

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. NOR 42144

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL &
PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE
FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS,
LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; AND CARGILL
INCORPORATED v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42150

VALERO MARKETING AND SUPPLY COMPANY
AND VALERO RAIL PARTNERS, LLC v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42152

TESORO REFINING & MARKETING COMPANY LLC;
TESORO GREAT PLAINS GATHERING & MARKETING, LLC;
AND DAKOTA PRAIRIE REFINING, LLC v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42153

ARKEMA INC. v. UNION PACIFIC RAILROAD COMPANY

SUPPLEMENTAL OPENING EVIDENCE AND ARGUMENT OF ARKEMA, INC.

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Dated: February 22, 2019

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Joint Verified Statement of J. Brent Grow and Stephen Trombetta

Exhibits

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1	UP presentation “Union Pacific Empty Tank Car Rules” (UPRR0000068-74)
2	Arkema presentation “UP 4703 Shop Moves Tariff: Impacts to Arkema, Inc.” (ARK10057103-57114)
3	UP presentation “{{ [REDACTED] }}” (UPRR0011423-430)
4	{ [REDACTED] } (ARK10001701-1709)
5	List of Item 55-C charges Arkema has paid through August 15, 2018

I. INTRODUCTION

Arkema Inc. hereby submits its Supplemental Opening Evidence and Argument (“Supplemental Evidence”) in STB Docket NOR 42153.¹ This Supplemental Evidence incorporates by reference, and is supplemental to, the Joint Opening Evidence and Argument filed collectively by Arkema and the other complainants in the consolidated proceedings captioned above under Docket NOR 42144 (“Joint Evidence”). In this Supplemental Evidence, Arkema presents supplemental facts and evidence specific to its complaint. Arkema repeats the Joint Evidence only to the extent necessary to give context to its individual facts.

In its Complaint, Arkema challenges the lawfulness of Item 55-C, Subpart D, in UP Tariff 6004-C (“Item 55-C”), published by defendant, Union Pacific Railroad Company (“UP”), which became effective on January 1, 2015. Arkema asserts that (1) UP does not compensate Arkema for Item 55-C in violation of 49 U.S.C. §§ 11121 and 11122; and (2) UP engaged in an unreasonable practice in violation of 49 U.S.C. § 10702 by misrepresenting its true motivation for adopting Item 55-C. This Supplemental Evidence is supported by the attached Verified Statement of J. Brent Grow (“Grow V.S.”), who is Arkema’s Strategic Purchasing Manager, Domestic Transportation- Rail, and exhibits referenced throughout this pleading.

II. STATEMENT OF FACTS

A. UP’s Adoption of Item 55-C.

In December 2014, UP notified its customers, including Arkema, that it would impose a new charge for transporting tank cars to and from repair facilities, effective January 1, 2015. UP,

¹ Throughout this Supplemental Evidence, text in double or single braces (i.e. {{...}} or {...}) is HIGHLY CONFIDENTIAL, except that text in single braces (i.e., {...}) is CONFIDENTIAL to Arkema and Union Pacific only, pursuant to the amended protective order issued in the consolidated proceedings on October 20, 2017.

along with most other Class I railroads, previously had provided such transportation without charge. UP implemented this new charge through Item 55-C.

In a presentation that UP distributed to Arkema and other customers, UP offered four reasons for this new charge:

Why Change?

- Align tank cars more closely with treatment of empties for all other car types
- Provide more timely feedback to customers about efficient management of their fleet
- Reduce empty miles on our busy network which will help protect the fluidity of our network
- Allow direct and prompt recovery of the costs for moving empty cars to and from shops²

UP did not explain in this document, or in subsequent communications with Arkema, why it was necessary or appropriate to align tank cars with other car types given the historical differences in treatment between tank cars and other car types.³ For example, unlike other car types, railroads do not supply tank cars to their customers for transportation. Nor did UP offer any facts to demonstrate that Arkema or most other customers were engaged in inefficient fleet management practices or were creating excess empty miles that threatened the fluidity of the UP network.⁴ Lastly, UP did not explain how Item 55-C would allow more prompt recovery of repair move costs that UP already was recovering through its loaded line-haul rates or why UP should charge

² Ex. 1 at UPRR0000070.

³ Grow and Trombetta V.S. para. 5.

