

1 BEFORE THE SURFACE TRANSPORTATION BOARD

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242995

3 NORTH AMERICA FREIGHT CAR)

4 ASSOCIATION; AMERICAN FUEL &)

5 PETROCHEMICALS MANUFACTURERS;)

6 THE CHLORINE INSTITUTE; THE)

7 FERTILIZER INSTITUTE; AMERICAN)

8 CHEMISTRY COUNCIL; ETHANOL)

9 PRODUCTS, LLC, D/B/A POET)

10 ETHANOL PRODUCTS; POET)

11 NUTRITION, INC.;)

12 AND CARGILL INCORPORATED.) Docket No. NOR 42144

13 Complainants,)

14 -v-)

15 UNION PACIFIC RAILROAD COMPANY)

16 Defendant.)

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7 BEFORE:

8 HONORABLE JOHN P. DRING

9 ADMINISTRATIVE LAW JUDGE

10

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1 Oral argument on Wednesday, April 19, 2017,
2 before Honorable John P. Dring, in Washington, D.C.,
3 At the offices of the Federal Energy Regulatory
4 Commission, 888 First Street Northeast, Hearing Room
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1 P R O C E E D I N G S

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3 PRESIDING JUDGE: We're on the record.

4 For the record's sake, I'm Administrative
5 Law Judge John Dring, and today we're going to have a
6 status conference on Surface Transportation Board,
7 Docket Number NOR 42144 of the consolidated case.
8 It's North America Freight Car Association, et al
9 versus Union Pacific Railroad Company.

10 I'm generally pleased with the progress
11 you-all are making. You've shown good faith and have
12 done a lot of work. There is still some work left to
13 be done in the consolidation of the Tesoro and Valero
14 complaints, which had a little component of
15 complexity, but I don't think it should -- I don't
16 expect it will hold things up too much.

17 Let's go around just so that Matthew knows
18 who's here. Why don't we just go around and tell him
19 who is here?

20 MR. ROSENTHAL: Michael Rosenthal
21 representing Union Pacific.

22 MS. ROSENBERG: Robert Rosenberg on behalf

1 of American Railcar Industries.

2 MR. MOPAS: Tod Mopas on behalf of North
3 American Freight Car Association and Poet Ethanol and
4 Poet Nutrition.

5 MR. MONROE: David Monroe on behalf of
6 NAFCA as well as Cargill.

7 MR. MORENO: Jeff Moreno on behalf of the
8 American Chemistry Council and the Fertilizer
9 Institute.

10 MR. DONOVAN: Paul Donovan on behalf of the
11 Chlorine Institute.

12 MR. SHANER: Houston Shaner on behalf of
13 AFPM, Valero and Tesoro.

14 PRESIDING JUDGE: Thank you. Yes.

15 MR. GOLDSTEIN: Marc Goldstein on behalf of
16 Union Tanker Company.

17 MR. NEUMAN: Reed Neuman on behalf of GATX.

18 MS. STOLARZ: I'm Anna Stolarz on behalf of
19 GATX.

20 PRESIDING JUDGE: Thank you.

21 And your name again?

22 MR. SHANER: Houston Shaner.

1 PRESIDING JUDGE: Mr. Shaner, since you're
2 the new person on the block here, do you anticipate
3 having any problems or any unusual problems in getting
4 up to speed with where everyone else is? Do you know
5 where everyone else is in this discovery? I know that
6 Mr. Rosenthal had a motion to compel, which I think
7 that is now moot. But what are your plans in order to
8 get up -- up to speed with everyone else? You're now
9 the slow rabbit.

10 MR. SHANER: Right. I have a pretty good
11 idea. So I -- I also represent AFPM. So, I've been
12 here before. Mike and I have had some discussions
13 and, you know, broadly aware of what Moore and Cargill
14 have produced. We're working right now with the
15 clients on what information they have and what's
16 accessible with their internal systems.

17 The requests are quite broad. We've had
18 some discussion about it from Mike. I'm optimistic
19 that for at least one, we can begin production,
20 rolling production in probably the next few weeks.

21 PRESIDING JUDGE: Okay.

22 MR. SHANER: Hopefully that will not be the

1 case, but we can get up to speed relatively quickly.

2 PRESIDING JUDGE: Okay. Well, let's --

3 MR. SHANER: And there are some procedural
4 matters we've also -- we've also had some discussions
5 in terms of the protective order and the production
6 protocol for the technical information.

7 PRESIDING JUDGE: Okay.

8 Mr. Rosenthal, are you satisfied that this
9 is not going to be unduly cumbersome in bringing the
10 new parties up to speed in this case?

11 MR. ROSENTHAL: I think that -- I'm hopeful
12 that it shouldn't be a problem as Houston said. They
13 have been involved in this case representing one of
14 the associations.

15 PRESIDING JUDGE: Right.

16 MR. ROSENTHAL: They've sat through this.

17 Hopefully they've listened to your rulings
18 on Poet and Cargill, and I think as long as we can
19 follow that pattern, we're not going to be looking for
20 them to do more.

21 PRESIDING JUDGE: And they probably are
22 familiar with my rulings in the Harsimus Branch case

1 as well, so they know what kind of guy I am.

2 MR. ROSENTHAL: We're not looking for them
3 to do more than Poet and Cargill have done.

4 In the case of Poet and Cargill, there was a
5 third set of discovery that we had asked as cleaned up
6 once we saw some of Answers to the first two sets of
7 discovery. So, I can't say that there's not going to
8 be any cleanup but on the preliminary discovery, you
9 know, we're just looking for the same type of
10 information that we asked for from other individual
11 Complainants.

12 PRESIDING JUDGE: Right. Right.

13 Do you have another comment?

14 MR. SHANER: Yes, Your Honor. There are
15 some qualifications. It depends on the category of
16 information. We're working with the clients on that
17 to see exactly what they have. And it's -- it's
18 difficult to address all those in detail right now.
19 But there is, I think, maybe a fundamental issue about
20 the scope of the complaints.

21 So as you're, I'm sure aware, the complaints
22 for Tesoro and Valero are Count 1 versus Count 2.

1 PRESIDING JUDGE: Yes. Yes.

2 MR. SHANER: And so we -- we do think
3 there's a pretty meaningful difference in scope there.
4 Obviously there are some commonalities but in terms of
5 the date range or, I guess primarily the temporal
6 breadth.

7 PRESIDING JUDGE: All right. I have a
8 command of that. I understand. Yes. Mr. Moreno.

9 MR. MORENO: On behalf of my clients, the
10 American Chemistry Council and Fertilizer Institute
11 and Mr. Donovan's client, The Chlorine Institute, we
12 probably had the least at stake in terms of discovery
13 at this point because we're pretty much out of this,
14 done.

15 PRESIDING JUDGE: Right.

16 MR. MORENO: But we're also the most -- our
17 members are also the most impacted by the pace of
18 this.

19 And I would note that when the board issued
20 its consolidation and its discovery order, it did
21 emphasize the need to bring discovery of Valero and
22 Tesoro to conclusion quickly. And by implication that

1 would also apply to the tank car owners in particular.

2 And the board even established its own
3 procedural schedule that would kick in immediately,
4 rather than require the parties to come back and
5 request a procedural schedule.

6 So that means you, Your Honor, effectively
7 determine when the evidentiary phase of this case
8 begins.

9 PRESIDING JUDGE: Right.

10 MR. MONROE: We have specifically two
11 requests that we'd like to get out of this hearing
12 that we would hope to accomplish today.

