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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

HASA, INC.

v.

UNION PACIFIC RAILROAD COMPANY

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Docket No. NOR 42165

REBUTTAL OF HASA, INC. TO

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO HASA, INC. *EX PARTE*
APPLICATION FOR SECTION 11123(a) SERVICE ORDER AND SECTION
11701 INVESTIGATION AND PETITION FOR TEMPORARY INJUNCTION**

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Dated: September 10, 2019

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Verified Rebuttal Statement of Robert Bzdil

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Hasa, Inc. (“Hasa”), hereby submits this rebuttal to the reply that Union Pacific Railroad Company (“UP” or “Union Pacific”) filed on September 3, 2019 (“Reply”), in opposition to the *Ex Parte* Application for Section 11123 (a) Service Order and Petition for Temporary Injunction that Hasa submitted on August 20, 2019 (“Application”). Hasa’s rebuttal is accompanied by the Rebuttal Verified Statements of its President and Chief Executive Officer, Christopher James Brink (“Brink R.V.S.”), and its Executive Vice President, Supply Chain & Industrial Sales, Robert Bzdil (“Bzdil R.V.S.”).

**I.
SUMMARY**

In the face of extraordinary events providing compelling justification for the Surface Transportation Board (“Board” or “STB”) to direct UP to continue daily

weekday service to Hasa in order to avoid substantial harm to Hasa’s business, its customers, and the broader public that rely on Hasa’s products to maintain water sanitation, UP resorts to a blunderbuss attack in its Reply. In order to justify its abrupt reduction of the same regular daily weekday service that UP has provided and that Hasa has relied upon for over five decades, timed for the peak season when it causes the most harm to Hasa, its customers, and the public, UP accuses Hasa of “materially misstating critical facts and by failing to mention others” and invoking jurisdiction that the Board does not have. Reply at 1, 15.¹ However, it is UP that threatened Hasa with commercial ruin and Southern California with a public health crisis, and when faced with compelling factual circumstances warranting immediate relief, it is UP that attempts to evade the Board’s proper jurisdiction and its fundamental service obligations.

UP’s version of develop, analysis, and consultation is strictly one-sided, focused on what is convenient or profitable for UP, and oblivious to the true needs of its customers. Rather than actually address important local service issues, and properly include them in its analysis, or even accept Hasa’s repeated invitations to come visit its facilities to see first-hand Hasa’s local service needs before making serious service reduction changes, UP chooses to brush them off. UP instead claims that it is “Hasa [that] makes sweeping, conclusory assertions regarding its production needs, storage capabilities, and potential product degradation.” Reply at 13. UP’s shrill characterization is entirely unwarranted.

¹ UP even insinuates a lack of candor on behalf of counsel. *Id.* at 2 n.3.

Hasa provided verified, detailed facts fully justifying its Application, including UP and Hasa's longstanding joint experiences, circumstances, and factors regarding Hasa's unique local service requirements, and compelling reasons why having UP drop off more cars each time three times a week instead of five is not feasible and would create cascading complications and problems. For the most part, UP does not dispute these facts.

UP's lead attack on Hasa's request for a continuation of five days a week service is instead that Hasa has no need for daily service because its average service needs are relatively modest, and it has not received more than 16 cars in a week, with ten storage spots at its Saugus facility. *Id.* at 1. However, UP has presented flawed data and UP's average weekday receipt analysis is also fundamentally flawed, as it assumes, incorrectly, that as long as Hasa receives a certain average number of railcars during a month or week, Hasa's service requirements have been met. Hasa's business requires UP standard daily service, not merely a specified average number of railcars weekly or monthly.

UP has broadly promised the Board and its customers that it will be proactive in exploring any "Unified Plan 2020," precision scheduled railroad ("PSR") service changes in full consultation with its customers, at the local level, well before making any service changes, and that those changes will provide customers with focused, reliable, repetitive *daily* service that meets their needs, minimizes car dwell, and prioritizes safety. The new, top-down, Unified Plan 2020 model that UP employed to assess Hasa's service completely ignores these important factors and the specific local,

bottom-up infrastructure limitations, business needs, product mix issues, and product deterioration issues that caused UP and Hasa to conclude, based on decades of experience and cooperation, that Hasa requires standard daily, weekday service.