⁴ *Id.*

its customers for tank car repair moves when the law declares this to be a railroad's responsibility.⁵

Arkema had serious concerns with Item 55-C that it promptly raised with UP. In a December 18, 2014 presentation that Arkema shared with UP, Arkema noted that Item 55-C "will simply produce additional profit for UP and additional costs for Arkema."⁶ { { [REDACTED]

[REDACTED] } } Arkema, however, accepting that UP may be unaware of various factors pertinent to tank car repair movements due to the fact that UP does not own tank cars, attempted to school UP in the private tank car shop process.⁷

Specifically, Arkema pointed out that it uses mobile repair units whenever possible to avoid having to transport a tank car to a repair facility at all, chemical tank cars must be cleaned before moving to a repair facility which requires an extra empty move to a cleaning facility first because most repair facilities cannot clean hazardous materials, and that Arkema must send its leased tank cars to a shop within the lessor's network.⁸ In addition, Arkema stressed that rail car shop demand and capacity frequently dictate shop selection.⁹ As evidence that Arkema has optimized its repair movements for efficiency, Arkema performed an analysis of its repair moves which showed that 92% were below 500 miles and 66% were below 250 miles.¹⁰ Arkema, therefore, was highly skeptical of UP's "efficiency" justifications.¹¹

⁵ *Id.*

⁶ Ex. 2 at UPRR0011391.

⁷ *Grow and Trombetta V.S.* para. 6.

⁸ Ex. 2 at UPRR0011390.

⁹ Ex. 2 at UPRR0011391.

¹⁰ Ex. 2 at UPRR0011393.

¹¹ *Grow and Trombetta V.S.* para. 6.

Indeed, Arkema expressed its belief that UP's true motivation underlying Item 55-C was to reap additional revenue from the confluence of two events that created a "Shop Bubble" which offered UP a unique opportunity to profit handsomely from repair facility movements.¹² First, Arkema noted the anticipated retrofit movements that would result from compliance with a proposed rule from the Pipeline and Hazardous Materials Safety Administration ("PHMSA") that would require the retrofit of tens of thousands of tank cars over the ensuing five years.¹³ Second, Arkema noted an impending surge in tank car recertifications required by HM-201. Arkema's belief was reinforced by the fact that UP's minimum charge for empty repair moves was comparable to tank truck rates for loaded hazardous materials shipments and UP also intended to assess its standard fuel surcharge on repair movements despite empty tank cars weighing 61% less on average than loaded cars.¹⁴ Arkema estimated that Item 55-C would add { [REDACTED] } annually to its rail spend on UP, an increase of { [REDACTED] }%, for the exact same service that UP previously provided as part of its loaded line-haul rates to Arkema.¹⁵ UP, however, made no offer to reduce its line-haul rates and has continued to increase its rates based upon market conditions just as it did prior to Item 55-C.¹⁶

UP and Arkema met on January 19, 2015, to discuss Arkema's objections. UP universally rejected every one of Arkema's points.¹⁷ { [REDACTED] }

¹² Ex. 2 at UPRR0011392.

¹³ Hazardous Materials: Enhanced Tank Car Standards, 79 Fed. Reg. 45,016, 45,060, 45,076 (proposed Aug. 1, 2014) (to be codified at 49 C.F.R. pts. 171-174, 179).

¹⁴ Ex. 2 at UPRR0011394-95

¹⁵ Ex. 2 at UPRR 0011394. { [REDACTED] }

¹⁶ Grow and Trombetta V.S. para. 10.

¹⁷ Ex. 3 at UPRR0011423-30.

[REDACTED]

[REDACTED]

[REDACTED]¹⁹ Through August 15, 2018, Arkema has paid UP \$1,426,853.65 pursuant to Item 55-C and has continued to accrue additional charges through the filing of this Supplemental Evidence.²⁰

B. Arkema's Business and Its Reliance Upon Tank Cars.

Arkema is a diversified, worldwide chemical manufacturer and a leading supplier of high performance materials that are used in a range of industries and applications. In the United States, Arkema operates 37 production facilities across 19 states.²¹ Arkema relies extensively upon rail transportation to move many of its products to customers.²²

Arkema tenders various products from six different business units to UP for transportation in private tank cars that Arkema owns or leases.²³ Arkema must supply tank cars to UP because, unlike nearly all other rail car types, UP does not separately supply the tank cars that it uses to provide transportation service to Arkema or any other tank car shipper.²⁴ This is a historical fact unique to tank cars. When a railroad relies upon private cars in lieu of providing those cars itself, the law requires the railroad to compensate the car provider for its ownership and maintenance costs, which include any costs associated with the transportation of cars to repair facilities. This compensation historically has occurred through the payment of mileage

¹⁸ Ex. 4.

