18 that road.

19 Your Honor, it is our position, I'm sure
20 you know this, that under 11.14.22, 26, 27, and 30
21 of the Code of Federal Regulations, the motions to
22 compel against members of trade associations as

1 motions to compel simply cannot stand. They can't
2 be raised.

3 The Cargill and Poet issues are separate.
4 That's not -- I'm not speaking for them. So they
5 might have motion to compel issues to deal with in
6 30 days. I don't see us having any to deal with in
7 30 days.

8 PRESIDING JUDGE: Okay.

9 MR. DONOVAN: So I am happy to come back
10 here in 30 days and talk about deposition schedules,
11 which we will hopefully have ironed out before then
12 and be ready to move on, and to the extent that we
13 have motions to compel from and against other
14 parties, that's fine. They can deal with that. But
15 the Complainants want to be ready to go forward so
16 we can develop our evidence and file our case.

17 Thank you, your Honor.

18 PRESIDING JUDGE: Thank you.

19 Mr. Rosenthal, I believe I said the last time we
20 were here essentially what Mr. Donovan has just
21 said, that I can't grant motions to compel against
22 the Complainants when they don't have the

Page 36

1 information, they don't have what you're seeking,
2 their members have that. I can't reach their
3 members through a motion to compel. Okay? So
4 let's -- go ahead.

5 MR. ROSENTHAL: Oh, no, that's fine. If
6 we want to schedule something, again, we have our
7 views of the law, and you've made your view clear.

8 Our concern is that, we understand that
9 they want to go ahead and prepare their evidence and
10 file their opening evidence. What we are looking
11 for is on the same time frame that the Board set up
12 for discovery, that we get to conduct our discovery,
13 too.

14 You mentioned sandbagging earlier. That's
15 exactly what our concern here is. They, again, have
16 their view of the case, and Mr. Donovan thinks he's
17 going to win. They will either be refunded or
18 they're owed money. We don't think that's at all
19 true. We think our charges are lawful. We think we
20 will win.

21 PRESIDING JUDGE: That's not before me. I
22 understand. That's parenthetical.

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

6 PRESIDING JUDGE: I can't help you with
7 that.

8 MR. ROSENTHAL: I understand.

9 PRESIDING JUDGE: I would love to help
10 you. I don't mind getting down into the weeds with
11 folks, but I can't do this.

12 MR. ROSENTHAL: I understand. And you
13 will have your ruling, and we will take it, and we
14 will argue what we have to do to the Surface
15 Transportation Board, if we think that their
16 precedent applies differently to this situation.

17 PRESIDING JUDGE: I will give you my
18 ruling today on that one.

19 MR. ROSENTHAL: No, we are willing to --

20 PRESIDING JUDGE: Do you want it today, or
21 do you want it in 30 days?

22 MR. ROSENTHAL: No, I would rather have it

Page 38

1 in 30 days, because I think having the motions out
2 there and having Cargill and Poet out there will
3 help us, perhaps, come to some sort of decision
4 without you having to rule at all.

5 PRESIDING JUDGE: Okay. They still want
6 to talk.

7 MR. DONOVAN: I'm happy to talk, your
8 Honor, but I can't talk for people I don't
9 represent.

10 PRESIDING JUDGE: I understand that, and I
11 think he does, too. So maybe he has got other ideas
12 that he hasn't discussed with you. Maybe you can
13 get something positive out of this for the record.

14 MR. ROSENTHAL: Again, one of the things
15 that we were able to do is we were able to reach a
16 stipulation -- despite the associations saying they
17 can't do anything, we were able to reach a
18 stipulation on an issue.

19 The reason why we're seeking discovery
20 from non-parties is because they're the ones who
21 actually have the information.

22 PRESIDING JUDGE: I understand that. And

1 Mr. Wilcox had a series of stipulations that I
2 thought made perfect sense.

3 MR. ROSENTHAL: I don't think so. I think
4 they were our stipulations.

5 PRESIDING JUDGE: Mr. Wilcox, did you have
6 stipulations, or were they his?

7 MR. WILCOX: I believe it was a
8 combination of Mr. Rosenthal and Mr. Moreno here. I
9 was an interested observer.

10 MR. MORENO: And I can say, we have other
11 stipulations that we have offered, but we haven't
12 been able to reach agreement on them.

13 PRESIDING JUDGE: That's why I've noted
14 them in the filings. I understand that.

15 What's wrong with those stipulations?
16 Just like the O&M stipulation. That was one of
17 them.

18 MR. ROSENTHAL: There were a number of
19 stipulations that we think are no problem and that
20 we think would resolve our need to conduct
21 discovery.

22 PRESIDING JUDGE: All right. You just

Page 40

1 work it out with him in the next 30 days, then;
2 right?

3 MR. ROSENTHAL: What we are also prepared
4 to do is to try to work with the non-parties and
5 reach stipulations with them, too.

6 PRESIDING JUDGE: We have already been
7 there. I understand that. I am not talking about
8 the non-parties. We wrapped that one up, at least
9 until we meet again in 30 days.

10 What I am talking about is the
11 Complainants and whether you can still work with
12 them on stipulations that make sense. Even though
13 apparently the Complainants don't remember what I
14 just read yesterday about their stipulations, they
15 had a couple of them that I thought made sense.

