

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

242701

ENTERED
Office of Proceedings
February 24, 2017
Part of
Public Record

VALERO MARKETING AND SUPPLY	)	
COMPANY and VALERO RAIL PARTNERS,	)	
LLC,	)	
	)	
Complainants,	)	NOR 42150
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

UNION PACIFIC'S MOTION TO COMPEL

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February 24, 2017

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	)	

The Board should compel Valero Marketing and Supply Company and Valero Rail Partners, LLC (collectively, “Valero”) to respond to the discovery requests served by Union Pacific on January 6, 2017. A copy of the discovery requests is attached as Exhibit A.

Valero filed its complaint on December 19, 2016. On January 6, 2017, Union Pacific served interrogatories and requests for production of documents. Union Pacific asked Valero to respond by January 21. Later on January 6, Valero moved to hold this proceeding in abeyance. On January 11, Valero sent Union Pacific a letter in which it objected to providing any discovery before the Board rules on its motion. A copy of the letter is attached as Exhibit B. On January 18, Union Pacific sent Valero a letter stating that the motion did not suspend Valero's obligation to respond to discovery. A copy of the letter is attached as Exhibit C.

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February 15, Valero objected to consolidation, arguing that discovery in this case is “only beginning,”¹ and that “[Valero] should have the opportunity to conduct their own discovery.”²

Valero has neither served objections to Union Pacific’s discovery requests nor produced responsive information. Valero also has not served any discovery requests on Union Pacific.

II. ARGUMENT

The Board should compel Valero to respond to discovery. The Board’s rules do not allow a party to delay responding to discovery merely by filing a motion to hold its case in abeyance.³ Valero’s tactics are especially inappropriate because Valero is resisting Union Pacific’s motion to consolidate this case with *NAFCA* by arguing that discovery has not advanced sufficiently in this case.⁴

Discovery in this case need not be complicated. As Union Pacific explained in its January 18 letter to Valero, Union Pacific simply wants Valero to search for and produce the same types of material that the individual complainants searched for and produced in *NAFCA*. Union Pacific understood that Valero was interested in that approach and provided Valero with a spreadsheet that identified specific discovery requests.⁵

¹ Complainants’ Reply to Defendant’s Motion for Consolidation at 4.

² *Id.* at 6.

³ *Cf. Omega Patents, LLC v. Fortin Auto Radio, Inc.*, No. 6:05-cv-1113-Orl-22DAB, 2006 WL 2038534, at *3 (M.D. Fla. July 19, 2006) (“[D]iscovery proceeds without regard to whether a motion to stay discovery is filed; nowhere in the rules is a motion to stay discovery self-executing.”).

⁴ Valero also argued that discovery is premature because the parties have not yet “conferred on a protective order, schedule, or other procedural matters necessary for the case to proceed.” *See* Exhibit B. However, the Board’s rules do not establish any such preconditions. *See* 49 C.F.R. § 1114.21.

⁵ *See* Exhibit D.

III. CONCLUSION

Regardless of whether the Board holds this case in abeyance, or whether it consolidates this case with *NAFCA*, the Board should order Valero to respond to Union Pacific's discovery requests.

Respectfully submitted,

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February 24, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2017, I caused a copy of the foregoing document to be served by e-mail or first class mail, postage pre-paid, on all of the parties of record in NOR 42150.

/s/ Michael L. Rosenthal
Michael L. Rosenthal

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

_____	)	
VALERO MARKETING AND SUPPLY	)	
COMPANY and VALERO RAIL PARTNERS,	)	
LLC	)	
	)	
Complainants,	)	NOR 42150
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
_____	)	

**UNION PACIFIC’S FIRST SET OF DISCOVERY REQUESTS TO VALERO
MARKETING AND SUPPLY COMPANY AND VALERO RAIL PARTNERS**

Pursuant to 40 C.F.R. §§ 1114.25 and 1114.30, Union Pacific Railroad Company requests that Valero Marketing and Supply Company and Valero Rail Partners, LLC (collectively, “Valero”) 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.

DEFINITIONS

- 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 19, 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 Valero, as well as any of Valero’s employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on Valero’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 Valero
- 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 42152

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 Valero:

- 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 Valero:

- 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 Valero
- 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 42152

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.

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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 42150.

/s/ Michael L. Rosenthal
Michael L. Rosenthal



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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 42150 - 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 Valero Marketing and Supply Company and Valero Rail Partners, LLC (collectively, "Valero") 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 Valero 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, Valero stands on its objections.

