

SURFACE TRANSPORTATION BOARD

ORDER DENYING REQUEST FOR ESTABLISHMENT OF DISCOVERY END DATES
AND ESTABLISHING BI-WEEKLY STATUS REPORTS

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: March 2, 2017

On February 7, 2017, 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) submitted a Status Report to the Administrative Law Judge and a Request for Establishment of Discovery End Dates in its proceeding against Union Pacific Railroad Company (UP).

Complainants propose the following end dates for discovery:

February 28, 2017	Completion of Document Production
March 7, 2017	Production of Privilege Logs
March 17, 2017	Objections to Privilege Logs
March 31, 2017	Supplemental Production from Privilege Log Objections
April 14, 2017	Completion of Deposition Discovery

On February 22, 2017, UP filed a reply in opposition to Complainants' Request for Establishment of Discovery End Dates. UP argues, *inter alia*, that Complainants' request to establish discovery end dates is premature, as UP is waiting for the Board to act on its recently submitted Motion to Consolidate this proceeding with recently filed actions by Valero Marketing and Supply Company et al., and Tesoro Refining & Marketing Company LLC, et al. UP asserts that if the Board grants UP's Motion to Consolidate, defining discovery end dates for this proceeding now would prove to be a wasted effort. In its February 22, 2017 reply, UP provided a list of discovery requests that have yet to be completed. These include document production from both the Complainants and UP, depositions of Complainants' witnesses, Tank Owners discovery, and production of privilege logs. UP argues that Complainants' proposed end dates do not allow sufficient time for discovery to be completed.

It is ordered:

1. Based on the list and description of these outstanding discovery items, I hereby deny Complainants' request that I set dates for the conclusion of discovery, as the request is premature. As for Complainants' concerns over UP's request that the Board consolidate this proceeding with others, this has no bearing on my scheduling of discovery in this case. Consideration of the impact on the instant case of other cases, which are not before me, is beyond my mandate from the Board.
2. Additionally, I will now require a bi-weekly status report. The first status report is due on March 16, 2017. In this report, participants to this proceeding will provide to me the following information:
 - a. The progress accomplished since the previous status report;
 - b. any outstanding discovery concerns that remain;
 - c. participants' plans to address outstanding discovery; and,
 - d. an estimate of time required for participants to address such concerns.
3. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.