

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR- 42152

**UNION PACIFIC RAILROAD
COMPANY**

Complainants Tesoro Refining & Marketing Company LLC, Tesoro Great Plains Gathering & Marketing LLC, and Dakota Prairie Refining, LLC (“Complainants”) oppose Defendant Union Pacific Railroad Company’s (“Union Pacific”) motion to compel responses to its discovery requests.¹ The Board should defer resolution of any discovery disputes until it decides the two pending motions filed by the Parties: (1) Complainants’ motion to hold the case in abeyance until a decision is reached on the merits of Union Pacific’s Item 55-C charges in *North America Freight Car Association v. Union Pacific Railroad Company*, STB Docket No. NOR-41244 (“NAFCA”), and (2) Union Pacific’s cross-motion to consolidate this action into *NAFCA*. Resolution of the Parties’ threshold motions will decide whether, and in which case, discovery will proceed. Wading into discovery disputes before then is premature, needlessly complicates this proceeding, and wastes the Board’s and parties’ resources.

¹ See Def.'s Mot. to Compel at 1.

BACKGROUND

Complainants filed a formal complaint with the Board on December 30, 2016.² On January 6, 2017, Complainants filed a motion to hold these proceedings in abeyance pending the outcome of *NAFCA*.³ In that motion, Complainants explained that an abeyance is appropriate so that the parties and the Board may preserve their resources until *NAFCA* resolves a legal issue also present in this case, namely, the legality of Union Pacific's Item 55-C charges.⁴ Complainants also explained that *NAFCA*'s two-year head start on this case meant that a headlong dive into discovery would simply risk significant duplication or misallocation of resources; at the same time, a pause in this case would still allow the parties to seek all appropriate discovery after *NAFCA* clarified the Item 55-C issue.⁵

On that same day that Complainants moved for an abeyance, Union Pacific served its first set of discovery requests.⁶ These requests were not modest, totaling 71 individual items (with 83 total subparts) and demanding information that spans at least three decades.⁷ Nor did Union Pacific request an accommodating timeframe for responses; it demanded a response fifteen *calendar* days after the date of service—Saturday, January 21, 2017.⁸ Complainants quickly responded via letter that discovery would be premature, unduly burdensome, and likely

² See Compl. at 1.

³ See Complainants' Mot. to Hold Proceedings in Abeyance at 1.

⁴ See *id.* at 5-7.

⁵ See *id.* at 7-8.

⁶ See Ex. A at 1.

⁷ See *id.* at 3-20.

⁸ See *id.* at 1.

wasteful until the Board had ruled on the abeyance motion.⁹ Complainants therefore stressed that the parties hold off further discovery until such a ruling.¹⁰ Union Pacific rejected this position in its own letter dated January 18, 2017,¹¹ and replied to the motion for an abeyance in a filing on January 26, 2017.¹² Union Pacific combined its reply with a motion to consolidate this case with *NAFCA*.¹³

Soon after Union Pacific's motion for consolidation, the parties filed a joint status report on their discussions regarding discovery and a procedural schedule.¹⁴ In that report, the parties acknowledged their agreement that a procedural schedule should be deferred until the Board resolves the competing motions from each party.¹⁵ Neither party has subsequently moved for the Board to adopt a procedural schedule in this case; neither party has served further discovery; neither party has sought a protective order to prevent dissemination of sensitive information; neither party has sought a discovery referee; neither party has filed a dispositive motion on the merits; and, but for Union Pacific's motion to compel, neither party has sought any further procedural or substantive relief from the Board. In sum, the case has stalled while the parties await the Board's decision on their respective motions—Complainants for an abeyance, Union Pacific for consolidation.

⁹ See Ex. B.

¹⁰ See *id.*

¹¹ See Ex. C.

¹² See Def.'s Opp. to Complainants' Mot. to Hold Proceedings in Abeyance and Mot. for Consol. at 1.

¹³ See *id.* at 1.

¹⁴ See Joint Status Report at 1.

¹⁵ See *id.*

ARGUMENT

Union Pacific's motion to compel discovery is premature for the same reason that all discovery in this case is premature: *NAFCA* is likely to shape the core issue of Item 55-C's legality far in advance of any merits briefing, or even complete discovery, in this case. As Complainants have previously explained, an abeyance would mean that discovery is also held in check, and as a corollary, Union Pacific's motion to compel discovery is equally inappropriate.