16 MR. MORENO: Are you referring to the ones
17 we have not reached agreement on?

18 PRESIDING JUDGE: Yes.

19 MR. MORENO: And some of those
20 stipulations would also obviate the need for some of
21 the discovery of the non-parties.

22 PRESIDING JUDGE: Yes, I understand. I

1 liked them. I did. I liked them.

2 MR. MORENO: And they were made open.

3 PRESIDING JUDGE: You should talk about
4 that. I mean, look, you may get nothing. They've
5 offered you stipulations; take their stipulations.
6 Think about it.

7 MR. ROSENTHAL: We will, your Honor. I
8 think it's worth discussing stipulations. I agree.

9 PRESIDING JUDGE: Okay.

10 MR. ROSENTHAL: Procedurally, just so I am
11 coming in prepared when we have our meeting in 30
12 days, if we are unable to work out matters fully
13 with the tank car owners, I would rather have before
14 you a set of our refined requests. I know you view
15 the originals as overly broad.

16 PRESIDING JUDGE: That's fine.

17 MR. ROSENTHAL: I just want to make sure
18 if we are here in 30 days to argue about the
19 subpoenas, that I can get to you and to them --

20 PRESIDING JUDGE: Clean it up. Get me
21 something current so I don't have -- it's kind of
22 silly if you've had extensive discussions that have

Page 42

1 narrowed the scope and I am working off a document
2 that is old and irrelevant. I don't want to do
3 that. You're absolutely right. So get me something
4 that accurately reflects the current set of
5 conditions before me when we meet again.

6 MR. ROSENTHAL: Good. Thank you.

7 PRESIDING JUDGE: Okay? All right.

8 Are we ready to schedule that? What's
9 September 22nd look like, the first day of autumn?

10 MR. DONOVAN: September 21st would be my
11 birthday, your Honor.

12 PRESIDING JUDGE: Do you want to do it on
13 your birthday? We can have a little cake and ice
14 cream.

15 MR. DONOVAN: Absolutely. That is 30 days
16 from now.

17 MR. GOLDSTEIN: Judge, I apologize. I'm
18 coming in from Boston, and I may have to be in D.C.
19 anyway on the 19th and 20th. So notwithstanding not
20 wanting to celebrate Mr. Donovan's birthday --

21 PRESIDING JUDGE: Well, we could drag it
22 out. Do you want to do the 19th or the 20th?

1 MR. WILCOX: How about the 20th? It's a
2 Tuesday.

3 PRESIDING JUDGE: All right. We will do
4 the 20th.

5 MR. GOLDSTEIN: Thank you, Judge.

6 PRESIDING JUDGE: 10:00 a.m.

7 And you bring your folks, Mr. Rosenthal.
8 We're going to do this. Okay?

9 MR. ROSENTHAL: That sounds good, your
10 Honor.

11 PRESIDING JUDGE: We're going to settle
12 it. It's been dragging on for too long. We're kind
13 of used to doing things faster here at the FERC.
14 All right?

15 MR. ROSENTHAL: Not one of those Galapagos
16 turtles; right?

17 PRESIDING JUDGE: That's right.

18 Anything else, folks? I appreciate it.
19 We are off the record.

20 (Whereupon, at 10:41 a.m., the status
21 conference was concluded.)
22

Page 44

1 CERTIFICATE OF NOTARY PUBLIC & REPORTER

2

3 I, SARA WICK, the officer before whom the foregoing
4 deposition was taken, do hereby certify that the
5 witness whose testimony appears in the foregoing
6 deposition was duly sworn; that the testimony of
7 said witness was taken in shorthand and thereafter
8 reduced to typewriting by me or under my direction;
9 that said deposition is a true record of the
10 testimony given by said witness; that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to the action in which this deposition was
13 taken; and, further, that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties hereto, nor financially or otherwise
16 interested in the outcome of this action.