Regards,

A handwritten signature in red ink, appearing to read "Justin A. Savage", with a long horizontal flourish extending to the right.

Justin A. Savage

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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

From: [Rosenthal, Michael](#)
To: [Shaner, Houston](#); [Justin A. Savage \(justin.savage@hoganlovells.com\)](mailto:justin.savage@hoganlovells.com)
Cc: [Pillai, Kavita](#)
Subject: NOR 42150 and 42152
Date: Friday, January 27, 2017 4:00:00 PM
Attachments: [Cargill and Poet Discovery Summary provided to Valero Tesoro 1 27 17.XLSX](#)

Justin and Houston,

During our meet and confer calls, you expressed an interest in reviewing a list of discovery requests to which Cargill and the Poet entities ultimately agreed to respond, or ultimately were ordered to respond, in NOR 42144. I've attached a spreadsheet that I believe accurately reflects the requests and responses (and/or limitations on the responses). (The spreadsheet does not address UP's third set of discovery requests, which was a follow-up set of discovery after we received responses from the first two sets.)

Regards,

Mike

Request	Subject of MTC?	Cargill to Produce	Poet Nutrition to Produce	Poet Ethanol to Produce
Interrogatories				
1		Will produce information to identify tank cars it owns and leases	Will produce information to identify tank cars it leases	Will produce information to identify tank cars it leases
2		Objected.	Responded narratively.	Responded narratively.
3		Will produce tank car lease agreements.	Responded narratively.	Responded narratively.
4		Will produce tank car lease agreements.	Responded narratively.	Responded narratively.
5		Will produce tank car lease agreements.	Will produce tank car lease agreements.	Will produce tank car lease agreements.
6		Will produce tank car lease agreements.	Will produce tank car lease agreements.	Will produce tank car lease agreements.
7		Will produce tank car lease agreements.	Responded narratively.	Responded narratively.
8		Will produce tank car lease agreements.	Responded narratively.	Responded narratively.
9		Will produce tank car lease agreements.	Will produce tank car lease agreements.	Will produce tank car lease agreements.
10		Will produce tank car lease agreements.	Will produce tank car lease agreements.	Will produce tank car lease agreements.
11		Objected.	Objected.	Objected.
12		Objected.	Objected.	Objected.
13		Objected.	Objected.	Objected.
14	Yes as to Cargill	From 9/29 hearing: Time period is 2013 to 2015. Cargill will produce dates sent, received and released from repair facilities and location of facility. Outside consultant may have waybill data which they would provide if so. Otherwise, the information may be contained in the CLM data which they were providing.	Searched; no responsive information.	Searched; does not possess all information but will produce responsive documents.
15	Yes as to Cargill	From 9/29 hearing: If they are planning to claim damages, they will have to provide underlying info so will do so.	Will produce responsive documents.	Will produce responsive documents.
16	Yes	From 9/29 hearing: Must produce this information	From 9/29 hearing: Must produce this information	From 9/29 hearing: Must produce this information
17		Will produce responsive documents.	Responded narratively.	Responded narratively that complainant has not been assigned any reporting marks.
18	Yes	After 9/26 m&c, agreed to provide loaded and empty miles. Empty miles on UP to repair facilities and empty miles on other railroads to repair facilities will be addressed by response to Rog. No. 14. Per 9/29 hearing, they will provide what they have going back to 2007.	Objected. After meet and confer, Wilcox confirmed that Poet has some but not complete information responsive to this Interrogatory going back to 2007 (data on loaded and empty miles for their leased tank cars provided by car owners). Per 9/29 hearing, they will provide what they have going back to 2007.	Objected. After meet and confer, Wilcox confirmed that Poet has some but not complete information responsive to this Interrogatory going back to 2007 (data on loaded and empty miles for their leased tank cars provided by car owners). Per 9/29 hearing, they will provide what they have going back to 2007.
19	Yes as to Cargill	After 9/26 m&c, agreed to provide this for 2007 to present.	Responded narratively that complainant has not been assigned any reporting marks.	Responded narratively that complainant has not been assigned any reporting marks.
20		Responded narratively.	Responded narratively that complainant has not been assigned any reporting marks.	Responded narratively that complainant has not been assigned any reporting marks.
21		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
22		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
23		Responded narratively.	Responded narratively.	Responded narratively.