The fundamental weakness of Union Pacific's position is straightforward. Discovery should not go forward in this case because *NAFCA* will undoubtedly decide a key legal issue before any merits decision in this case, and that will be true whether the Board opts for an abeyance, as Complainants request, or sends the parties into *NAFCA*, as Union Pacific seeks. Consequently, awaiting that resolution will save the Board and parties considerable time and resources on discovery disputes that will not change the result in *NAFCA*. That discovery should not be compelled if it will not in fact change the result in *NAFCA*. It will instead only duplicate costs. *Cf. City of Lincoln—Pet. for Declaratory Order*, Docket No. FD-34425, slip op. at *2 (STB served Dec. 24, 2003) (refusing to grant a motion to compel when the party sought to hold the discovery dispute in abeyance).

Indeed, because both parties acknowledge some degree of relationship to *NAFCA*, neither has claimed that plowing forward with proceedings in this case makes sense. The parties reported thus to the Board when requesting that no procedural schedule be entered. And Union Pacific's reluctance to propose a procedural schedule betrays any putative claim that it *needs* immediate discovery in this case, much less responses to 71 individual requests (including 83 total subparts). Union Pacific clearly does not plan to *use* the information it is gathering in this proceeding any time soon.

Union Pacific’s motion is not saved by its claim that an indefinite discovery process “need not be complicated.”¹⁶ The “simple” responses to Union Pacific’s demands for thirty years’ worth of records would require large expenditures on one issue that will soon be resolved in *NAFCA*—and other issues and claims that are not present in this case.¹⁷ That Union Pacific thinks complete acquiescence to its discovery demands “need not be complicated” does not imbue those demands with merit.

Union Pacific also misses the point when it claims, oddly, that Complainants may not both disagree with its discovery position and oppose consolidation.¹⁸ Complainants’ position is, and remains, perfectly consistent: Both discovery and consolidation are inappropriate because an abeyance is the most efficient and fairest path forward in this case. The alternatives simply replicate large litigation costs without providing a meaningful benefit to the parties or to the Board’s decision-making process. And, if anything, it is Union Pacific that seeks to bootstrap its objections to an abeyance by prosecuting full-bore discovery as a pressure tactic in a case that it otherwise does not seek to advance.

CONCLUSION

For the foregoing reasons, Complainants respectfully request that the Board deny Union Pacific’s motion to compel.

Respectfully submitted,

¹⁶ See Def.’s Mot. to Compel at 3.

¹⁷ See Complainants’ Reply to Def.’s Mot. for Consolidation at 4-9 (explaining that *NAFCA*’s second count gives its discovery and proceedings a much broader scope than this case).

¹⁸ See Def.’s Mot. to Compel at 3.

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Prairie Refining, LLC*

Dated: March 16, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2017, I have caused a copy of the foregoing motion to be served by email and/or first class mail on the following counsel for the Defendant:

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EXHIBIT A

	)	
TESORO REFINING & MARKETING	)	
COMPANY LLC; TESORO GREAT PLAINS	)	
GATHERING & MARKETING LLC; and	)	
DAKOTA PRAIRIE REFINING, LLC	)	
	)	
Complainants,	)	NOR 42152
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

Pursuant to 40 C.F.R. §§ 1114.25 and 1114.30, Union Pacific Railroad Company requests that Tesoro Refining & Marketing Company LLC, Tesoro Great Plains Gathering & Marketing LLC, and Dakota Prairie Refining, LLC (collectively, “Tesoro”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street NW, Washington, D.C. 20001, no later than January 21, 2017.

A. “Car Owner” means the Person to whom a tank car’s reporting mark is assigned.

B. “Communication” means any transmission or receipt of information by one or more Persons and/or between two or more Persons by means including but not limited to telephone conversations, letters, telecopies, electronic mail, text messages, written memoranda, and in-person conversations.

- C. “Complaint” refers to the complaint filed in this matter on December 30, 2016.
- D. “Document” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.
- E. “Identify” when used with respect to a movement of a rail car means to state the waybill number, the date the movement began, the car number, the origin, the destination, the carriers in the route, any interchange points, and the total miles.
- F. “Identify” when used with respect to a communication means to state the method of communication (*e.g.*, in person, by telephone, by email), the persons participating in the communication and anyone receiving a copy of the communication, and the date of the communication and to state in general terms the content of the communication.
- G. “Identify” when used with respect to a lease agreement means to state the parties to the agreement, the date of the agreement and any amendments, the term of the agreement, the cars subject to the agreement, and the date the lessee took possession of the cars.
- H. “Item 55-C” means Item 55-C in UP Tariff 6004.
- I. “Person” means a corporation, company, partnership, trade association, or natural person.
- J. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- K. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.
- L. “You” and “Your” refer to Tesoro, as well as any of Tesoro’s employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on Tesoro’s behalf.

