

SERVICE DATE – NOVEMBER 23, 2016

SURFACE TRANSPORTATION BOARD

DECISION

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

Decided: November 22, 2016

On June 2, 2015, North America Freight Car Association, American Fuel & Petrochemicals Manufacturers, The Chlorine Institute, Inc., The Fertilizer Institute, and American Chemistry Council, along with Ethanol Products, LLC d/b/a POET Ethanol Products, POET Nutrition, Inc., and Cargill Incorporated (collectively, Complainants), filed an amended complaint against Union Pacific Railroad Company (UP) pursuant to 49 U.S.C. §§ 10702, 11101, 11121, 11122, 11701, and 11704, and 49 C.F.R. pt. 1111. In Count I, Complainants challenge the reasonableness of UP Tariff 6004, Item 55-C (Item 55-C), which became effective on January 1, 2015. In Count II, Complainants allege that UP's refusal to compensate Complainants for the use of their tank cars, whether through mileage allowances or reduced line haul rates, constitutes an unreasonable practice under 49 U.S.C. § 10702 and violates 49 U.S.C. §§ 11101, 11121, and 11122. On June 22, 2015, UP filed its answer to the amended complaint.

In a decision served on February 11, 2016, the Board adopted a procedural schedule and directed the parties to complete document discovery by June 10, 2016, and deposition discovery by July 25, 2016. In a concurrently served decision, the Board referred all discovery issues to Administrative Law Judge John P. Dring.¹

On June 10, 2016, the Board held the procedural schedule in abeyance pending the resolution of discovery disputes and further order of the Board. The Board directed the parties to file a status report, including a proposed revised procedural schedule, if appropriate, by July 1, 2016. The Board also encouraged the parties to discuss any necessary modifications to the discovery deadlines with Judge Dring.

¹ The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board.

Oral hearings were held on the record before Judge Dring. See N. Am. Freight Car Ass'n v. Union Pac. R.R., NOR 42144, slip op. at 1-2 (STB served Sept. 22, 2016). Among the transcripts of discovery hearings before Judge Dring, the Board has received two that present confidentiality issues under the protective order served on February 11, 2016. First, the transcript of the September 20, 2016 hearing is marked as containing confidential material. Second, the transcript of the August 22, 2016 hearing includes a colloquy implying that the information discussed may be subject to the protective order. (See Hr'g Tr. 27:8 – 28:11, Aug. 22, 2016).

The parties will be directed to jointly submit, by December 14, 2016, redacted public versions of these two transcripts, to the extent necessary under the protective order. If the parties believe that no information needs to be redacted from one or both transcripts prior to publication, the filing they jointly submit by December 14, 2016 must indicate this.

It is ordered:

1. The parties are directed to jointly submit, by December 14, 2016, redacted public versions of the two transcripts referenced above, to the extent necessary under the protective order. If the parties believe that no information needs to be redacted from one or both transcripts prior to publication, the filing they jointly submit by December 14, 2016 must indicate this.

2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.