17

18

19

20

Notary Public in and for the

21

District of Columbia

22

Commission Expires: NOVEMBER 14, 2017

A a.m 2:5 43:6,20 abbreviate 19:6 able 7:20 8:8,10 18:18 22:3 37:3 38:15,15,17 39:12 absolutely 13:17 42:3,15 acceded 21:1 accept 34:13,13 acceptable 23:10 accepting 34:16 access 15:9,10,11 21:16,18 accessing 15:13 accurately 42:4 action 44:12,16 activity 21:4 additional 13:3 address 25:20 addressed 25:17 Administrative 1:18 7:3 admission 28:22 admissions 25:2 affairs 31:22 aggregated 9:21 ago 25:15 agree 22:20 41:8 agreed 8:1,2,5 9:21 17:4 22:4,22 23:17 26:8 agreement 19:16 26:1 33:14 39:12 40:17 agreements 18:9 ahead 34:2 36:4,9 al 7:6 allow 11:16 allowance 26:14 allowances 25:4 27:6 amenable 19:17 America 1:2 American 1:3,4 2:14 3:17 5:16 7:6 amount 21:3 amounts 10:15 33:1 ANNA 6:16 answer 13:13 answers 27:3 anyway 42:19 apologize 42:17 apparently 40:13 APPEARANCES 3:1 4:1 5:1 6:1	appears 44:5 applies 37:16 apply 26:3 appreciate 43:18 argue 37:14 41:18 aside 27:6 asked 8:14 25:3,6 26:12 27:4,14,14 28:15 29:3 34:4 asking 17:8 22:8 23:18 25:8 27:7 28:13,14,17 29:1 assertion 30:13 associated 15:18 association 1:3 7:6 28:14 associations 18:7 25:21 31:14 34:22 37:5 38:16 associations' 20:5 assume 23:15 29:2 astolarz@nossam... 6:20 attorney 44:14 August 1:14 2:2 authorized 32:20 automatic 15:6 automatically 16:3 autumn 42:9 available 11:9,10 Avenue 3:4 award 31:19 B back 7:12 10:9,21 11:22 21:22 33:12 34:9 35:9 based 21:4 23:20 basis 31:7 bed 12:21 behalf 2:6,14 3:8,16 4:8,18 5:8,16 6:7 6:14,21 9:7,12 29:6 believe 10:9 15:17 25:16 28:4 29:15 35:19 39:7 believed 21:15,17 23:2 best 21:5 31:20 better 14:17 Beveridge 6:3 biggest 23:22 billing 25:18 bind 37:4 birthday 42:11,13	42:20 bit 37:4 board 1:1 7:5 13:9 13:22 19:9 31:19 36:11 37:15 Boston 42:18 boxes 22:18 brief 34:5 briefly 18:4 bring 43:7 broad 17:7 41:15 broader 10:22 20:14 brought 18:5,8 26:6 budget 14:9 burden 24:1 Burling 5:4 business 34:2 button 23:3 C C 6:16 7:1 cake 42:13 calculation 10:20 call 12:9 16:17 17:16,17 called 7:21 10:14 car 1:2 6:7 7:6 9:8 9:12,19 10:5,5,13 10:17 11:11,15 14:20 15:4,9 16:22 17:18,21 18:12,19 20:17 28:3,14 30:8 41:13 care 24:17 Cargill 1:7 4:18 20:11,20,21 21:1 21:14,15,17 22:21 24:21 26:3 27:3,4 28:1,17 35:3 38:2 Cargill's 22:22 cars 8:17 10:6,19 11:3 21:20 26:10 carving 30:11 case 15:12 18:8 19:11 32:16 35:16 36:16 cases 24:11 caucus 34:5 celebrate 42:20 certain 7:19 8:16 9:13 15:9,9,11 23:10 25:1 certainly 12:14 13:19 14:17 30:20	CERTIFICATE 44:1 certify 44:4 charge 15:13 charged 14:22 charges 26:9 36:19 Chemistry 1:5 3:17 Chicago 6:12 Chlorine 1:4 3:8 CIO 13:9 circumstances 11:21 claiming 18:13 clarifying 34:11 Clean 41:20 clear 18:16 36:7 client 29:20 clients 29:7 30:15 Code 34:21 collect 16:6 collects 14:21 15:2 Columbia 44:21 combination 39:8 combined 20:10 come 7:12 17:5 19:16 33:12 35:9 38:3 comes 14:9 comfortable 27:11 coming 41:11 42:18 comment 24:17 Commission 2:4 44:22 communicate 14:15 companies 8:14 company 1:8 5:9 6:7 7:7,21 compel 19:22 20:19 25:1 29:21 34:22 35:1,5,13,21 36:3 compile 10:10 16:11 Complainant 2:14 3:8 4:18 Complainants 1:7 3:16 4:8 17:19 18:2 19:14 26:19 28:15 29:8 31:12 33:9,13 35:15,22 40:11,13 complete 12:12 19:4 19:10 comply 32:19 conceivable 14:6 concern 11:20 36:8 36:15 concluded 43:21	concrete 33:1 conditions 11:21 42:5 conduct 36:12 39:20 conference 1:11 2:1 7:4 12:9 30:2 43:21 confidential 27:11 28:11 confidentiality 24:6 conflicts 18:19 Connecticut 3:4 constructive 29:18 continue 12:16 continued 2:17 3:1 3:19 4:1,21 5:1,19 6:1 continuing 32:19 control 20:6 conversation 12:9 19:15 conversations 14:14 cooperation 30:19 32:9 copy 17:12 Corporation 6:21 correct 7:17 9:14 11:9 18:20,20 21:7,10 25:18 cost 8:22 10:11,21 13:5 15:18 22:4 22:12,12,15 23:3 24:1,8 29:1 costs 8:19 10:18 11:5 13:18,21 15:14 16:1,22 20:17 24:2 25:2 Council 1:5 3:17 counsel 17:20 44:11 44:14 counsel's 31:17 couple 10:3 13:1 20:13 24:19,20 26:7 34:11 40:15 course 15:3 31:21 courtesy 33:7 34:5 cover 20:14 Covington 5:4 cream 42:14 CRR 1:22 current 41:21 42:4 D D 5:11 7:1 D.C 1:13 2:3,11 3:6
---	--	--	---	---