¹⁹ Grow and Trombetta V.S. para. 9.

²⁰ *Id.*

²¹ Grow and Trombetta V.S. para. 12.

²² *Id.*

²³ Grow and Trombetta V.S. paras. 13, 15.

²⁴ Grow and Trombetta V.S. para. 13.

allowances. UP, however, does not pay mileage allowances to Arkema and has not done so for over a decade, perhaps longer.²⁵

Arkema currently possesses a fleet of approximately 1400 tank cars.²⁶ Arkema owns just 177 of those tank cars and leases the rest from leasing companies such as GATX, Union Tank and Trinity.²⁷ Arkema has laddered its tank car leases so that approximately 10% of the fleet will be up for renewal each year.²⁸ This provides Arkema with flexibility to align its tank car fleet size with its business needs by increasing or reducing its fleet size annually as appropriate to the level of business.²⁹

Because Arkema continuously optimizes its fleet size to its business needs, it must maximize its utilization of tank cars as much as possible.³⁰ When a tank car is at a repair facility for cleaning, inspection, repair or maintenance, including transportation to and from such facilities, it is unavailable to satisfy Arkema's transportation needs. Therefore, it is in Arkema's interest to minimize the time that its tank cars spend traveling to, returning from, and sitting at repair facilities.³¹

Arkema assigns each tank car to sub-fleets that are dedicated to serving one of six business units.³² Each business unit separately manages its dedicated sub-fleet which includes

²⁵ Grow and Trombetta V.S. para. 11.

²⁶ Grow and Trombetta V.S. para. 13.

²⁷ *Id.*

²⁸ Grow and Trombetta V.S. para. 14.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Grow and Trombetta V.S. para. 15.

deciding when and where to send a tank car for cleaning, inspection, repair, or maintenance.³³

An outside contractor, QTS, supports the fleet managers by identifying the most efficient repair facility options and coordinating with the tank car lessors to determine which facilities to use, track the movement of cars, and divert cars directly to repair facilities on empty returns to avoid excessive empty miles.³⁴

Except for a single lease of 23 tank cars, all of Arkema's tank car leases are full service, which means that the lessor is responsible for most maintenance expenses.³⁵ Therefore, Arkema must obtain instructions from the lessor whenever a car must move to a repair facility for inspection, maintenance or repair. Each lessor has established a nation-wide network of approved repair facilities for its cars.³⁶ The lessor will direct the tank car to a specific repair facility or provide a choice of facilities that have current capacity to handle the car. Arkema may request a different facility if the assigned location is sub-optimal, although the lessor is under no obligation to honor Arkema's request.³⁷ Arkema then is responsible for routing the car to the facility, including any charges associated with that transportation, such as Item 55-C.³⁸ But before Arkema can send a tank car to the assigned repair facility, it first must have the car cleaned.³⁹ Although some repair facilities also clean tank cars, very few are capable of cleaning the hazardous materials that Arkema transports in its cars.⁴⁰ Consequently, Arkema usually must

³³ *Id.*

³⁴ *Id.*

³⁵ Grow and Trombetta V.S. para. 16.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Grow and Trombetta V.S. para. 17.

⁴⁰ *Id.*

send the car to a separate, specialized cleaning facility before routing it to a repair facility.⁴¹ This additional move also is subject to charges pursuant to Item 55-C.

Arkema engages in multiple best practices to avoid excessive empty miles on its tank car fleet. Chief among them is diverting tank cars to repair facilities directly from the preceding unloading point to avoid bringing an empty car all the way back to an Arkema facility.⁴² Arkema also selects cleaning facilities in close proximity to its plants, which is especially important for Arkema's latex sub-fleet because those tank cars must be cleaned after every single loaded move.⁴³ In addition, Arkema uses mobile repair facilities whenever feasible to avoid sending a tank car to a repair shop at all.⁴⁴ Arkema employed these measures even before UP adopted Item 55-C because they also optimized Arkema's ability to get maximum utilization from its tank cars.⁴⁵