INSTRUCTIONS

1. Unless a different time period is specified, these requests cover the period from January 1, 2001 to the time responsive information and documents are served on Union Pacific.
2. For each and every document request, You are required to produce any documents in Your possession, custody, or control.
3. If You for any reason withhold documents or information responsive to any of these requests, You should state the specific factual and legal basis for doing so and produce documents or information for any part of the request or interrogatory that is not alleged to be objectionable or to call for production of protected information. If You withhold documents on the basis of a claimed privilege or attorney work product, then for each such document, You should provide the following information: the document's date, type (e.g., letter, memo, notes), author(s), addressee(s), other recipient(s), general subject matter, and the basis for withholding the document or information.
4. Identify all persons who provided information for each response, and state which response(s) the person provided information for.
5. These requests are continuing in character so as to require You to supplement in accordance with 49 C.F.R. § 1114.29.

INTERROGATORIES

Interrogatory No. 1

Identify the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 13

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

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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.

Interrogatory No. 15

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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.

Interrogatory No. 16

Identify each movement for which You have 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 You paid the charge.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 2001 through 2016, with respect to Your 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

Interrogatory No. 18

Separately by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but did not own, and separately for each year from 2001 through 2016, 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

Interrogatory No. 19

Separately by each car reporting mark assigned to You, state the amount billed to You pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 2001 through 2016.

Interrogatory No. 20

Separately by each car reporting mark assigned to You, state the amount You charged Persons leasing Your tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 2001 through 2016.

Interrogatory No. 21

Separately by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You to cover costs associated with empty mileage movements by those cars, separately for each year from 2001 through 2016, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

Interrogatory No. 22

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 Tesoro
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Any Complainant in STB Docket Nos. NOR 42144 or NOR 42150

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 28

With regard to each tank car owned by You, 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 2016

- g. Total empty miles moved, separately for each year from 2005 through 2016
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2016
- i. Other maintenance costs, separately for each year from 2005 through 2016
- j. Costs for car cleaning, separately for each year from 2005 through 2016
- k. Repair costs, separately for each year from 2005 through 2016
- l. Storage costs, separately for each year from 2005 through 2016
- m. Taxes paid on the car, separately for each year from 2005 through 2016
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2016
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2016
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2016
- q. Payments received from lessees for maintenance and repair costs You incurred, separately for each year from 2005 through 2016
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2016
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2016

Interrogatory No. 29

For each tank car You used pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2016
- c. Empty miles moved, separately for each year from 2005 through 2016
- d. Costs for programmed maintenance of valves You incurred, separately for each year from 2005 through 2016

- e. Other maintenance costs You incurred, separately for each year from 2005 through 2016
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2016
- g. Repair costs You incurred, separately for each year from 2005 through 2016
- h. Storage costs You incurred, separately for each year from 2005 through 2016
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2016
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2016
- k. Total payments You made to the lessor, separately for each year from 2005 through 2016
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2016
- m. Payments You made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2016
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2016

Interrogatory No. 30

Separately for each year from 2005 through 2016, state for Tesoro:

- 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 You owned that are not addressed in subsections a-n

Interrogatory No. 31

Separately for each year from 2001 through 2016, state for Tesoro:

- 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

Interrogatory No. 32

Separately for each year from 2001 through 2016, state:

- a. separately by railroad (i) the number of tank cars movements for which You were paid a mileage allowance, (ii) the total number of miles on which You were paid allowances, and (iii) the total amount of allowances paid to You

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

Interrogatory No. 33

With regard to the allegation in Paragraph 8 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 cost of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

Interrogatory No. 34

With regard to the allegation in Paragraph 19(b) of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Complainants’ 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 You furnished and explain the basis for that amount.

Interrogatory No. 35

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

Interrogatory No. 36

Identify the Persons who are responsible for:

- a. Deciding which Repair Facility will be used for tank cars You own or lease.
- b. Deciding when to direct tank cars You own or lease to a Repair Facility.
- c. Negotiating lease terms for tank cars You own or lease.
- d. Paying or billing for empty mileage payments required with regard to tank cars You own or lease.

- e. Requesting rates from railroads for transportation of products in tank cars.

Interrogatory No. 37

Identify all communications regarding charges by railroads other than Union Pacific for empty movements of tank cars to or from repair facilities with:

- a. Other Persons within Tesoro
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Railroads other than Union Pacific
- f. Any Complainant in STB Docket Nos. NOR 42144 or NOR 42150

DOCUMENT REQUESTS

Document Request No. 1

Produce all documents identified in Your answers to the Interrogatories.