3:14 4:6,16 5:6,14 6:19 42:18 d/b/a 1:5 4:9 damages 28:19 data 8:4,7,9,11,17 9:8,13,20,21 10:4 10:5,9,19 11:2,5,8 11:10 13:3,19 14:20,21,22 15:2 15:4,13 16:3 21:16,17 22:4,5,5 22:16 23:8,8,10 23:11 24:5 database 21:18 22:1 22:3,17 23:2 24:7 databases 16:4 date 17:7 DAVID 4:12 day 7:12 42:9 days 12:15,21 14:18 18:18 29:10 30:14 30:15 33:11,12,17 35:6,7,10 37:21 38:1 40:1,9 41:12 41:18 42:15 deal 11:1 19:13 20:13 31:4 35:5,6 35:14 dealing 13:15 16:18 dealt 23:5 deciding 34:2 decision 38:3 demonstrate 31:8 denying 19:8 depend 16:17 depends 30:6 depose 32:10 deposition 35:10 44:4,6,9,12 depositions 32:7,12 33:3 despite 38:16 determine 11:3 determined 8:20 10:8 develop 24:12 35:16 Diamond 6:3 difference 26:22 different 10:4,20 26:7,11,17 differently 37:16 direct 32:3,13,15 direction 13:20 44:8 discovery 18:7 24:21 26:4 32:17 32:18 36:12,12	38:19 39:21 40:21 discuss 28:10 discussed 38:12 discussing 28:7 41:8 discussion 11:22 34:8 discussions 9:16 20:12 29:6 41:22 District 44:21 dmonroe@gkgla... 4:17 Docket 1:4 7:5 document 42:1 documents 8:14 16:20 17:8 19:18 20:3,4 31:5 32:5,7 32:11 doing 7:9 24:16 27:19 29:6 43:13 dollars 13:13 Donovan 3:2,3 19:21 30:5,6,16 31:4,5,12 33:5,17 33:20 34:4,11,17 35:9,20 36:16 38:7 42:10,15 Donovan's 42:20 doubt 24:6 drag 42:21 dragging 43:12 Dring 1:17 2:2 7:3 Drive 6:11 duly 44:6 E E 7:1,1 e-mails 8:14 earlier 36:14 early 9:16 easily 8:21 23:3 economic 31:9,15 effect 21:6,12 efforts 21:5 either 12:17 19:8 36:17 employed 44:11,14 employee 27:18 29:2 44:14 employees 27:18 empty 8:16 10:6,10 11:1 encompassed 7:19 Energy 2:3 engaging 29:5 enormous 31:10,10 31:15 33:1	entirely 21:10 entities 20:11 27:22 equalization 10:15 26:12 ESQ 2:8 3:2,11 4:2 4:12 5:2,3,11 6:2 6:9,16 essentially 10:18 35:20 et 7:6 Ethanol 1:5,6 4:8,9 evidence 32:4,13,16 35:16 36:9,10 37:2 Ex 9:20 16:8 exactly 14:15 28:20 36:15 exhibits 32:12 expect 23:14 expenses 25:2 expensive 14:8 22:19 experience 15:1 24:15 31:17,18 Expires 44:22 explain 17:13 explore 8:6 exploring 8:22 11:5 extended 12:8 extensive 41:22 extent 32:20 35:12 F fact 21:16 fair 27:15 34:1 fairly 8:21 13:7 23:2 32:8 far 34:17 faster 43:13 Federal 2:3 34:21 feet 32:22 FERC 43:13 Fertilizer 1:4 3:16 figure 12:17 13:4 14:11 16:1,15 18:11 28:17,19 file 32:13 35:16 36:10 37:2 filed 20:10 24:22 filings 39:14 financially 44:15 find 16:21 21:4 22:16 23:7 fine 27:12 32:15 35:14 36:5 41:16 first 2:4 24:20 26:11	42:9 focus 17:9 24:14 folks 37:11 43:7,18 follow 32:7 following 25:17 foot 23:14 foregoing 44:3,5 forth 11:22 forthcoming 32:10 forward 10:13 33:2 35:15 found 21:5 four 7:22,22 9:19 frame 13:14 32:9 36:11 framework 16:15 free 14:2 15:15 Freight 1:2 7:6 Friday 24:22,22 Fuel 1:3 2:14 fully 11:22 41:12 further 44:13 G G 7:1 Galapagos 43:15 GATX 6:21 general 28:15 generally 11:20 16:11 22:2 getting 12:10 31:1,8 37:10 give 9:21 12:21 18:17 29:14 30:14 37:17 given 44:10 giving 30:13 GKG 4:3,13 go 7:13 8:5 10:6 13:19 14:21 21:3 21:12,15,22 29:7 33:14 34:2,17 35:15 36:4,9 goes 11:14 going 7:15 10:9,21 12:21 14:8 18:14 19:7,21 20:3 22:17 29:16 30:12 30:14,19 31:9,19 32:2,14 33:7 36:17 43:8,11 GOLDSTEIN 6:2 42:17 43:5 good 13:7 42:6 43:9 gosh 25:8 gotten 18:6	gracious 34:13,16 graciously 34:12,16 grant 35:21 granting 19:8 great 7:11 30:16 group 31:4 guarantee 13:2 H half 13:12 hand 30:8 happen 12:22 13:2 happens 32:16 happy 32:19 35:9 38:7 hearing 2:5 18:4 29:20 height 21:13 help 12:3 19:9 37:6 37:9 38:3 hereto 44:15 hike 21:15 Hine 3:12 historically 31:16 Hogan 2:9 hold 33:22 honesty 30:1 Honor 7:18 9:10 13:18 21:9 24:20 25:21 30:18 31:5 34:19 35:17 38:8 41:7 42:11 43:10 Honorable 1:17 2:1 hope 7:9 12:17 30:20 hopefully 35:11 house 33:11 HOUSTON 2:8 houston.shaner@... 2:13 hundreds 22:10 I ice 42:13 idea 14:17 31:18 ideas 38:11 Illinois 6:12 impact 19:11 31:15 32:15 impacts 31:9 imposed 26:9 include 27:5 Incorporated 1:7 4:19 individual 18:10 20:17 22:11
---	--	--	---	--