Request	Subject of MTC?	Cargill to Produce	Poet Nutrition to Produce	Poet Ethanol to Produce
24		Will produce responsive documents.	Searched; no communications identified.	Searched; no communications identified.
25		Will produce responsive documents.	Searched; no communications identified.	Searched; no communications identified.
26		Will produce responsive documents.	Searched; no communications identified.	Searched; no communications identified.
27		Will produce responsive documents.	Searched; no communications identified.	Searched; no communications identified.
28	Yes as to Cargill	After 9/26 m&c, agreed to produce documents for reparations period. Confirmed at hearing.	Will produce responsive documents.	Will produce responsive documents.
29		Objected.	Objected.	Objected.
30	Yes	Agreed to provide reasonably accessible information responsive to subparts a., b., c., f., g., n., o., and s. for the period 2007 to present for movements on UP. Objected to rest. Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases.	Responded narratively that complainant does not own tank cars.	Responded narratively that complainant does not own tank cars.
31	Yes	Agreed to provide reasonably accessible information responsive to subparts a., b., c., i., j., and n. for period 2007 to present. Objected to rest. Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases.	Poet will produce all documents and information in its possession, custody, or control regarding tank car ownership and maintenance costs, except that POET Nutrition will not be required to produce car-by-car invoices, or other similar transactional documents or information regarding tank car ownership costs, except to the extent the car-by-car materials are readily available from computerized databases. POET Nutrition will produce this information for the time period 2014 to 2015.	Poet will produce summaries of POET Ethanol's tank car ownership and maintenance costs prepared in the normal course of business. POET Ethanol will produce this information for the time period 2008 to 2015. POET Ethanol will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs

Request	Subject of MTC?	Cargill to Produce	Poet Nutrition to Produce	Poet Ethanol to Produce
32	Yes	Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases.	Poet will produce all documents and information in its possession, custody, or control regarding tank car ownership and maintenance costs, except that POET Nutrition will not be required to produce car-by-car invoices, or other similar transactional documents or information regarding tank car ownership costs, except to the extent the car-by-car materials are readily available from computerized databases. POET Nutrition will produce this information for the time period 2014 to 2015.	Poet will produce summaries of POET Ethanol's tank car ownership and maintenance costs prepared in the normal course of business. POET Ethanol will produce this information for the time period 2008 to 2015. POET Ethanol will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs
33	Yes	Agreed to provide information in part a, and to the extent applicable, part b for 2007 to present.	Objected. After meet and confer, Wilcox confirmed that neither Poet entity has responsive information for 33(b).	Objected. After meet and confer, Wilcox confirmed that neither Poet entity has responsive information for 33(b).
34		Responded narratively to subpart a and b(i). Objected to b(ii).	Responded narratively to subpart a and b(i). Objected to b(ii). After meet and confer, Wilcox confirmed that neither Poet entity has been or is being paid mileage allowances by any other railroad.	Responded narratively to subpart a and b(i). Objected to b(ii). After meet and confer, Wilcox confirmed that neither Poet entity has been or is being paid mileage allowances by any other railroad.
35	Yes	Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases. cted.	Poet will produce all documents and information in its possession, custody, or control regarding tank car ownership and maintenance costs, except that POET Nutrition will not be required to produce car-by-car invoices, or other similar transactional documents or information regarding tank car ownership costs, except to the extent the car-by-car materials are readily available from computerized databases. POET Nutrition will produce this information for the time period 2014 to 2015.	Poet will produce summaries of POET Ethanol's tank car ownership and maintenance costs prepared in the normal course of business. POET Ethanol will produce this information for the time period 2008 to 2015. POET Ethanol will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs
36		Responded narratively.	Objected.	Responded narratively.
37		Responded narratively.	Responded narratively.	Responded narratively.
38		Responded narratively.	Responded narratively as to UP.	Responded narratively as to UP.
39		Objected.	Objected.	Objected.
Document Requests				
1		Will produce documents as discussed in interrogatory responses.	Will produce documents as discussed in interrogatory responses.	Will produce documents as discussed in interrogatory responses.
2		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
3		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
4		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
5		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.