Document Request No. 2

Produce all documents, regardless of date, supporting Your allegation in Paragraph 8 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

Document Request No. 3

Produce all documents, regardless of date, supporting Your allegation in Paragraph 19(b) of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Complainants’ rail tank cars.”

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.

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.

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.

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.

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.

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.

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.

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.

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 Your furnishing tank cars.

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 Your furnishing tank cars.

Document Request No. 14

Produce a copy of each lease under which You are the lessee of tank cars furnished to Union Pacific in any year from 2001 through 2016.

Document Request No. 15

Produce a copy of each lease under which You are the lessor of tank cars furnished to Union Pacific in any year from 2001 through 2016.

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.

Document Request No. 17

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

Document Request No. 18

Separately for each year from 2001 through 2016, 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.

Document Request No. 19

Separately for each year from 2001 through 2016, 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.

Document Request No. 20

Separately for each year from 2001 through 2016, produce document sufficient to show Your costs of maintaining tank cars that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

Document Request No. 21

Separately for each year from 2001 through 2016, 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.

Document Request No. 22

Separately for each year from 2001 through 2016, 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.

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 2001 through 2016.

Document Request No. 24

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

Document Request No. 25

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

Document Request No. 26

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

Document Request No. 27

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

Document Request No. 28

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

Document Request No. 29

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

Document Request No. 30

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

Document Request No. 31

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

Document Request No. 32

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

Document Request No. 33

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for

parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

Document Request No. 34

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

RHONDA S. FERGUSON
LOUISE A. RINN
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Union Pacific Railroad Company
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/s/ Michael L. Rosenthal
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One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

January 6, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2017, I caused a copy of the foregoing document to be served by e-mail on all of the parties of record in NOR 42152.

/s/ Michael L. Rosenthal
Michael L. Rosenthal

EXHIBIT B

January 11, 2017

By Electronic Mail

Michael L. Rosenthal, Esq.
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001

Re: STB Docket No. NOR 42152 - First Set of Union Pacific Discovery Requests

Dear Mike:

I write to reiterate our objections to Union Pacific's First Set of Discovery Requests to Tesoro Refining & Marketing Company LLC, Tesoro Great Plains Gathering & Marketing LLC, and Dakota Prairie Refining, LLC (collectively, "Tesoro") communicated to you by phone on January 6, 2017. As you know, we filed a motion to hold the proceedings in abeyance pending the outcome of a liability determination in STB Docket No. NOR 42144, *North America Freight Car Association v. Union Pacific Railroad Company*. No ruling has yet been issued on that motion. Nor have the parties conferred on a protective order, schedule, or other procedural matters necessary for the case to proceed. Discovery would be premature, unduly burdensome, and a waste of the parties' resources until these issues have been resolved. This is particularly the case because Union Pacific's voluminous discovery to Tesoro appears to be the same as that served on the parties in the *NAFCA* case, even though there is an additional claim in that litigation that is not at issue here. Until the Board rules on the pending motion to hold the proceedings in abeyance, and, should that motion be denied, the parties confer on procedural issues, Tesoro stands on its objections.

Regards,

A handwritten signature in red ink, appearing to read "Justin A. Savage".

Justin A. Savage

Partner
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EXHIBIT C

COVINGTON

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mrosenthal@cov.com

By Electronic Mail

January 18, 2017

Justin A. Savage, Esq.
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Re: STB Docket Nos. NOR 42150 & NOR 42152

Dear Justin:

This responds to your January 11, 2017 letters on behalf of Valero Marketing and Supply Company and Valero Rail Partners, LLC ("Valero") and Tesoro Refining & Marketing Company LLC, Tesoro Great Plains Gathering & Marketing LLC, and Dakota Prairie Refining, LLC ("Tesoro") regarding Union Pacific's first set of discovery requests to Valero and Tesoro.

Under the Surface Transportation Board's rules, Valero's and Tesoro's motions to hold proceedings in abeyance do not suspend Valero's and Tesoro's obligations to respond to Union Pacific's discovery requests.

Discovery in these cases need not be complicated. The legal issues appear to be nearly identical to the issues being litigated in STB Docket No. NOR 42144. As counsel for one of the parties in that matter, you know that the scope of discovery was extensively discussed by the parties, and the most contentious issues were ultimately resolved by an administrative law judge. If Valero and Tesoro agree to search for and produce the same materials that the individual complainants agreed to search for and produce in NOR 42144, we can rapidly complete discovery and focus on the substance of the claims in all of these proceedings.

Sincerely,



Michael L. Rosenthal