Industries 5:16 6:14 industry 19:12 information 7:20 10:13,18 11:17 14:7 15:10,10,11 15:19 16:6,12 17:14 18:12 20:15 21:4 25:12 31:1 36:1 38:21 informative 16:17 17:16 instance 22:6 24:2 Institute 1:4,4 3:9 3:17 interested 30:22 31:1 39:9 44:16 interrogatories 13:13 interrupt 18:15 inverse 25:16 invoices 22:18 involve 8:12,13 involved 17:19 18:10 involves 11:4 ironed 35:11 irrelevant 22:15 25:13 42:2 issue 17:9 38:18 issues 7:10 20:12,13 20:14,20 24:21 26:13,17 35:3,5 items 22:11 J J 6:2,9 jeff.moreno@tho... 3:15 Jefferson 4:4,14 JEFFREY 3:11 John 1:17 2:1 7:3 Judge 1:18 7:2,3 8:8 9:2,6,11,17 10:1 11:8,14 12:2,6,19 13:6 14:3,12,19 15:6,16 16:8,13 17:1,17,22 18:15 19:1 20:2,7,21 21:11 22:9,13,20 23:13,16,21 24:11 25:14 26:5,15,18 27:8,20 28:2,6,10 29:4,14,22 30:10 30:17,20 31:3,11 33:3,10,18,22 34:6,9,15 35:8,18	36:21 37:6,9,17 37:20 38:5,10,22 39:5,13,22 40:6 40:18,22 41:3,9 41:16,20 42:7,12 42:17,21 43:3,5,6 43:11,17 July 17:5 K K 4:12 6:18 KALAS 6:9 KAVITA 5:3 keeps 21:19 kind 30:6 41:21 43:12 know 9:18 14:12,13 15:14 16:11 22:11 23:21 25:14 27:17 34:20 41:14 L L 5:2 large 16:4 larger 11:4 LaRoe 3:3 law 1:18 4:3,13 7:3 32:20 36:7 lawful 36:19 lead 19:20 25:18 lease 18:9 leases 8:14 let's 28:10 34:17 36:4 liked 41:1,1 line 12:11 list 17:5 litigation 14:9 little 18:9 20:19 42:13 LLC 1:5 4:9 LLP 2:9 3:12 5:4,12 6:10,17 loaded 8:16 10:6,10 11:1 Locke 6:10 Loftus 5:12 long 7:13 24:5 43:12 look 7:15 33:19 41:4 42:9 looked 17:14 22:7 looking 14:16 17:10 36:10 looks 30:11 Lord 6:10	lot 13:21 14:4,5 16:2,18 18:9 21:2 21:16,20 22:4,5 22:17 23:12 28:1 love 37:9 Lovells 2:9 M M 3:2,13 main 18:5 maintenance 22:8 24:2 majority 8:12 making 29:15 Manufacturers 1:3 2:15 MARC 6:2 marked 27:10 Massachusetts 6:5 match 23:8 matter 15:3,22 28:13 matters 8:12 12:10 12:17 16:9 41:12 MATTHEW 6:9 mean 13:14 14:6 24:1 26:6 29:19 31:10 41:4 means 12:12 meet 40:9 42:5 meeting 41:11 member 13:8,22 members 20:8 31:14 34:22 36:2 36:3 memo 17:12 mentioned 36:14 message 33:8 met 19:15 mgoldstein@bdla... 6:6 MICHAEL 5:2 Mike 12:14 mileage 10:15 25:4 26:12,14 27:6 mileages 8:16 miles 11:2 million 13:12 mind 24:14 37:10 minimizing 16:22 mkalas@lockel... 6:13 Moerman 3:3 Monday 1:14 2:2 money 13:18,21 14:4,5,9 23:4,12	23:17 33:1 36:18 MONROE 4:12 21:9,14 22:10,14 22:21 23:15,19,22 months 32:16 Moreno 3:11 25:20 26:21 39:8,10 40:16,19 41:2 morning 20:22 21:8 motion 19:22 20:10 20:19 25:1,11 35:5 36:3 motions 20:10 29:21 34:21 35:1 35:13,21 38:1 move 26:9 33:2 34:12 35:12 movement 10:5 movements 8:17 10:11 26:13 moving 11:3 mrosenthal@cov.... 5:7 N N 7:1 narrow 19:16 narrowed 42:1 narrowly 17:2 20:20 necessarily 19:9 necessary 26:4 need 29:15 30:19 32:5,5,6 39:20 40:20 needed 17:13 needs 11:17 24:8 32:17 neither 44:10 network 15:4 never 27:14,14 33:2 new 15:1 non-parties 18:1,6 30:10 32:2 38:20 40:4,8,21 non-party 9:7 11:15 17:18,21 18:19 28:3 30:8 normal 31:21 normally 16:5 24:10 North 1:2 7:6 Northeast 2:4 Northwest 2:10 3:4 3:13 4:4,14 5:5,13 6:18	Nossaman 6:17 Notary 44:1,20 noted 39:13 notice 34:1 noticed 33:5 noticing 32:6 notwithstanding 42:19 NOVEMBER 44:22 number 1:4 7:5 8:2 21:22 39:18 Nutrition 1:6 4:10 O O 3:11 7:1 O&M 9:17 39:16 objections 23:20 observer 39:9 obtain 7:21 8:8,10 11:16 14:7,22 15:19 obtaining 8:6 obviate 40:20 obviously 31:14 offer 34:13,14,16 offered 9:7,11 25:15 25:21 39:11 41:5 officer 44:3 offices 2:3 Oh 36:5 Okay 33:10 35:8 36:3 38:5 41:9 42:7 43:8 old 42:2 ones 31:13,15 38:20 40:16 open 41:2 opening 36:10 order 28:5 31:9 33:11 originals 41:15 outcome 44:16 outside 21:19 outstanding 20:9 24:20 overly 41:15 owed 36:18 owned 14:1 owner 15:12 owners 9:8,12,19 10:5,14,17 11:15 14:20 15:8,9 16:22 17:18,21 18:12,19 20:17 28:4 30:8 41:13
--	---	--	--	---