13 PRESIDING JUDGE: Okay.

14 MR. MONROE: As a result of this. And the
15 first of this is we'd like to make sure that the
16 status conference is -- that our status conference, we
17 get a discovery schedule with firm deadlines; both for
18 any motions --

19 PRESIDING JUDGE: I was going to ask you to
20 do that, so that's good.

21 MR. MORENO: Very good. I'm pleased to see
22 that. And also, deadlines not just for filing

1 motions to compel or any discovery disputes, but also
2 for the completion of document production and
3 depositions.

4 And that there be a target date at least set
5 for the close of discovery that we can all shoot for.

6 The second request that we have, Your Honor,
7 is that we get to the bottom of the remaining tank car
8 owner disputes with UP this morning, if at all
9 possible.

10 Our first appearance before you on the
11 subject of tank car owner discovery was 10 months ago
12 on June 23rd. And about six months ago on
13 October 13th, you issued an order that ostensibly
14 resolved all the outstanding discovery disputes
15 between the parties.

16 But the status reports that have been
17 received in the last couple days show a broad range of
18 different status depending on the tank car owner, from
19 almost done to barely begun in one instance.

20 And given the past of just six months we
21 would ask that Your Honor get to the bottom of these
22 remaining issues today and let's get deadlines for

1 when this is going to be finished.

2 PRESIDING JUDGE: I'd like -- yeah. I was
3 going to ask for that. I'd like to have a fulsome
4 discussion here about what is reasonable and I will
5 issue an order actually setting dates.

6 I like dates, of course, because most people
7 meet them, and if they don't we can have a discussion
8 on the record as to why they didn't. And maybe give
9 them another chance and if they don't make it again,
10 things happen.

11 MR. MORENO: Thank you, Your Honor. I'm
12 pleased to hear that and that's kind of the gist of
13 our request because our members are the ones who are
14 paying these freight bills and we're well beyond the
15 two year statute of limitations at this point in time.
16 It's starting to cost real money.

17 PRESIDING JUDGE: Yeah. Yeah. Anybody have
18 any problems with that? Okay.

19 Do we want to just -- how do you want to
20 proceed with this? Because the status report suggests
21 various problems. Most of them aren't -- don't appear
22 to be major problems at this point.

1 What about Cargill though?

2 MR. MONROE: Cargill --

3 PRESIDING JUDGE: It seems to be the slow
4 one on the block.

5 MR. MONROE: David Monroe for Cargill.

6 Cargill has technically been the slow one.
7 We've had some internal problems; people leaving the
8 company, key people leaving the company and also
9 without getting into it, medical issues with key
10 people.

11 PRESIDING JUDGE: All right.

12 MR. MONROE: But we are, I believe, on
13 track. I know that I actually have a conference call
14 tomorrow with the outside vendor who is doing the last
15 processing of the e-mails and really basically, that's
16 what we have left, the e-mails.

17 Once we get the e-mails --

18 PRESIDING JUDGE: What about the privilege
19 log? Do you have the privilege log --

20 MR. MONROE: Well, as we've indicated in our
21 status conference, we will produce the privilege log
22 when we finish the production and I think --

1 PRESIDING JUDGE: Makes sense.

2 MR. MONROE: -- that we are going to take a
3 very short -- we said a week, maybe it's 10 days.

4 PRESIDING JUDGE: Okay.

5 MR. MONROE: But I don't think there's going
6 to be a lot of privileged stuff, but of course they're
7 still in the process of doing that.

8 PRESIDING JUDGE: I understand.

9 MR. MONROE: But basically we had produced
10 all the data, the cost data back in December. We've
11 had some back and forth with counsel for UP on
12 questions, additional questions, but I haven't heard
13 from you lately. So I'm assuming that -- that you're
14 pretty fine with what we've given you, or at least --

15 MR. ROSENTHAL: I just want to say, we -- we
16 haven't been asking a lot --

17 PRESIDING JUDGE: This is Mr. Rosenthal.

18 MR. ROSENTHAL: We haven't been asking the
19 same sort of follow up questions that we've asked of
20 Poet because we haven't -- we don't know what the sum
21 total of the data they claimed is complete. So with
22 Poet they said, we're done. We looked at it. We

1 found a couple of, you know, contracts that seemed to
2 be missing when you read a document and it refers to
3 something else and it doesn't have the document. And
4 we've had some cooperative follow up and I think with
5 Poet Ethanol and Poet Nutrition we're done.

6 With Cargill, because we haven't had anyone
7 say, you know, this is our production, I haven't tried
8 to pepper anybody with questions saying, well, where
9 is this, where is that, where is the other thing?

10 Because --

11 PRESIDING JUDGE: You have no basis at all.

12 MR. ROSENTHAL: I suspect the response is
13 it's coming, it's coming, it's coming. So once we
14 have what purports to be a complete production, we'll
15 review it as we've been reviewing the stuff we have so
16 far.

17 PRESIDING JUDGE: Sure.

18 MR. ROSENTHAL: And there may be some follow
19 up.

20 But if Cargill is going to produce by the
21 end of April, as the status report suggested, I think
22 all that follow up will be completed within the time

1 it's going to take Valero and Tesoro to respond.

2 PRESIDING JUDGE: Okay.

3 MR. ROSENTHAL: I can't imagine it's going
4 to take more than a couple of weeks -- days, weeks to
5 follow up and -- you know, see whether documents seem
6 to be missing or data seems to be missing.

7 I don't think that's going to be the hold up
8 on the schedule.

9 PRESIDING JUDGE: Right. Mr. Moreno, you
10 sort of stuck your neck out on this. And I appreciate
11 that.

12 Do you have -- since we have a number of
13 parties here and we've got one over there, do you have
14 -- you were reading off a piece of paper. Do you have
15 a list of outstanding issues and recommendations for
16 dates? I'm just asking if anybody wants to do my job
17 for me, help me out?

18 MR. MORENO: If I did, I would be glad to do
19 it. The only issues I know of personally are those
20 that are reported in the status report.

21 PRESIDING JUDGE: Yes.

22 MR. MORENO: Because I'm not counsel to

1 those parties who are involved in this dispute.

2 PRESIDING JUDGE: Yeah.

3 MR. MORENO: So I'm hoping at least those
4 individuals, we can get to the bottom of what their
5 timeframe is for reasonable responses.

6 PRESIDING JUDGE: Yeah. Would it help to
7 just go around party by party and state what you need
8 from others, and have a discussion and set dates on
9 those? Is that the way to do it?

10 I'm open to suggestions.

11 MR. MORENO: That seems reasonable to me.
12 It would also be informative to me as well, as to how
13 much is really out there that is still open.

14 PRESIDING JUDGE: Anybody else? Is that a
15 good way to do it or not? I mean, is there a better
16 way?

17 MR. KALAS: Judge, this is Matt Kalas for
18 Trinity. I'm happy to hop on and kind of give you an
19 idea of where we're at.

20 PRESIDING JUDGE: Okay.

21 MR. KALAS: I think in the report we talked
22 about we've come to a resolution with UP. On search

1 term string and syntac, that significantly reduced the
2 reasonableness of the searches and the review that we
3 needed to do.

4 We were dealing at the time with something
5 like 240 gigabytes of data. So there was a
6 significant amount of data that -- that's caught up.
7 So that's been reduced down to now, we're in a world
8 where we can review that. We think we can get that
9 done in about 45 days. I think that's what we said;
10 30, 45 days. In terms of setting a hard schedule, if
11 we were to put that at 60 days, I think we'd be
12 comfortable with the -- with the expectation that we'd
13 get that done before that.