Arkema has multiple incentives to follow these best practices to minimize the distances its tank cars travel empty to and from repair facilities. First among these, as previously mentioned, is the need to optimize tank car utilization. In the ordinary course of business, fewer empty miles means less time that a tank car is out of service. Only in the rare instances when a closer repair facility has a lengthy backlog might it make sense to select a more distant facility.⁴⁶ Second, because rent continues to accrue during transit to a repair facility, but not while at such facilities, longer transit times associated with longer distances cost Arkema more rent.⁴⁷ Third,

⁴¹ *Id.*

⁴² *Grow and Trombetta V.S.* para. 18.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Grow and Trombetta V.S.* para. 19.

⁴⁷ *Id.*

under the mileage equalization tariff, RIC-6007-Series, Item 187, a per-mile charge is assessed annually on every tank car fleet for each empty mile above 106% of loaded miles accrued by that fleet. Arkema's lessors, which pay those charges initially, ultimately pass them onto their lessees who are responsible for the excess empty mileage charges.⁴⁸

III. ARGUMENT

A. UP Does Not Compensate Arkema For Item 55-C Charges As Required By 49 U.S.C. § 11122.

As explained in Part III.A.1.a. of the Joint Evidence, 49 U.S.C. § 11122 requires UP to compensate Arkema for the cost of owning and maintaining the tank cars that Arkema supplies to UP for the purpose of earning revenue on Arkema's loaded tank car movements. That compensation must account for the costs that Arkema incurs pursuant to Item 55-C to move tank cars to and from repair facilities. Because UP is responsible for supplying tank cars as part of its common carrier obligation or compensating those who do supply those cars from which UP benefits, the Interstate Commerce Commission ("ICC") historically prohibited railroads from charging for repair movements.⁴⁹ In *General American Transp. Corp. v. Indiana Harbor Belt Railroad Co.*, 3 I.C.C. 2d 599, 608, 610, 613-16 (1987), however, the ICC relaxed that blanket prohibition when, even though tank car providers would incur such charges initially, railroads ultimately would be responsible for those charges through their payment of mileage allowances in accordance with Ex Parte No. 328, *Investigation of Tank Car Allowance System*, 3 I.C.C. 2d 196 (1986). UP, however does not pay mileage allowances to Arkema and has not done so for over a decade.⁵⁰ In the absence of such compensation, Item 55-C is unlawful.

⁴⁸ *Id.*

⁴⁹ *E.g., Union Tank Car Co. Terminal Service*, 268 I.C.C. 338 (1947); *General American Transp. Corp. et al. v. Indiana Harbor Belt R.R. Co.*, 357 I.C.C. 102 (1977).

⁵⁰ *Grow and Trombetta V.S.* para. 11.

Although UP acknowledges that it does not pay mileage allowances, it nevertheless claims to compensate Arkema through discounted line-haul rates, which UP calls “zero-mileage” rates. As explained in Part III.A.2. of the Joint Evidence, Board precedent precludes UP’s resort to zero-mileage rates to compensate tank car providers in lieu of paying mileage allowances. Moreover, UP has not advised Arkema that it is discounting its line-haul transportation rates to compensate Arkema for supplying tank cars or even offered Arkema the option to choose a rate that included a mileage allowance.⁵¹ Regardless, even if UP had done so, Arkema would have no means to ascertain whether or not UP’s zero-mileage rates genuinely contained any discount, as explained in Part III.A.3. of the Joint Evidence. Indeed, as detailed in Part III.A.1.b. of the Joint Evidence, UP’s motivations for adopting Item 55-C are inconsistent with any intent to compensate Arkema for this new tank car ownership cost.

UP’s behavior towards Arkema after adopting Item 55-C also is inconsistent with any claim that UP is compensating Arkema for charges incurred under Item 55-C. Although Arkema’s tank car ownership costs increased dramatically, UP did not offer any reductions to Arkema’s line-haul rates which Arkema had negotiated without knowledge of Item 55-C.⁵² Furthermore, when those contract rates expired, UP increased them while simultaneously increasing the Item 55-C charges.⁵³

B. UP misled Arkema about the reasons for Item 55-C.

As detailed in Part III.B. of the Joint Evidence, UP had a duty to present Item 55-C in an honest manner, without misrepresenting it to avoid shipper scrutiny. But UP’s explanation for Item 55-C did not reflect its internal motivations. Instead, UP represented its empty-repair move

⁵¹ *Id.*

⁵² Grow and Trombetta V.S. para. 10.