owners' 11:11	positive 38:13	12:12 29:16	reached 25:22	18:18 39:20
P	possession 20:5,6	prohibitively 14:8	33:13 40:17	resolved 12:1
P 1:17 2:1 7:1	possibility 8:6 16:16	22:19	read 20:22 21:7	resources 13:8,16
Pacific 1:8 5:8 7:7	possible 12:4 19:5	prolonging 31:2	22:9 40:14	respect 25:5
16:21 26:9 27:5	19:10	protect 24:5	ready 35:12,15 42:8	respective 2:6
27:14 30:8	possibly 12:3,5	protective 28:5 31:8	really 7:9 24:1,7	respond 24:12 37:3
paid 10:14	precedent 37:16	provide 9:12 10:9	29:1,5	responded 21:21
pair 8:3	precise 8:3	10:12,20 14:16	reason 7:13 11:16	Respondent 1:9 5:8
pared 17:7	prefer 29:19	22:5	15:16,21 18:5	response 27:9,21
pared-down 17:5	prepare 36:9	provided 17:12,15	20:13 26:2 32:18	responses 25:1
parenthetical 36:22	prepared 7:12 37:2	providing 19:17	32:21 38:19	responsible 27:18
paring 17:1	40:3 41:11	public 19:4 44:1,20	reasonable 22:4	right 8:1 15:8 19:1
part 10:14,19	present 2:5 26:20	pull 22:3 24:16	26:5	20:3 21:13 23:14
Parte 9:20 16:8	27:2	purposes 16:7	recall 9:13 10:1	29:22 30:17 31:3
particularly 15:12	PRESIDING 7:2	pursued 9:4	27:19	31:10 34:15 39:22
22:6	8:8 9:2,6,11,17	pushing 23:3	received 24:22	40:2 42:3,7 43:3
parties 2:6 28:18	10:1 11:8,14 12:2	put 12:20 15:4	record 7:2 19:4,9,10	43:14,16,17
35:14 44:12,15	12:6,19 13:6 14:3	23:19	34:7,8,10 38:13	road 34:18
parts 7:22	14:12,19 15:6,16	puts 33:22	43:19 44:9	ROBERT 5:11
PAUL 3:2	16:8,13 17:1,17	Q	records 10:16 24:10	rolling 31:7
paul.donovan@la...	17:22 18:15 19:1	query 22:3	recoups 15:14	room 2:5 28:9
3:7	20:2,7,21 21:11	question 12:20	reduced 44:8	Rosenberg 5:11
pay 23:17 24:13	22:9,13,20 23:13	23:18 29:2 31:9	reference 13:14	11:19 12:5,8 15:2
paying 33:1	23:16,21 24:11	32:1	referring 40:16	15:8 16:2 18:17
payment 10:15 27:5	25:14 26:5,15,18	questions 8:16,17	refined 41:14	18:21 28:3,8 29:6
payments 26:14	27:8,20 28:2,6,10	24:13 27:16 28:15	reflects 42:4	29:10 30:13,17,18
PC 6:3	29:4,14,22 30:10	quote 25:3	refunded 36:17	33:10
people 13:10 14:19	30:17,20 31:3,11	quoting 23:9	regard 8:4 24:21	Rosenthal 5:2 7:14
16:12 32:11 37:4	33:3,10,18,22	R	Regulations 34:21	7:18 8:10 9:3,10
38:8	34:6,9,15 35:8,18	R 7:1	Regulatory 2:4	10:2,3 11:10,16
perfect 39:2	36:21 37:6,9,17	rail 15:4,4	related 44:11	13:1,17 14:10,13
perfectly 19:2	37:20 38:5,10,22	Railcar 5:16	relating 17:9	15:21 16:10,14
permission 11:12,18	39:5,13,22 40:6	Railinc 7:17,21 8:5	relative 44:13	17:3,20 18:3
pertain 29:8	40:18,22 41:3,9	8:6,13,15,18 9:1,8	relevant 20:16,17	19:17 23:13,16
Petrochemicals 1:3	41:16,20 42:7,12	9:22 10:9,12,20	24:3	24:17,19 26:7,16
2:15	42:21 43:3,6,11	11:9,11,13,17	remain 19:2	27:2,10,13 28:12
phone 12:8	43:17	13:4,22,22 14:7	remember 25:7	29:12,19 30:22
PILLAI 5:3	pretty 15:3,7 25:7	14:15,20,21 15:2	40:13	31:6 32:17 33:13
places 17:14	principle 23:20,22	15:14,20 16:5,19	repair 11:4	35:19 36:5 37:1,8
pleadings 13:11	25:12	16:20	repairing 10:18	37:12,19,22 38:14
Poet 1:5,6 4:9,10	probable 12:7 14:6	railroad 1:8 5:9 7:7	reparations 31:19	39:3,8,18 40:3
20:11,11 24:21	probably 22:10	13:7	reported 1:21 15:5	41:7,10,17 42:6
26:3 27:3,22	23:10 24:14	railroads 10:7 14:1	REPORTER 44:1	43:7,9,15
28:17 35:3 38:2	problem 22:21,22	15:10 20:16 25:3	reports 23:7	Rosenthal's 15:19
Poet's 20:19 27:8,20	39:19	25:9,13,17 26:10	represent 38:9	24:13 26:19
point 14:5 15:17	problematic 31:21	27:4,15	request 10:22 11:2	RPR 1:22
18:8 23:9 25:22	Procedurally 41:10	raised 35:2	22:7 28:22	rule 38:4
26:20,20 27:2	proceeding 15:17	raising 25:22	requested 21:17	rules 18:13
31:6 37:3	19:6	range 17:8	22:11	ruling 37:13,18
pointed 17:6	process 12:16 25:18	rates 25:4 27:5,7	requesting 19:19	run 13:11
points 13:10 23:8	Procrustean 12:20	rdr@sloverandlof...	requests 7:19,22 8:2	S
34:11	produce 23:1	5:15	8:4,11,12 16:18	S 7:1
portion 9:1	produced 32:6,12	reach 36:2 38:15,17	17:2,6 19:7 21:1	sandbag 30:3
position 20:18	Products 1:5,6 4:8,9	39:12 40:5	22:8 29:8 41:14	sandbagging 36:14
34:19	program 10:14 23:7		reschedule 30:1	SARA 1:22 44:3
	progress 9:5 12:11		resolve 12:3,17,18	