14 PRESIDING JUDGE: Okay. Let's do this.
15 Sixty days, and restate what we do at the end -- what
16 we've done at the end of 60 days?

17 MR. KALAS: I'm sorry?

18 PRESIDING JUDGE: Restate what we have
19 done -- what you have done at the end of 60 days?

20 MR KALAS: We're done with our production.

21 PRESIDING JUDGE: Okay. All right. How
22 does that sound, Mr. Rosenthal?

1 MR. ROSENTHAL: That's fine with me, Your
2 Honor. I'm in the position where, you know, much like
3 Mr. Moreno, I don't know how much we to have to
4 review. We've tried to work with all of the parties
5 where there have been discovery issues as Mr. Kalas
6 has said, to try to reduce the burden, to keep it
7 reasonable.

8 PRESIDING JUDGE: Yeah.

9 MR. ROSENTHAL: And keep it with the order.
10 And if that's what it takes him to review it, that
11 seems fine.

12 Again, I think -- I think the outside -- the
13 parties that are going to set the outer limit on
14 closing this those proceeding are likely to be the new
15 ones; Tesoro and Valero.

16 PRESIDING JUDGE: Yes. Right.

17 MR. ROSENTHAL: So --

18 PRESIDING JUDGE: Well, do you want -- would
19 it be make sense to subsume everything else under
20 their deadlines, Mr. Moreno? I don't know.

21 MR. MORENO: I think it makes sense to talk
22 in terms of the longest --

1 PRESIDING JUDGE: Well, let's do that first.

2 MR. MORENO: Yeah. That sets the outer
3 boundaries.

4 PRESIDING JUDGE: All right. Let's try that.

5 MR. SHANER: Your Honor, frankly, it's hard
6 for me to propose a date certain because we still need
7 to understand the exact scope of the dispute, and --

8 PRESIDING JUDGE: Yeah.

9 MR. SHANER: -- what sort of like -- cost
10 information, for example, or the movement information,
11 what sort of detail we have and certain timeframes,
12 what the timeframe would be for that.

13 As well as, you know, how reasonable it
14 would be to pull that and produce it. And it's --

15 PRESIDING JUDGE: Why don't you give us a
16 broad outline of what you will require and give us
17 some dates that you think make sense for those?

18 MR. SHANER: As far as individual dates?

19 Well, we need to have further discussions
20 with Union Pacific about what they think is the most
21 priority information. We've had a little bit of
22 discussion about that. If we begin a rolling

1 production, what should we identify first? We've had
2 part of it -- you know, begun looking at the leases
3 and movement data initially, but that may not be what
4 Mike most cares about.

5 The e-mail data it's, you know, probably in
6 the earlier stages with that. And for Tesoro at
7 least, there's still some question about whether or
8 not we'll really need an outside vendor to help us
9 process all of this. I think with Valero, I think
10 they can do it internally. That's what's helping us
11 push it off much more quickly.

12 But I do think we need to resolve the, sort
13 of, the temporal scope of discovery to have a better
14 picture of how quickly we can produce anything.

15 And what we would produce as well -- what
16 information would exist in what sort of form?

17 PRESIDING JUDGE: All right. How long would
18 it take you to -- go ahead.

19 MR. DONOVAN: Yeah. Paul Donovan
20 representing The Chlorine Institute.

21 Your Honor, it seems to me as I sit here
22 listening to this, that this general proceeding at

1 this point has some of the earmarks -- some of the
2 earmarks of a class action.

3 PRESIDING JUDGE: Uh-huh.

4 MR. DONOVAN: In the sense that I know that
5 Mr. Rosenthal has a right to discovery from these
6 various plaintiffs. But it also seems to me that the
7 information he's going to get from Valero is not going
8 to be materially different than the information he's
9 going to get from Poet unless there's something out
10 there that I don't understand with respect to the
11 overall implications of this issues in this case.

12 Accordingly, if Poet and Poet and Cargill
13 are, in fact class representatives, for lack of a
14 better phrase, then Valero and Tesoro are hanging
15 around.

16 PRESIDING JUDGE: Yes.

17 MR. DONOVAN: And giving them another six
18 months to produce the same kind of information seems
19 to me to be grossly prejudicial to those of us who
20 don't care.

21 PRESIDING JUDGE: Yeah. I have a sense that
22 that's correct.

1 Mr. Rosenthal?

2 MR. ROSENTHAL: All I was going to say is
3 this is the issue that was argued to the board on the
4 consolidation motion.

5 PRESIDING JUDGE: Yeah. Yeah.

6 MR. ROSENTHAL: I think the board has
7 resolved this.

8 PRESIDING JUDGE: Yes. I know.

9 Well, off the record.

10 (Off the record discussion.)

11 PRESIDING JUDGE: We're back on the record.

12 MR. MORENO: Your Honor.

13 PRESIDING JUDGE: Yes.

14 MR. MORENO: Given that Mr. Shaner has not
15 yet even been able to rule out the potential for
16 discovery, despite, it seems to be, at least
17 reasonable to set a deadline for raising those
18 disputes before you and getting those resolved if they
19 should occur.

20 PRESIDING JUDGE: Yeah. I was hoping that's
21 part of the broader context. Unfortunately having
22 these cases consolidated puts us in that situation

1 where we really have to have him, Mr. Shaner and his
2 clients catch up with everyone else before we really
3 can do -- my hope would be that while he's catching
4 up, you-all are finishing your work.

5 I'm certain that that would happen.

6 MR. MORENO: From my client's perspective,
7 we're done --

8 PRESIDING JUDGE: You're done. Yes. I
9 know. But the others, I mean, I think that we'll all
10 be waiting for Mr. Shaner to finish his work and that
11 will be the conclusion of everything, I would think.
12 Is that -- does anyone have a different take on that?
13 All right.

14 Mr. Shaner, you're back on the hot seat.
15 You got to help us with some dates. I know how
16 difficult it is and I fully appreciate what you've
17 said and I think you're absolutely right. However I
18 need some hard stops here.

19 MR. SHANER: Your Honor, I think for Valero
20 we can begin a production in the next few weeks but
21 frankly if I say much more than that, I'm afraid I'm
22 just going to be guessing and we could just meet back

1 here with a missed deadline. I'm happy to submit a
2 further-up status report to, you know, even before
3 that to get better specificity but I think we need
4 some clarity on the scope of discovery whether or not
5 we're going to have to go back to 2001, sometimes
6 earlier for the requests.

7 PRESIDING JUDGE: Well, how soon can he get
8 clarification on the scope of discovery?

9 MR. ROSENTHAL: If I -- what would be nice
10 is if they first, you know, at least formerly respond
11 to the discovery requests that we served back in
12 January.

13 PRESIDING JUDGE: Yes.

14 MR. ROSENTHAL: That at least we have -- we
15 have that as a starting point.

16 PRESIDING JUDGE: Yes.

17 MR. ROSENTHAL: But while we weren't
18 entirely successful with all of our meetings and
19 conferences, we certainly were able to negotiate a
20 number of limits on time periods. And I understand
21 what Mr. Shaner is saying about the Count 1 and Count
22 2.

1 PRESIDING JUDGE: Yes.

2 MR. ROSENTHAL: And there might be
3 accommodations we can make in that regard. Although
4 whether or not claiming damages under what was Count
5 2, it's still part of their theory. So there's going
6 to be a balance. But there -- but we may be able to
7 accommodate that in some way to ease the burdens based
8 off other discovery that we have produced.