⁵³ Grow and Trombetta V.S. para. 10.

charges to Arkema as an efficiency measure {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }} until it came time to communicate UP’s decision to customers.

If UP intended Item 55-C to encourage efficient tank car fleet management, one would expect UP to have performed some analysis to identify inefficient practices and the impact of those practices upon UP. But UP offered no such evidence to Arkema {{ [REDACTED] [REDACTED] }}.⁵⁴ Moreover, as detailed in Part II.B., above, Arkema had ample incentives to employ efficient fleet management practices long before UP contemplated Item 55-C.

Regardless of whether or not UP’s true motivations for Item 55-C were lawful, UP’s misrepresentation of those motivations to Arkema and other customers was an unreasonable practice. Railroad practices that include “misrepresentations or misleading conduct by the carriers” are unreasonable, and it is well within the scope of this Board’s authority to proscribe such practices.⁵⁵

IV. REQUEST FOR RELIEF

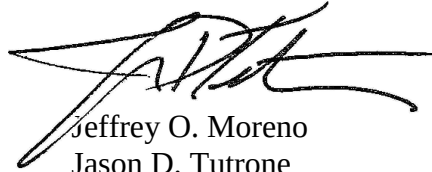
For the foregoing reasons, Arkema requests that the Board (1) find Union Pacific’s Item 55-C, Subpart D, and its related charges to be unlawful, (2) order Union Pacific to rescind Item 55-C, Subpart D and pay Arkema reparations, with interest, for Item 55-C, Subpart D charges that Arkema has paid for empty repair movements occurring after July 31, 2015. Arkema has presented evidence of \$1,426,853.65 paid to UP under Item 55-C through August 15, 2018, and,

⁵⁴ Grow and Trombetta V.S. para. 5.

⁵⁵ Ex Parte No. 661, *Rail Fuel Surcharges*, slip op. at 7 (served Jan. 26, 2007).

should the Board resolve this proceeding favorable to it, Arkema will present additional evidence of charges incurred from that date through the Board's decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Moreno', with a long horizontal stroke extending to the right.

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Dated: February 22, 2019

CERTIFICATE OF SERVICE

I do hereby certify that on this 22nd day of February, 2019, I have served a copy of
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Grow/Trombetta Verified Statement

BEFORE THE SURFACE TRANSPORTATION BOARD

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Docket No. NOR 42153

ARKEMA INC. v. UNION PACIFIC RAILROAD COMPANY

**JOINT OPENING VERIFIED STATEMENT OF
JONATHAN BRENT GROW AND STEPHEN TROMBETTA
OF ARKEMA, INC.¹**

1. We, Jonathan Brent Grow and Stephen Trombetta, jointly submit this verified statement in support of both the Joint Opening Evidence and Argument of the Complainants in STB Dockets NOR 42144, 42150, 42152, and 42153 and the Opening Evidence and Argument of Arkema, Inc. in STB Docket NOR 42153.

¹ Throughout this document, text in double braces (i.e., {{...}}) is HIGHLY CONFIDENTIAL pursuant to the amended protective order issued in the consolidated proceedings on October 20, 2017.

2. I, Jonathan Brent Grow, am the Strategic Purchasing Manager, Transportation, Rail and Barge at Arkema, and have held this position since 2012. My primary responsibilities in this role include contracting for rail and barge transportation. Prior to working at Arkema, I spent three years managing the rail fleet for Braskem. I also spent 15 years in various logistics positions at Sunoco, and for approximately twelve of those years, my work involved transportation contracting, including rail, and plant transportation operations management.

3. I, Stephen Trombetta, am the International Compliance and Transportation Purchasing Manager at Arkema. In this role, I manage railcar procurement for all of Arkema. This includes being responsible for negotiating railcar leases, making lease payments, and otherwise interfacing with railcar lessors. I also assist the Arkema business units assigned tank cars with planning for railcar qualification events and other fleet needs. I have held these responsibilities at Arkema for approximately ten years and have been with Arkema for 22 years.

4. In December 2014, Union Pacific Railroad Company (“UP”) announced to Arkema that it was implementing Item-55C, Subpart D, in UP Tariff 6004-C (“Item 55-C”), effective January 1, 2019.

