

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	242826
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	ENTERED
CHEMISTRY COUNCIL; ETHANOL	)	Office of Proceedings
PRODUCTS, LLC D/B/A POET ETHANOL	)	March 16, 2017
PRODUCTS; POET NUTRITION, INC.;	)	Part of
AND CARGILL INCORPORATED,	)	Public Record
	)	Docket No. NOR 42144
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

Union Tank Car Company (“UTC”), GATX Corporation (“GATX”), Trinity Industries, Inc. (“Trinity”), and American Railcar Industries, Inc. (“ARI”) (individually, “Tank Car Owner” or “Owner,” and collectively, “Tank Car Owners” or “Owners”), non-parties to the above captioned matter, hereby submit this status report in response to the order of Administrative Law Judge Dring served March 3, 2017.

On January 24, 2017, the Tank Car Owners executed a letter authorizing UP to obtain specified materials from Railinc filed on May 17, 2016 (“UP Pet.”). Tank

Car Owners are unaware whether Railinc has compiled and/or UP has obtained the data authorized by the letter. Each Tank Car Owner was to receive, via Complainants, a copy of the data provided by Railinc pertaining to its own tank cars, but no Tank Car Owner has received any such data to date.

Shortly after the Railinc authorization letter was executed, UTC and ARI approached UP to confer regarding problems that they were encountering in compiling ESI documents; UTC and ARI anticipated that Trinity and GATX would later encounter the same problems. In particular, RFP 6 was generating an excessive number of hits for both UTC and ARI,¹ and ARI was experiencing additional problems with other ESI RFPs. Following those discussions and a modification of the search, UTC was able to proceed with its ESI compilation and is doing so.² Based on UTC's ability to reach a workable resolution, ARI has arranged for support from an ESI vendor, which cost and disruption ARI had hoped to avoid. GATX and Trinity are also facing an impracticably large volume of ESI materials. Trinity has also encountered the same problems with an impracticably large set of hits in response to RFP 6 even with the modified search terms used by UTC, the source of which appears to be inclusion of simple numbers (e.g., "71"), and is exploring alternative search string syntax options. Trinity and, very possibly

¹ The October 13, 2016 order specifies: "To the extent any search described below yields an excessive number of 'hits' or 'false positives,' the affected TCOs and UP will work to resolve the issue jointly through modification of the search terms or syntax. If a resolution is not achieved by agreement, the TCOs and UP shall have the right to return to the undersigned Administrative Law Judge to seek a resolution of the issue."

² One of the challenges is distinguishing "UP" from "up" as both a stand-alone term and as part of a larger string such as "support" or "uphold."

GATX and ARI, will need to confer further with UP in order to make the ESI searches, especially RFP 6, practicable.

In light of these ESI-related difficulties, no or little information has been produced to UP to date. UTC anticipates being able to make the bulk if not the entirety of its production within the next month. The other Tank Car Owners anticipate being able to start their non-ESI production shortly and may be able to complete much of that aspect of their production within the next month. It is not feasible to provide an estimate of the time frame for completing the ESI-related production until RFP 6 is made manageable, but the other Tank Car Owners are working diligently to define the scope of the problem so that they can propose possible solutions to UP.

Respectfully submitted,

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Dated: March 16, 2017

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CERTIFICATE OF SERVICE

I hereby certify that this 16th day of March, 2017, I have caused copies of the forgoing to be served via first-class mail, postage prepaid, or by more expeditious means, upon all parties of record to this proceeding.

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

/s/ Robert D. Rosenberg