9 PRESIDING JUDGE: How quickly can we do
10 that?

11 MR. ROSENTHAL: It's a matter of them
12 calling me with whatever issues they have.

13 PRESIDING JUDGE: When are you doing to do
14 that, Mr. Shaner?

15 MR. SHANER: We can do it pretty quickly.
16 We can discuss afterwards. I think --

17 PRESIDING JUDGE: I really do want to move
18 this along.

19 MR. SHANER: Right. I mean, we were working
20 quickly.

21 PRESIDING JUDGE: I'm not -- you know, I
22 don't anticipate having to hurt anybody. I will if I

1 have to. I'm getting probably as antsy as anybody
2 else in this room to finish this. This holds a space
3 on my docket that could be filled with something else
4 I'd rather do right now. And I'm sure that all of you
5 don't like to come back here either. You know, this
6 is -- it was interesting some time ago but I think
7 we're all pretty well done with this. And it's -- you
8 know, it's not -- no reflection on you. I mean,
9 you're the new guy on the block. But you know, you
10 got to come along with us and we're going to finish
11 this very quickly.

12 MR. SHANER: We have every intention of
13 finishing it as quickly as possible. But -- and
14 that's part of the reason why there hasn't been as
15 much paper exchanged with Mr. Rosenthal because we've
16 spent most of our time trying to work with the client
17 to get them up to speed as quickly as possible.

18 PRESIDING JUDGE: Right. Well, look, why
19 don't -- why don't you and Mr. Rosenthal work closely
20 and the two of you give me a consolidated status
21 report every week? How does that sound? That sounds
22 pretty good to me, which I guess means you'll say it

1 sounds pretty good to you.

2 MR. SHANER: It sounds great to me.

3 PRESIDING JUDGE: You belong in this group,
4 Mr. Shaner. I'm sorry to say.

5 Yes, Mr. Wilcox?

6 MR. WILCOX: Just to bring up a point. I
7 think where you were heading was -- and I'm with Jeff,
8 Tom Wilcox was maybe setting a deadline for those
9 disputes -- for the discussions that we were just
10 talking about to end and a formal a request made to
11 you to resolve any outstanding issues.

12 PRESIDING JUDGE: All right.

13 MR. WILCOX: Between the two new complaints
14 and UP. I think that's where we were kind of heading.
15 I just wanted to bring that up again.

16 PRESIDING JUDGE: Yeah. I think that's a
17 good articulation of it. Mr. Rosenthal, what do you
18 think?

19 MR. ROSENTHAL: I have no problem with that.
20 I'm a little surprised since they have all been
21 sitting at this table for the past, you know, six
22 months, a year, however long we've been here.

1 PRESIDING JUDGE: Yeah.

2 MR. ROSENTHAL: I'm a little surprised they
3 haven't talked about this ahead of time.

4 PRESIDING JUDGE: Yes.

5 MR. ROSENTHAL: If they have a schedule and
6 a plan for bringing up discovery disputes, I mean,
7 that's all fine with me.

8 I just don't want to bring -- I can't tell
9 Mr. Shaner how quickly he needs to talk to his client
10 when they have talked to their client, and they have
11 issues that they want to raise with me.

12 I'm available. I've worked with, I think,
13 all of these people by this point. And I think we've
14 been reasonable and resolved whatever we could in
15 trying to minimize --

16 PRESIDING JUDGE: Yeah.

17 MR. ROSENTHAL: -- the disputes that we see.

18 So, I think -- I mean, there seems to be a
19 little bit of an ambush here on that side of the
20 table.

21 So if they can come up with a schedule I can
22 live with it.

1 PRESIDING JUDGE: Go ahead.

2 MR. NEUMAN: I have an idea, Mr. Rosenthal.

3 That would be, discovery closes 60 days from today,
4 with one exception and that is within 30 days from
5 today, if there are discovery disputes that are going
6 to prevent that 60-day deadline from being met by
7 these two complainants --

8 PRESIDING JUDGE: Yeah.

9 MR. NEUMAN: -- they bring it to you.

10 PRESIDING JUDGE: Yes.

11 MR. NEUMAN: And these weekly status sound
12 fuzzy and wonderful but they don't tell me anything.
13 I can't imagine what they do for anybody else.

14 PRESIDING JUDGE: Would it help if all you
15 got together and -- and separately outside the --
16 outside of this status conference and work out some
17 sort of schedule that you would agree upon?

18 Would that help?

19 MR. NEUMAN: I think that --

20 PRESIDING JUDGE: I mean, you just gave me
21 one.

22 MR. NEUMAN: -- everybody here will agree to

1 the schedule except those two, which doesn't do much
2 good.

3 PRESIDING JUDGE: Yeah. Well, I don't want
4 -- I don't want to penalize Mr. Shaner.

5 MR. NEUMAN: And that's why I said you can
6 -- you can -- within 30 days from now, they can bring
7 any discovery disputes that are going to prohibit the
8 production within 60 days, and get your blessing as to
9 what they're going to do to hit 90-days or whatever
10 the date's going to be.

11 PRESIDING JUDGE: All right. Mr. Shaner, if
12 I were you I wouldn't like that, and I can tell by
13 your face you're not real happy. But what -- do you
14 have any comments on that that might be constructive?

15 MR. SHANER: I think we -- I would need to
16 talk to Mike in more detail. The 60 days for
17 completion of all productions, I just can't agree to
18 that.

19 PRESIDING JUDGE: No. I know you can't.

20 MR. SHANER: Right.

21 PRESIDING JUDGE: I would be -- I would be
22 disappointed if you did.

1 MR. SHANER: But the other aspect, we will
2 need to serve some very limited discovery on Union
3 Pacific. There are differences with their affirmative
4 defenses and answers in this case, but I think that
5 will be completed probably very quickly. We can
6 resolve some other discovery through stipulations and
7 I imagine we can have a pretty good sense of, you
8 know, what the outstanding issues are in about a
9 month. I think we can probably work through that.
10 But the production timeline, I don't think that's
11 possible.

12 PRESIDING JUDGE: Mr. Donovan, I share your
13 peak at how we're proceeding here but I think the
14 board has forced us into this at this point by this
15 consolidation. I would love to cut you people free,
16 but you're just not there.

17 MR. NEUMAN: Your Honor, may I make a
18 suggestion that kind of meets halfway here? If we're
19 not in a position for Valero and Tesoro to agree upon
20 what would be a date for conclusion of discovery, can
21 we at least set a date for UP and Valero to come back
22 and say, okay, this is -- for setting that date?

1 Basically a date to set the date -- the end date. So
2 that we don't continue on with discussions week after
3 week without a clear ending.

4 PRESIDING JUDGE: Mr. Shaner, you can
5 respond to that. But, also, Mr. Monroe made a point
6 earlier that it's all good and well for you and Mr.
7 Rosenthal to give me weekly status reports, but they
8 don't know about it. I would like to include them on
9 the service list.

10 MR. SHANER: I assumed they would.

11 MR. MORENO: We do see the status reports,
12 Your Honor.

13 PRESIDING JUDGE: What were you talking
14 about then? It doesn't -- Mr. Monroe?

15 MR. DONOVAN: Mr. Donovan.

16 PRESIDING JUDGE: Mr. Donovan, I'm sorry.

17 MR. DONOVAN: I'm just saying that the
18 status reports are vague enough that they don't really
19 me when they're going to get done, what they're --
20 while having this discussion back and forth. And I
21 can understand that that's what they're doing.