5. When UP announced Item 55-C, it provided Arkema a presentation explaining that, under Item 55-C, it would begin charging Arkema for empty movements of tank cars to and from repair facilities.² The presentation also explained that UP was implementing the charge for four reasons: to align the treatment of empty tank cars with other car types, to provide more timely feedback to customers about efficient management of their fleet, to reduce empty miles and

² Ex. 1 to Opening Evidence and Argument of Arkema, Inc.

protect the fluidity of UP's network, and to allow direct and prompt recovery of costs for moving empty tank cars to and from repair facilities. UP did not explain in this presentation or in any other communications with Arkema why it was necessary to align the treatment of empty tank cars with other car types. It also has not provided any evidence that Arkema or other customers were managing their fleets inefficiently or were incurring so many empty miles as to jeopardize the fluidity of UP's network. In addition, it has not explained how Item 55-C would allow more prompt recovery of repair move costs, which UP was recovering through its linehaul rates for loaded movements, or why Item 55-C is justified given that tank car repair moves are its legal responsibility.

6. In a December 18, 2014 presentation that Arkema provided to UP, Arkema explained that its tank car shop process was already as efficient as possible and, thus, Item 55-C would merely result in additional profit for UP and costs for Arkema, without the efficiency improvements UP was seeking.³ To help UP understand the shop process for private tank cars, the presentation described Arkema's shop process, including the best practices it already had in place to minimize empty mileage. The presentation also noted that UP timed the implementation of Item 55-C with the beginning of the next industrywide wave of HM-201 tank car qualification deadlines and the beginning of the anticipated DOT-111 retrofit period, which would generate thousands of unavoidable tank car repair movements and result in over \$23 million in revenue for UP. Additionally, the presentation elaborated on the cost, business, safety, and administrative impacts that Item 55-C would have on Arkema. Arkema ended the presentation with multiple counterproposals to help reduce the burden of Item 55-C.

³ Ex. 2 to Supplemental Opening Evidence and Argument of Arkema, Inc.

7. UP and Arkema met on January 19, 2015, to discuss the concerns Arkema raised in its December 18, 2014 presentation. UP rejected Arkema's objections to Item 55-C, but agreed to explore a temporary measure to reduce the financial burden of transitioning to Item 55-C on the short notice UP provided.

8. {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

9. Since August 1, 2015, Arkema has paid for tank car repair facility movements pursuant to Item 55-C at their full tariff rate. Through August 15, 2018, Arkema has paid UP \$1,426,853.65 in Item 55-C charges. A list of these paid charges, compiled from Arkema's internal accounting system, is attached as Exhibit 5 to the Opening Evidence and Argument of Arkema, Inc. Arkema has continued to accrue additional Item 55-C charges since August 15, 2018.

10. UP did not offer to reduce the linehaul rates under its contracts with Arkema that were in place when UP announced Item 55-C, even though Arkema negotiated them without knowledge of Item 55-C. When the rates in these and subsequent contracts with Arkema have expired, UP has increased them based on overall market conditions, like it had been doing in the years preceding Item 55-C. UP has not explained how it compensates Arkema for Item 55-C charges despite these increases. Further, alongside these linehaul rate increases, UP has increased the Item 55-C charges annually.

11. Since at least 2012 when Mr. Grow assumed his current position, UP has neither told Arkema that it is discounting its linehaul rates to compensate Arkema for supplying tank cars to UP nor offered Arkema the option of a linehaul rate that includes payment of a mileage allowance to Arkema. Arkema also has not received mileage allowances from UP in at least a decade.

12. Item 55-C has a significant impact on Arkema's business. Arkema is a diversified, worldwide chemical manufacturer of high performance materials, industrial specialty chemicals, and coatings. In the United States, Arkema has 37 production facilities in 19 states. Arkema relies extensively upon rail transportation to transport many of its products to its customers.

13. Arkema has a fleet of approximately 1400 Arkema owned or leased tank cars. It owns 177 of these cars and leases the rest from various leasing companies including GATX, Union Tank Car Company, and Trinity Industries Leasing Company. Arkema uses this fleet to provide UP with the tank cars it needs to ship Arkema's products, because UP does not supply tank cars as part of the transportation it provides Arkema or its other shippers.