Request	Subject of MTC?	Cargill to Produce	Poet Nutrition to Produce	Poet Ethanol to Produce
6		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
7		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
8		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
9		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
10		Searched; no responsive documents.	Searched; no responsive documents.	Searched; no responsive documents.
11		Searched; no responsive documents.	Searched; no responsive documents.	Searched; no responsive documents.
12		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
13		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
14		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
15		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
16		Will produce responsive documents, which will most likely consist of lease and sublease riders.	Will produce responsive documents.	Will produce responsive documents, which will most likely consist of lease and sublease riders.
17		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
18	Yes	Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases. cted.	Responded narratively that complainant does not own tank cars.	Responded narratively that complainant does not own tank cars.
19	Yes	Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases. cted.	Poet will produce all documents and information in its possession, custody, or control regarding tank car ownership and maintenance costs, except that POET Nutrition will not be required to produce car-by-car invoices, or other similar transactional documents or information regarding tank car ownership costs, except to the extent the car-by-car materials are readily available from computerized databases. POET Nutrition will produce this information for the time period 2014 to 2015.	Poet will produce summaries of POET Ethanol's tank car ownership and maintenance costs prepared in the normal course of business. POET Ethanol will produce this information for the time period 2008 to 2015. POET Ethanol will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs

Request	Subject of MTC?	Cargill to Produce	Poet Nutrition to Produce	Poet Ethanol to Produce
20	Yes	Cargill will produce existing management and accounting reports and analyses regarding Cargill's tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases. cted.	Poet will produce all documents and information in its possession, custody, or control regarding tank car ownership and maintenance costs, except that POET Nutrition will not be required to produce car-by-car invoices, or other similar transactional documents or information regarding tank car ownership costs, except to the extent the car-by-car materials are readily available from computerized databases. POET Nutrition will produce this information for the time period 2014 to 2015.	Poet will produce summaries of POET Ethanol's tank car ownership and maintenance costs prepared in the normal course of business. POET Ethanol will produce this information for the time period 2008 to 2015. POET Ethanol will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs
21		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
22		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
23		Will produce responsive documents.	Will produce responsive documents.	Will produce responsive documents.
24		Will produce responsive documents from January 1, 2013 to present.	Will produce responsive documents.	Will produce responsive documents.
25	Yes as to Cargill	After 9/26 m&c, agreed to produce plans, analyses but not to search emails. At 9/29 hearing, Cargill stated it had no plans.	Searched; no responsive documents.	Searched; no responsive documents.
26	Yes as to Poet entities	Will produce responsive documents from January 1, 2013 to present.	Per 9/29 hearing: Will produce responsive documents related to UP movements and movements by other railroads (BNSF is the only one) from January 2013 to present. Will select a limited number of people likely to make the communications. Will work together to come up with search terms.	Per 9/29 hearing: Will produce responsive documents related to UP movements and movements by other railroads (BNSF is the only one) from January 2013 to present. Will select a limited number of people likely to make the communications. Will work together to come up with search terms.
27		Objected.	Searched; no responsive documents.	Searched; no responsive documents.
28		Will produce responsive documents from January 1, 2013 to present.	Searched; no responsive documents.	Searched; no responsive documents.
29	Yes	Produced leases and subleases from January 1, 2013 to present. After 9/26 m&c, agreed to determine relevant people and check emails and paper documents. Confirmed in hearing.	Will produce responsive documents.	Will produce responsive documents.
30		Searched; no responsive documents.	Searched; no responsive documents.	Searched; no responsive documents.
31	Yes as to Cargill	Will produce responsive documents from January 1, 2013 to present. After 9/26 m&c, agreed to determine relevant people and check emails and paper documents. Confirmed in hearing. No time frame. They will search whatever has been retained.	Searched; no responsive documents.	Searched; no responsive documents.
32		Searched; no responsive documents.	Searched; no responsive documents.	Searched; no responsive documents.
33		Will produce leases and subleases from January 1, 2013 to present.	Will produce responsive documents.	Will produce responsive documents.

Request	Subject of MTC?	Cargill to Produce	Poet Nutrition to Produce	Poet Ethanol to Produce
34	Yes	Per 9/29 hearing: Agreed to run search terms for emails relating to items 55-c and other smilar charges with agreed upon search terms. Cargill to pick an appropriate group of custodians likely to have these documents. Time frame is 2013 to present.	Per 9/29 hearing: Will produce responsive documents from January 1, 2013 to present for movements transported by UP and other railroads.	Per 9/29 hearing: Will produce responsive documents from January 1, 2013 to present for movements transported by UP.
35	Yes	Objected.	No responsive documents as to temporary storage, inspections, testing, repairs, replacements or retrofits. Will produce responsive documents as to car cleaning and tank car movements by UP from Jan. 1, 2013 to present.	No responsive documents as to temporary storage, inspections, testing, repairs, replacements or retrofits. Will produce responsive documents as to car cleaning and tank car movememnts by UP from Jan. 1, 2013 to present.
36		Will produce responsive documents.	Searched; no responsive documents.	Searched; no responsive documents.