22 PRESIDING JUDGE: Let's have more in depth

1 discussion on these reports then.

2 MR. NEUMAN: Fair enough.

3 PRESIDING JUDGE: That would help. I'd like
4 to see that myself. I know that's sort of a
5 subjective statement but I would expect that in your
6 stage of professional development you could figure
7 that one out. Right?

8 MR. SHANER: Certainly.

9 PRESIDING JUDGE: Okay.

10 MR. SHANER: All right. You know, I would
11 also say that for the broader discussion, you know,
12 while we're working this out I don't think everything
13 should depend on Valero and Tesoro. We think we can
14 move along other issues quickly. We probably will be
15 the last to complete a reduction -- productions.

16 PRESIDING JUDGE: Right.

17 MR. MONROE: But I don't think that
18 necessarily stops us from setting deadlines in other
19 aspects of the case.

20 And I would remind some of the other counsel
21 that we have every incentive and interest to move this
22 case along as quickly as possible.

1 PRESIDING JUDGE: I know you do.

2 MR. SHANER: We are in fact, parties.

3 PRESIDING JUDGE: And I never intimated
4 anything to the contrary. I think you all have
5 substantial and sufficient interest to move things
6 along. It's just that, you know, to state the
7 obvious, you're the last one in and you've got to
8 catch up with everyone else.

9 MR. SHANER: Certainly.

10 PRESIDING JUDGE: I do have a great deal of
11 sympathy for that position. Nonetheless, that's where
12 we all are.

13 MR. MORENO: Your Honor, Mr. Shaner's
14 statement is a good segway to kind of bring us back to
15 where we started with respect to the status of the
16 tank car. Obviously, we're not able to set an outer
17 bound for Valero and Tesoro today. I think we should
18 still talk about the various discrepancies that appear
19 to exist between the status of -- from one tank car
20 owner to the other.

21 PRESIDING JUDGE: Yes.

22 MR. MORENO: I would be very interested to

1 know -- because I cannot tell from the status report
2 is -- is exactly where each individual owner is.
3 Trinity has indicated that they're -- they'll be
4 completed within 60 days at the latest. But it's
5 unclear to me where the others who are further back in
6 the line are.

7 PRESIDING JUDGE: You know, this is
8 characterized as a status conference and I would like
9 to open it up so that it looks like more of a
10 conference, so that in the formalities of these
11 proceedings you address me and then we go back and
12 forth through me.

13 I think it might be productive at this point
14 if the parties would -- could have a civilized
15 discussion among themselves on the record so that you
16 can actually get this information out, shared in a --
17 in an efficient way, more efficient way. So how does
18 that sounds?

19 MR. NEUMAN: Fine.

20 PRESIDING JUDGE: Is that appropriate, do
21 you think?

22 MR. NEUMAN: Sure.

1 PRESIDING JUDGE: Well, why don't we do
2 that? Who wants to start?

3 If you have questions, you can ask questions
4 of each other.

5 Yes?

6 MR. GOLDSTEIN: Marc Goldstein for Union
7 Tank Car. I'll start because I think my story is the
8 easiest and most complete thing.

9 We made our production to UP last week or
10 the week before. I have not heard any complaints from
11 Mr. Rosenthal yet. But if he --

12 PRESIDING JUDGE: Yet?

13 MR. GOLDSTEIN: -- has some we're happy to
14 the address it.

15 PRESIDING JUDGE: All right.

16 MR. GOLDSTEIN: But at this point we've made
17 our production. We think that we are complete,
18 pending comments back from Mr. Rosenthal.

19 PRESIDING JUDGE: All right.

20 Mr. Rosenthal, do you have --

21 MR. ROSENTHAL: Yeah. We've taken a first
22 look at the production. It seems to be fairly

1 complete. We may have a few follow up questions once
2 we look at some of the data that were produced. If we
3 don't understand particular columns or something.

4 PRESIDING JUDGE: Yeah.

5 MR. ROSENTHAL: But you know, I've actually
6 personally I think looked at all of the documents, and
7 I agree it seems complete.

8 PRESIDING JUDGE: Wonderful. Thank you.
9 Next? Mr. Neuman?

10 MR. NEUMAN: Reed Neuman for GATX.

11 We too have had productive discussions, I
12 think, with Mr. Rosenthal about various aspects of the
13 document responses and the discovery responses. We're
14 working through those. And based upon what I know
15 today, I would say we're well within four weeks of
16 being -- of being done. I think that may be actually
17 -- it may be shorter than that. Maybe three to
18 four weeks, I think we'll be done.

19 So -- and no problems. We don't have any
20 outstanding disputes or issues that are bubbling and
21 may come to you. As far as I know, I think we're just
22 moving things along.

1 PRESIDING JUDGE: Okay.

2 MR. NEUMAN: So I'd say 30 days would
3 probably be a conservative or a comfortable estimate
4 of when we'll be done for GATX.

5 PRESIDING JUDGE: Thank you very much.

6 MR. ROSENBERG: Your Honor, Robert Rosenberg
7 for ARI or American Railcar Industries.

8 I have a little bit more of a mixed report.

9 I think for a majority of the requests,
10 we've been able to collect the information. The ESI
11 is still taking a while. Also we were having a
12 problem collecting information for 2C and 2D, which
13 relates -- which relate to charges from other
14 railroads for similar charges and how these charges
15 are or are not passed through to the lessee customers,
16 I believe.

17 In that regard we were having, you know,
18 substantial problems just locating that information.
19 You know, there didn't seem to be a particular way to
20 pull the information together.

21 And in the context of that I was trying to
22 get some idea of what level the charges turned out --

1 were turned out to be, how much money we were looking
2 for, which I thought was a large number but it wasn't
3 looking to be that way.

4 And, so, I asked Mr. Rosenthal how much --
5 you know, if UP could identify the charges and it
6 turned out to be a -- I alluded to this in a status
7 report -- a relatively modest figure.

8 PRESIDING JUDGE: Yeah.

9 MR. ROSENBERG: One that we don't believe
10 justifies this level of discovery against ARI.

11 The figure that was given was -- for ARI,
12 was for 2015 and 2016 combined, and 2016 is outside of
13 the required discovery period was all of \$14,000 --

14 PRESIDING JUDGE: Wow.

15 MR. ROSENBERG: -- that Mr. Rosenthal
16 identified.

17 Now, he also referred to another figure for
18 a related company that's a hundred thousand dollars
19 over those two years, and we don't think that
20 information should be included. But even if it is
21 included, it doesn't justify the discovery expense
22 that ARI has been exposed to.

1 So it's -- you know, it's become a
2 frustrating thing for us.

3 PRESIDING JUDGE: Mr. Rosenthal, help us.

4 MR. ROSENTHAL: Sure.

5 Well, the discovery requests that he was
6 talking about, one of them asks for documents
7 sufficient to show empty repair mileage payments to
8 railroads other than Union Pacific.

9 PRESIDING JUDGE: Right.

10 MR. ROSENTHAL: So, I don't know what
11 payments his company has made to other railroads. The
12 payments made to UP may be more or less, I don't know.

13 It's not a UP question. I don't think Union
14 Pacific's payments tell you anything about payments to
15 other railroads.

16 The second question, 2D, talks more
17 generally about empty repair mileage charges, which
18 are not necessarily the same as the tariff at issue.
19 There are other empty repair milage charges tank car
20 owners apparently bill to their lessees.