14. Arkema annually aligns its fleet size to its business needs by increasing or decreasing its fleet size as appropriate for current business levels. This is possible because Arkema has laddered the lease expirations for its leased cars so that approximately 10% of the leased fleet is subject to renewal each year. Because of this continual optimization, Arkema does not have excess tank car capacity that can compensate for its tank cars being out of service for unnecessarily long periods. Thus, Arkema must minimize the time its cars are out of service, including the time they moving to and from and sitting at repair facilities.

15. Arkema's six business units that ship products in tank cars with UP manage the fleet with the help of an outside contractor, QTS. Arkema dedicates each tank car to one of its six business units that ship products in tank cars. Each business unit has a fleet manager who manages its dedicated fleet, which includes making decisions about when and where to send the business unit's cars for cleaning, inspection, repair, or maintenance. QTS supports the fleet managers by identifying the most efficient repair facility options, coordinating with the tank-car lessors to obtain a decision about which facilities to use, tracking the movement of cars, and diverting cars directly to repair facilities on empty returns to avoid excessive repair movements.

16. Except for a single lease of 23 tank cars, Arkema's tank car leases are all full-service leases, which means that the lessor is responsible for most maintenance of the leased cars, and Arkema must comply with the lessor's instructions about which facilities to use for inspection, maintenance, or repair. Each lessor has its own nation-wide network of repair facilities it has approved for its cars and will either direct Arkema to send a tank car to a specific facility or identify multiple facilities to which Arkema can send a tank car. Although Arkema may request that a car be sent to a different facility than the facility the lessor selects, the lessor has the final say on which facility will be used. Once a repair shop is selected for a tank car, Arkema is responsible for routing the car to the repair shop and paying any transportation charges associated with the movement to and from the repair shop.

17. Arkema usually must send its tank cars to a cleaning facility before routing them to a repair facility. Many of Arkema's tank cars carry hazardous materials that must be cleaned from the car before any maintenance or repair work. Few repair facilities are capable of both cleaning the hazardous materials in Arkema's cars and performing repairs or maintenance on the cars.

Thus, maintenance and repairs of Arkema cars usually require an additional empty movement to a cleaning facility in addition to empty movements to and from the repair facility.

18. Arkema has established multiple best practices to reduce empty tank car miles. One of the most important of these practices is diverting tank cars to repair facilities while on their empty return from the previous unloading point. This avoids having the car brought back to an Arkema facility and, then, having to send the car on a roundtrip repair movement. Arkema also selects cleaning facilities that are close to its production facilities. This is crucial for Arkema's sub-fleet that carries latex, because these cars must be cleaned after every loaded move. Another Arkema practice is to use mobile repair facilities when possible, which avoids having to send a car to a repair facility. Because these practices enable Arkema to maximize the use of its tank cars, Arkema has been managing its fleet in accordance with these practices since before UP announced Item 55-C.

19. The benefits Arkema realizes from implementing these best practices are significant. For example, these practices increase Arkema's tank car utilization, because reducing empty miles ordinarily results in reducing the time Arkema's tank cars are out of service. While instances may arise where the backlog at a repair facility is so long that it would be worthwhile to send a car to a more distant facility, they are rare. These practices also reduce the amount of rent Arkema must pay while cars are out of service. Because rent accrues on Arkema's cars while moving to and from repair facilities, but not while they are at those facilities, longer transits to and from repair facilities result in Arkema paying more rent for out of service cars. Additionally, these practices enable Arkema to minimize or avoid mileage equalization charges under tariff RIC-6007 Series, Item 187, which imposes a per-mile charge on every tank car fleet for each empty mile above 106% of the fleet's loaded miles. Although Arkema's lessors initially pay

these charges, Arkema's leases make it responsible for reimbursing its lessors for these charges, to the extent they are attributable to Arkema's empty movements.

VERIFICATION

I, Jonathan Brent Grow, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on February 15, 2019

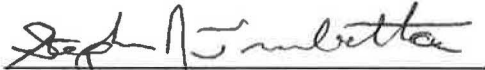

Jonathan Brent Grow

VERIFICATION

I, Stephen Trombetta, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on February 18, 2019



Stephen Trombetta

Exhibit 1

Redacted—Highly Confidential

Exhibit 2

Redacted—Highly Confidential

Exhibit 3

Redacted—Highly Confidential

Exhibit 4

Redacted—Highly Confidential

Exhibit 5

Redacted—Highly Confidential