saying 21:2 23:11 25:8 38:16 says 11:17 32:17 schedule 7:11 36:6 42:8 scheduled 30:2 33:4 schedules 35:10 scope 19:16 42:1 second 18:16 seconds 34:14 see 26:1 29:9 33:2 35:6 seek 14:7 seeking 28:19 36:1 38:19 seeks 15:19 sense 12:13,13 39:2 40:12,15 sent 20:22 separate 35:3 September 33:21 42:9,10 series 39:1 served 19:4 service 14:22 set 11:4 36:11 41:14 42:4 settle 33:15 43:11 SHANER 2:8 ship 27:5 shipped 27:7 shippers 15:11 18:10,13 shops 11:4 26:10,13 short 32:9 shorthand 44:7 side 9:4 37:5 signed 28:4 silly 41:22 simple 25:7 28:22 simply 35:1 sir 9:15 sit 29:16 sitting 29:17 situation 37:16 six 32:16 sized 13:7 Slover 5:12 smaller 28:1 somebody 25:6 somewhat 17:7 soon 14:17 sorry 9:10 18:14,16 28:14 sort 20:14 26:22 30:11 38:3	sorts 16:10 sound 33:16 sounds 26:5 43:9 South 6:11 speak 12:14 19:21 speaking 33:9 35:4 specifically 17:10 spend 13:12 spending 23:17 stand 35:1 standard 23:7 24:9 standing 25:12 32:22 started 22:1 state 7:9 status 1:11 2:1 7:4 30:2 43:20 stipulate 26:8,18,19 stipulation 25:15,21 26:1,2,4,16 27:1 38:16,18 39:16 stipulations 26:8 39:1,4,6,11,15,19 40:5,12,14,20 41:5,5,8 STOLARZ 6:16 Street 2:4,10 3:13 4:4,14 5:5,13 6:4 6:18 stretch 15:20 studies 13:12 study 24:12 stuff 14:1 21:20 22:18 24:8 32:14 submit 9:20,22 10:17 14:20 submitted 8:18 subpoena 7:19 11:13 subpoenas 41:19 subscription 7:16 subset 9:13 substantial 13:8 19:11 substantive 29:5 sued 28:18 suffering 31:15 suggesting 29:13 Suite 3:5 4:5,15 6:4 6:18 summarily 19:7 supply 9:7 suppose 11:12 12:3 sure 21:10 26:21 28:12 32:9 34:6 34:19 41:17	Surface 1:1 7:4 31:18 37:14 sworn 44:6 T tailored 20:20 tailoring 17:2 take 7:16 8:2 21:12 21:15 33:18 37:13 41:5 taken 44:4,7,13 takes 7:13 talk 35:10 38:6,7,8 41:3 talked 18:4 talking 30:7 40:7,10 tank 6:7 9:7,12 10:13,17 11:11,15 14:20 15:9 16:22 17:18,21 18:12,19 28:3,13 41:13 telling 23:6 33:7 term 14:4 terms 17:7 19:22 testimony 44:5,6,10 thank 31:7 35:17,18 42:6 43:5 thing 32:3 things 8:13,15 10:4 10:10 12:17 13:1 15:15 16:10 17:4 18:3 22:6 24:3,19 38:14 43:13 think 11:19 12:2,6 12:11,13,13 13:1 14:16 15:21 16:16 18:4 19:3 22:15 24:2,3,16 29:11 30:4,11 31:17 32:8 36:18,19,19 37:15 38:1,11 39:3,3,19,20 41:6 41:8 thinks 36:16 Thomas 4:2,4,14 Thompson 3:12 thought 7:20 8:5 21:21 26:22 39:2 40:15 time 7:15 19:3,15 22:1 24:15 25:15 29:15 32:9 35:19 36:11 today 7:3,10,13 11:15 29:9 33:8 33:17 37:18,20	Tom 27:15 total 10:10 totally 22:15 track 21:19 tracks 10:5 trade 31:13 34:22 transmitted 16:3 transportation 1:1 7:5 27:19 31:18 37:15 trial 33:20 tried 17:9,11 Trinity 6:14 true 13:17 24:4 31:16 36:19 44:9 try 8:2 11:3 19:15 34:2 40:4 trying 13:4 14:10 14:14 15:22 16:14 16:21 17:22 18:11 22:16 24:8 28:17 28:19 Tuesday 43:2 turn 16:12 turned 31:6 turtles 43:16 twilcox@gkglaw.c... 4:7 two 20:9 22:15 26:13 27:22 types 10:4 29:5 typewriting 44:8 U unable 41:12 understand 7:14 14:3 16:13 26:15 26:21 28:2 31:11 36:8,22 37:8,12 38:10,22 39:14 40:7,22 understanding 16:4 22:2 Union 1:8 5:8 6:7 7:7 16:20 26:9 27:4,14 30:7 unique 24:12 unreasonable 15:18 15:22 untoward 21:3 UP's 12:13 19:22 update 7:8 updated 9:4 upwards 13:12 usage 15:13 use 11:2 16:6	V vague 14:4 various 16:6 varying 13:10 vendor 21:19 23:5,6 versus 7:7 view 20:1 36:7,16 41:14 views 36:7 vs 1:8 W W 4:2 Wacker 6:11 wallet 24:16 Walnut 6:4 want 7:9 18:16 19:9 28:8 30:3 33:6 34:1 35:15 36:6,9 37:1,2,20,21 38:5 41:17 42:2,12,22 wanted 17:13 wanting 42:20 wants 24:9 Washington 1:13 2:2,11 3:6,14 4:6 4:16 5:6,14 6:19 waterfront 20:15 way 23:19 24:9 28:16 ways 16:22 we're 14:10,14 25:8 27:11 28:13,14,16 28:17,19 31:1 37:3 38:19 43:8 43:11,12 we've 8:20 14:14 17:7,9 18:6 27:17 28:4,15 Wednesday 12:10 16:18 17:16 weeds 37:10 Wellesley 6:5 WICK 1:22 44:3 Wilcox 4:2 9:6,11 9:14,15,19 19:14 19:20 20:4,9 25:14,19 27:12,16 27:22 34:4 39:1,5 39:7 43:1 willing 11:20 13:19 19:2 37:19 win 36:17,20 Winn 3:3 witness 44:5,7,10 wonderfully 24:15
--	--	--	--	--