21 PRESIDING JUDGE: So this not 55C?

22 MR. ROSENTHAL: Exactly. So again, you have

1 that Union Pacific has charged and they've paid under
2 55C, doesn't tell me what they -- what the other
3 charges may or may not be.

4 So as far as the amount, I don't think
5 that's meaningful.

6 I'm a little disturbed to hear Mr.
7 Rosenberg's comment about related parties.

8 Union Pacific's records show that the total
9 number that Mr. Rosenberg talked about is being billed
10 to ARI. Our discovery dealt with, you know, define
11 ARI to include related parties. So I'm not sure what
12 Mr. Rosenberg has in mind when he's trying to -- and
13 I'm not sure what the corporate structures are. We
14 really haven't had a detailed discussion about that.
15 But either way, you know, we've talked about the
16 relevance of these requests. We've extensively in
17 front of you, we've negotiated what the parties will
18 do, what we get from railroads, what we get from the
19 company. I mean, it's a bit late to be coming back
20 and saying six months later, oh, we've looked at this
21 stuff and I don't know, we can't find it. We don't
22 think it's worth it.

1 I mean, that was all litigated long ago.

2 And we've had Union Tank Car produce, we've
3 had Trinity say that they're going to be done in 60
4 says. We've had GATX say they think they're going to
5 be done in four weeks.

6 I just -- it strikes me as -- we've tried to
7 be cooperative. We talked about this. We've made
8 other accommodations in our PSI searches. We've given
9 Mr. Rosenberg the information about buildings, so
10 hopefully he can he track it down with the help of his
11 company. But we've been through this before it seems.

12 PRESIDING JUDGE: Yes. Mr. Rosenberg?

13 MR. ROSENBERG: Yeah. I would agree that
14 we've had helpful consultations and communications and
15 discovery has been narrowed. I had just thought, you
16 know, when we were first here the representations were
17 that the tank car owners were the -- were rural
18 parties in interest had massive dollars involved in
19 this and, you know, I essentially took UP at its word.

20 That turns out not to be the case for better
21 or worse.

22 Some of the information is, you know, is --

1 you know, there just doesn't seem to be enough of it
2 for there to be a feasible way to look for it besides
3 sending people to file cabinets to start looking for
4 individual invoices.

5 But we also have an issue --

6 PRESIDING JUDGE: We don't do that. I mean,
7 Mr. Rosenthal, I could just say that this is just
8 unreasonable and just order that it not be produced,
9 couldn't I? Well, yes, I could.

10 But what do you think?

11 MR. ROSENTHAL: I just find it very -- first
12 of all, as far as the representations he made about
13 Tank Car owners. Again, Mr. Rosenberg is, somehow in
14 his mind, defining ARI to be something different from
15 Union Pacific. You know, one, I think whatever the
16 amount is -- the amount we came up with for this
17 company was -- I assume it's not highly confidential
18 because you said a year?

19 PRESIDING JUDGE: Yes.

20 MR. ROSENTHAL: Is somewhere above a hundred
21 thousand dollars.

22 PRESIDING JUDGE: Yeah.

1 MR. ROSENTHAL: It's different for different
2 tank car owners.

3 PRESIDING JUDGE: Sure.

4 MR. ROSENTHAL: We didn't get into the
5 specifics of that during our earlier presentations to
6 you. Mr. Rosenberg didn't ask me. I assumed he was
7 consulting with his clients.

8 I think -- and, again, I don't know -- I
9 just don't know what they pay to other companies. But
10 they tell me they can't find the data, you know, I
11 don't know what to do. I think they should make a
12 good faith effort.

13 PRESIDING JUDGE: They should make a good
14 faith effort. But on the other hand if they have to
15 do -- if it's unduly burdensome, then we don't
16 generally require it.

17 I don't know --

18 MR. ROSENTHAL: I understand that.

19 PRESIDING JUDGE: He's suggesting that. I
20 don't know if he's going to actually, formally say
21 it's unduly burdensome and it's just a complete waste
22 of time. I don't know.

1 He has to have a pretty good foundation for
2 that assertion, and I don't know if he's had that --
3 has that foundation or if he just sort of thinks this
4 is the case. But we're not going to -- we're not
5 going to force someone to go through formalistic
6 exercises in discovery if it's unduly burdensome.

7 MR. ROSENTHAL: I understand. I just
8 haven't heard this objection from others.

9 PRESIDING JUDGE: I know. I know. And it
10 may be -- I don't know. I speculate here that it may
11 be that the others have a different method of
12 accounting for this. I don't know. The recordkeeping
13 is different. I mean, if ARI has file cabinets full
14 of junk and others have it on computers, I would say
15 that's sad. But it may be the case.

16 MR. ROSENBERG: Your Honor, also I think it
17 would be appreciated, I think ARI is the smaller tank
18 car owner than the other entities here.

19 If you're larger, you have other systems.
20 You also have, I presume, that they have a larger set
21 of dollars at stake.

22 But -- and, you know -- you know, I had

1 assumed that because Union Pacific was going after
2 ARI, that there were lots of dollars to justify this
3 effort.

4 We're in, you know, this uncomfortable
5 situation where there's over a hundred thousand
6 dollars of discovery work for a hundred thousand
7 dollars in charges. And, now, we're just compounding
8 it with the additional work.

9 PRESIDING JUDGE: Well, that's just -- if
10 that's the case and you're making that representation,
11 it sounds unduly burdensome. I mean, clearly if
12 you've got a hundred thousand dollars worth of billing
13 and you've spent a hundred thousand dollars trying to
14 figure that out, that's just kind of silly.

15 Mr. Rosenthal?

16 MR. ROSENTHAL: I mean, if he's representing
17 that they spent a hundred thousand dollars in
18 discovery, that's -- you know, I understand that.
19 Again, I find that one a little difficult to believe.
20 But the other point is, you know, one of the reasons
21 we work to protect tank car owners is not because they
22 particularly owe us money, but because we wanted to

1 see what they're charging others and how their systems
2 are working.

3 PRESIDING JUDGE: Yeah.

4 MR. ROSENTHAL: It's to understand how these
5 systems work. So they may not pay all the money
6 themselves but they may be billed and pass it on, and
7 that what we're digging into.

8 PRESIDING JUDGE: Yes. Well, I mean, you
9 can make -- you can make your case, I think, with the
10 data the other tank car owners have provided on this
11 point, can't you?

12 I mean, given the assertions here that it's
13 de minimis and it's unduly burdensome, can't you make
14 your case with the rest of it.

15 MR. ROSENTHAL: It remains to be seen.

16 I mean, we haven't seen Trinity's data, we
17 haven't seen GATX's data. Union Tank has produced
18 their data but I honestly haven't gotten through.
19 I've looked at their e-mails because those tend to be
20 the most interesting things. I've looked to see what
21 sort of data they've provides.

22 PRESIDING JUDGE: So Trinity and GATX have

1 not produced it? Is that what you just said?

2 MR. ROSENTHAL: They have not. Union Tank
3 Car has produced -- so I -- although I've looked at
4 all of their documents, you know, I can't sitting here
5 tell you that I've seen the ones that were produced in
6 response to 2C. I have no reason to believe they're
7 not in there but they produced a fair amount. I tried
8 to make sure it looked reasonably complete, that it's
9 just not thrown there.

10 PRESIDING JUDGE: Mr. Neuman, do you have
11 any comments on that?

12 MR. NEUMAN: For GATX. I said we are three
13 or four weeks away from producing the information.
14 He's talking about that he can preview.

15 PRESIDING JUDGE: All right. Well, why
16 don't we get it -- and Trinity, how far is Trinity
17 from this?

18 MR. NEUMAN: Matt's on the phone.

19 PRESIDING JUDGE: Matt, are you still there?

20 MR. KALAS: I am, Your Honor. With respect,
21 I do need to hop off here in about 15 minutes.

22 PRESIDING JUDGE: No. That's all right.

1 MR. KALAS: If that's all right.

2 I would like to try to address our aspect,
3 if possible.

4 PRESIDING JUDGE: Well, you can. Let's go
5 ahead and finish this issue, and then you can say
6 whatever you need to say. Okay?

7 MR. KALAS: Yes. So, the answer to the
8 issue, I mean we haven't broken it out in the same
9 manner that ARI has. So, I can't speak to anything in
10 that respect because of volume.

11 PRESIDING JUDGE: Yeah. And how far are you
12 away from finishing the 2C and 2D discovery request?
13 How long?

14 MR. KALAS: Again, I put the 60 days out as
15 a -- as a safe in my mind, reasonable conclusion to
16 when we're complete with the full production for all
17 the requests that were compounded. So that's where I
18 have us. We've collected all of our documents from
19 all of the custodians that we identified.

20 PRESIDING JUDGE: Sixty days for that?

21 MR. KALAS: Our databases are all being
22 searched per our terms and per responsiveness, we've

1 -- you know, we've collected the data related to what
2 he needs as to --- as processing railing data.

3 So, again, I think we're -- you know, he's
4 perhaps 30 to 45 days, but in terms of if I wanted --
5 if we wanted to set a schedule today, I would put that
6 at 60 days out definitively.

7 PRESIDING JUDGE: Mr. Neuman, you're four to
8 six weeks. So you've got 60 days on this, I guess
9 instead. I mean, we're going to finish this in
10 60 days, the 2C and 2D issues here.

11 MR. NEUMAN: Right. But I think it's more
12 likely to be four.

13 PRESIDING JUDGE: That's fine.

14 MR. NEUMAN: Right. I think it's more
15 likely to be four.

16 PRESIDING JUDGE: That's fine.

17 MR. NEUMAN: Right.

18 PRESIDING JUDGE: Faster is better. But
19 we're setting the outside parameters.

20 MR. NEUMAN: Understood.

21 PRESIDING JUDGE: Now, ARI, what would
22 60 days do for you?

1 MR. MONROE: Well --

2 PRESIDING JUDGE: Recognizing what you've
3 already said. You don't have to repeat any of it.

4 MR. MONROE: I believe that we could
5 complete things within that timeframe, if not earlier.

6 PRESIDING JUDGE: All right. So let's --
7 yes?

8 MR. NEUMAN: I have no problem.

9 PRESIDING JUDGE: All right. Well, so we've
10 got 60 days to respond to 2C and 2D, and that's a hard
11 stop. Okay?

12 Mr. Rosenthal, is that good for you? Do you
13 like that?

14 MR. ROSENTHAL: That's fine. I actually
15 think they were talking about -- I don't want to speak
16 for them, but I think the other tank cars owners were
17 talking about being done with --

18 PRESIDING JUDGE: Everything.

19 MR. ROSENTHAL: With everything.

20 PRESIDING JUDGE: Everything.

21 MR. ROSENTHAL: Including 2C and 2D within
22 that timeframe.

1 PRESIDING JUDGE: Yeah.

2 MR. ROSENTHAL: I don't want to speak for
3 Mr. Rosenberg.

4 PRESIDING JUDGE: Mr. Rosenberg was subsumed
5 within that.

6 MR. ROSENBERG: I guess I -- you know,
7 there's a question in my mind whether we still have to
8 produce 2C and 2D if it involves that manual exercise.

9 PRESIDING JUDGE: Do the best you can in
10 that period of time.

11 What?

12 MR. MONROE: Yes, Your Honor.

13 PRESIDING JUDGE: No, no. Go ahead. Let's
14 have a discussion here. You were thinking something.

15 MR. MONROE: You know, I'm just thinking
16 that we're sending people to look at five years of
17 file cabinets to look for item 55 -- item 55C only
18 comes into existence as of I think January 1, 2015.
19 You know, there are some other carriers for -- for
20 perhaps earlier years.

21 You know, what I've seen from the most
22 recent invoices that come in, is that they come in.

1 That get a reject sign on them because they come to
2 the car owner, you know, I think is pretty much the
3 last recourse. Would that be a fair characterization
4 at least, of how UP bills them? Mike?

5 MR. ROSENTHAL: Well, Jimmy, I mean, again,
6 I am not only talking about -- none of these actually
7 necessarily involve stuff that Union Pacific is
8 billing.

9 MR. MONROE: Well --

10 MR. ROSENTHAL: When Union Pacific bills for
11 item 55C charges, it tries to find the person who is
12 actually responsible for making the payment. That's
13 often not going to be the tank car owner because of
14 their arrangements with the lessee. We try to make it
15 easy and bill the lessee.

16 There are cases where a tank car owner is
17 probably the right party to bill, in which case we
18 bill the tank car owner.

19 PRESIDING JUDGE: Right.

20 MR. ROSENTHAL: But again, none of this is
21 necessarily -- 2C and 2D are not item 55C charges.
22 They're -- 2C is other railroad charges and 2D is

1 other empty mileage charges.

2 PRESIDING JUDGE: Right.

3 MR. ROSENTHAL: So --

4 PRESIDING JUDGE: Well, just do the best you
5 can.

6 MR. MONROE: Yes, Your Honor.

7 PRESIDING JUDGE: And finish everything in
8 60 days.

9 MR. MONROE: Thank you, Your Honor.

10 PRESIDING JUDGE: All right.

11 Who wants to go next?

12 Mr. Monroe, I see you're probably chomping
13 at the bit there. So you can go next.

14 MR. MONROE: I believe that Cargill -- let
15 me tell you what Cargill has to do.

16 Cargill produced all of the data that we
17 spent a number of hours discussing before you in
18 December. We've gotten some -- notwithstanding I
19 think what Mike said, we did get a two or three paged
20 letter from UP's counsel asking additional questions
21 about that data and clarifications and what does this
22 mean and what does that mean? We responded to that.

1 So I think as far -- unless they look at the
2 data and they have more questions, we're done with the
3 data. And the data was the big part. Okay?

4 There were additional requests that required
5 us to look for hard copy stuff and that turned out to
6 be a much more difficult process than the -- than one
7 would think. In large part because the key person
8 left the company who was basically the custodian of
9 those documents. A new person's come in and it was
10 basically trying to find. So it took a long time.

11 We've done that.

12 PRESIDING JUDGE: Okay.

13 MR. MONROE: Basically there's going to be
14 no additional hard copy documents. I think we've
15 produced all the leases that we can locate, going back
16 I think to 2009 or 2008. We thought that there might
17 be some. We said we'd try to go to 2007. We looked
18 in archives and we're not finding things. So, I think
19 we're done. And we're prepared to -- once we do the
20 last phase, which I will get to in a minute, we're
21 prepared basically to give supplemental responses to
22 all the requests saying, we've looked, we don't have

1 this. We've looked, this is what we've got. And I'm
2 -- long story short, I believe that we should be able
3 to do that by the end of April. At the way -- the
4 pace things have gone, it would be ridiculous for me
5 to say, I'll give you a hard -- a promise that we'll
6 be done at the end of April. But we certainly will be
7 done within 60 days, which is what we were talking
8 about.