work 16:14 18:1 21:3 34:3 40:1,4 40:11 41:12	2007 22:1 2009 10:10,12,16,21 2016 1:14 2:2 2017 44:22			
working 42:1	202-263-4107 3:15			
works 28:16	202-298-8100 3:7			
world 28:16 32:22	202-342-5235 4:17			
worth 41:8	202-342-5248 4:7			
wouldn't 8:15 26:2	202-347-7170 5:15			
wrapped 40:8	202-637-5600 2:12			
write 23:7	202-662-5448 5:7			
wrong 39:15	202-887-1400 6:20			
X	20th 42:19,22 43:1 43:4			
x 1:2,9	21st 42:10			
Y	22 1:14 2:2			
years 9:8,13	22nd 42:9			
yesterday 20:22 40:14	23rd 17:4			
Z	26 34:20			
0	26th 33:20			
02481 6:5	27 34:20			
1	3			
1 2:5 8:2 21:22	30 12:15,21 14:17 18:17 29:10 30:14 30:15 33:11,12,17 34:14,20 35:6,7 35:10 37:21 38:1 40:1,9 41:11,18 42:15			
10,000 23:9	312-443-0458 6:13			
10:00 2:5 43:6	328 9:20 16:8			
10:41 43:20	4			
100,000 23:11	400 6:4			
1055 4:4,14	42144 1:5 7:5			
10th 5:5	5			
11.14.22 34:20	50- 23:11			
111 6:11	500 4:5,15 6:18			
1224 5:13	555 2:10			
1250 3:4	6			
13 7:22	60606 6:12			
13th 2:10	7			
14 44:22	781-416-5700 6:6			
15 6:4 9:8,12	8			
1666 6:18	850 5:5			
17th 5:13	888 2:4			
1919 3:13				
1987 21:22				
19th 42:19,22				
1st 17:5				
2				
200 3:5				
20001 5:6				
20004 2:11				
20006 6:19				
20007 4:6,16				
2001 21:22				
20036 3:6,14 5:14				