9 PRESIDING JUDGE: Okay. Okay.

10 MR. MONROE: The last thing we have to do
11 and what we're doing right now is the ESI -- the
12 e-mails basically.

13 PRESIDING JUDGE: Okay.

14 MR. MONROE: We have an outstanding request
15 for depositions and I haven't really talked to Mike.

16 PRESIDING JUDGE: You can finish all of the
17 discovery within 60 days.

18 MR. MONROE: Well, certainly our production
19 will be done. I'm -- let's just say within the next
20 two or three weeks we anticipate basically to give
21 Mike a supplemental response that says, okay, this is
22 everything we have. Okay? We're done unless he has

1 problems.

2 We have an outstanding request for
3 depositions and I haven't really talked to Mike about
4 that because --

5 PRESIDING JUDGE: All right.

6 MR. MONROE: -- there's an e-mail saying we
7 don't want to schedule anything until your production
8 is complete.

9 PRESIDING JUDGE: So I want you-all to
10 consider that when we agree upon a date, like the tank
11 car owner 60 days, consider that an order. Okay?

12 So, you are -- you're carving out for
13 yourself an order that in what, one month you'll
14 finish your discovery --

15 MR. MONROE: Our production.

16 PRESIDING JUDGE: -- production?

17 MR. MONROE: Our production, yes.

18 PRESIDING JUDGE: Okay. One month. All
19 right.

20 MR. MONROE: And then we have the
21 depositions, which we will schedule, you know,
22 within -- I'm assuming it will be within 60 days. But

1 they'll have to look at our production first, I
2 assume.

3 PRESIDING JUDGE: Okay.

4 MR. MONROE: We're prepared to do that on a
5 reasonable basis.

6 PRESIDING JUDGE: Okay.

7 Mr. Rosenthal?

8 MR. ROSENTHAL: Yeah. That's fine. We want
9 a chance to review their production before we have the
10 depositions, just so we have an idea of whatever they
11 have and to follow up.

12 But --

13 PRESIDING JUDGE: Yes.

14 MR. ROSENTHAL: -- the type of schedule Mr.
15 Monroe is proposing sounds reasonable.

16 PRESIDING JUDGE: You-all will, of course,
17 well keep me apprised on your status report on that?

18 MR. ROSENTHAL: Absolutely.

19 PRESIDING JUDGE: That's fine. Next?

20 MR. KALAS: Your Honor, with respect, before
21 we move on to next, I just wanted to cast again for
22 Trinity. If they are no more questions with respect

1 to Trinity I would like to drop off the call.

2 PRESIDING JUDGE: All right. Well, thank
3 you very much for your participation. I appreciate
4 it.

5 MR. KALAS: I appreciate it. And I thank
6 you all for your accommodation. I appreciate it.

7 PRESIDING JUDGE: All right. Take care.

8 MR. KALAS: Thank you.

9 MR. NEUMAN: Your Honor, it seems to me --
10 we may have some -- to a 95 percent resolution here
11 and that is with the exception of new complainants.
12 Discovery's going to be complete in 60 days.

13 PRESIDING JUDGE: All right.

14 MR. NEUMAN: We're very close to that.

15 PRESIDING JUDGE: Right.

16 MR. NEUMAN: So, to you -- the question for
17 you, Your Honor, do you feel that you have the ability
18 to declare discovery closed (except for) and kicking
19 the procedural schedule that the board has already
20 outlined?

21 PRESIDING JUDGE: I don't think I can do
22 that.

1 MR. NEUMAN: Fair enough.

2 PRESIDING JUDGE: You know, I didn't have to
3 think too long on that. I think that's irregular.
4 It's a very nice try and I would love to do it for
5 you, but no.

6 MR. NEUMAN: Well, could we -- you knew I
7 had an addendum to that footnote for that suggestion.
8 And that is: Could we when the 60 days approaches or
9 is there, could we get back to Mr. Shaner and his
10 clients to say when?

11 PRESIDING JUDGE: Absolutely.

12 MR. NEUMAN: Okay.

13 PRESIDING JUDGE: Yes.

14 MR. NEUMAN: I'll live with that it.

15 PRESIDING JUDGE: Okay.

16 So we're just cutting to the chase. This
17 90 percent solution, everyone except Mr. Shaner will
18 be finished with the discovery, not the depositions in
19 60 days. Is that right?

20 MR. ROSENTHAL: Just to be clear, though, if
21 it turns out that Valero and/or Tesoro have discovery
22 that they serve on Union Pacific, it would be

1 everybody except Tesoro and Valero and then Union
2 Pacific. They've talked about serving discovery on
3 Union Pacific again. So --

4 PRESIDING JUDGE: So what's your point?

5 MR. ROSENTHAL: When you say everybody
6 except Valero and Tesoro will be done with discovery.

7 PRESIDING JUDGE: Uh-huh. Well, you two
8 still are locked in mortal combat.

9 MR. ROSENTHAL: Exactly.

10 PRESIDING JUDGE: Yes. I understand that.
11 You just wanted to make sure, didn't you?

12 MR. ROSENTHAL: I just wanted to make sure.

13 MR. NEUMAN: That's good.

14 MR. SHANER: The other point of
15 clarification that needs to get on the record, one of
16 the things we've been waiting for quite some time from
17 UP is a privilege log. And UP's status report has
18 indicated that they would produce a privilege log by
19 May 15th. And I want to make sure that that's still
20 the case, that the introduction of Valero and Tesoro
21 doesn't change a date -- even if Valero and Tesoro
22 seek additional discovery.

1 PRESIDING JUDGE: Couldn't possibly, could
2 it? It was a leading question.

3 MR. ROSENTHAL: I mean, I -- we will produce
4 our privilege log based on the discovery that we've
5 received and we are in for May 15th, which is
6 consistent with the parties' discovery protocol.

7 PRESIDING JUDGE: Right.

8 MR. ROSENTHAL: You know, if you're saying
9 you don't -- don't hold that up even though if Valero
10 and Tesoro are --

11 PRESIDING JUDGE: Yeah.

12 MR. ROSENTHAL: -- served more discovery,
13 we'll comply with that.

14 PRESIDING JUDGE: Yes. That's what I want.
15 Right. Thank you.

16 All right. Mr. Shaner, you just don't look
17 very happy today. I don't know you but --

18 MR. SHANER: I'm not unhappy.

19 PRESIDING JUDGE: You need to have more fun
20 here.

21 All right.

22 What else do we have to do here? Sounds

1 like we've made a lot of progress. Is that it?]

2 All right. So Mr. Shaner, you and Mike over
3 here are going to communicate with me on a weekly
4 basis. And don't just -- not just little one liners,
5 I want some detail in these. Okay? I want to have a
6 good feeling about where you folks are going and what
7 you've been doing. Please. Is that it?

8 Well, thank you very much. I always enjoy
9 getting together with you folks. I really do. And
10 we're off the record.

11 (Whereupon, the hearing concluded at 11:00
12 a.m.)

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1 REPORTER'S CERTIFICATE

2 District of Columbia

3 County of Washington, to wit:

4 I, KENNETH NORRIS, a Notary Public of
5 the District of Columbia, County of Baltimore, do
6 hereby certify that the within named parties
7 personally appeared before me at the time and place
8 herein set out.

9 I further certify that the proceedings
10 was recorded stenographically by me and this
11 transcript is a true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor in any way
14 interested in the outcome of this action.

15 As witness my hand and notarial seal
16 this 19th day of April 2017.

17

18

KENNETH NORRIS

19

Notary Public

20

21

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