In this particular circumstance, UP broke each and every one of its public PSR promises and its legal obligations as a common carrier, as described and verified at length in Hasa's Application and further in this Rebuttal. Review of UP's own communications makes it abundantly clear that UP has materially misstated material facts in its belated attempt to justify its actions and give the appearance of abiding by its PSR service change promises, when it is clearly not. UP's attacks betray a basic misunderstanding or ignorance of its own actions and communications as well as a fundamental disregard for Hasa's predicament. UP's threats and actions left Hasa with no acceptable alternative but to seek first assistance from the STB's Office of Public Assistance, Government Affairs and Compliance ("OPAGAC") and then, when that was ineffective, relief from the Board itself.

Even following the Board's August 21, 2019 decision ("Order") requiring UP to immediately restore daily weekday service on an interim basis, and after UP's representation to the Board on August 23, 2019 that it was in full compliance with the Order, UP actually waited 13 days to comply with the Order, without any notice or explanation of its delinquency. In the interim, UP provided supplemental "special switches" to Hasa, but it has then turned around and invoiced Hasa for those switches noting "CHARGES AUTHORIZED BY [HASA]," which is untrue. UP represents that it is in full compliance with the Order and it has not charged Hasa for special switches, but

even as of yesterday, it continues to send special switch invoices. Hasa previously brought to UP's attention the matter of improper special switch charges, but UP has thus far failed to fix the problem, even after the Board's Order, and has instead told Hasa to dispute them through UP's separate electronic dispute resolution system. UP remains in non-compliance with the Board's Order, and UP's recalcitrance may require additional interim assistance from the Board to rectify.

Hasa's requested relief reasonably comports with Board's construction of § 11123, as well as the Board's broad injunctive relief authority, whereas UP's view of the Board's authority would leave the agency without any ability to protect the public interest here or receivers or shippers elsewhere in similar circumstances. The Board's jurisdiction must surely extend to where a carrier's refusal to understand a customer's requirements and to take abrupt, unnecessary actions to curtail service during a period of peak customer need poses a severe threat to the public interest and welfare, as is the case here.

In short, UP's strident assertions betray fundamental misrepresentations of its own actions, Hasa's constraints, the governing law, and the applicable standards, all of which strongly support Hasa's request for relief and the Board's Order granting that relief. UP's unfounded and false contentions confirm that the relief should remain in place until the parties are able to work out a mutually beneficial solution.

In that regard, Hasa wishes to report that, notwithstanding the tenor of the pleadings, it and UP have been engaged in some constructive discussions. *Brink R.V.S.* at ¶¶ 5-7. Continuation of the Order will not reduce Hasa's efforts to attempt to reach a

reasonable accommodation with UP, but will instead assist and help promote a reasonable commercial resolution. In its Application, Hasa has requested STB-sponsored mediation, which it believes could prove very useful to parties. For whatever reason, UP chose not to address that matter in its Reply even though it has told the Board that it is always open to alternative dispute resolution. Hasa reiterates that it remains willing to proceed on that basis, just as it is willing to proceed with direct discussions with UP or with OPAGAC's assistance, as this is a matter that can and should be resolved through reasonable commercial discussions.

II. ERRORS AND OMISSIONS IN UP's FACTUAL STATEMENTS

UP purports to present its own version of the factual background at pages 5-12 of its Reply, and though the Verified Statement of Kari Kirchhoefer ("Kirchhoefer V.S.") and Michael Matya ("Matya V.S."), but its presentation is riddled with errors, omissions, and distortions. Hasa addresses the most significant below. Omission of any matter should not be viewed as acquiescence in UP's position.

A. Hasa did Not Overstate the Importance of and Public Need for Its Products or Its Customer Base

UP notes that it "does not contest" the importance of Hasa's bleach for its customers and acknowledges that it "does not have complete visibility into the details of Hasa's business." *Id.* at 11.² Yet UP then proceeds to speculate that the product is used

² UP's nonetheless later deems the public interest need to be a "strawman." *Id.* at 15.

for “municipal *swimming pools*, not drinking water.” *Id.* (original emphasis).³ UP’s characterization is defective in several respects.

First, UP ignores that Hasa identified five dozen public, municipal, and community customers, the majority of which are city, community, and municipal water districts that use Hasa’s products to sanitize drinking water, including the City of Anaheim,⁴ the Los Angeles Department of Water & Power,⁵ and many smaller municipalities in Los Angeles County and the surrounding areas. Brink V.S. ¶ 7; Brink R.V.S. at ¶ 8. UP also ignores that the product is also sold to hundreds of wholesale distribution partners that distribute its products to other water treatment plants. *Id.* Additionally, Hasa did not in any way mislead the Board and discussed the use of its products in disinfecting swimming pools, in wastewater treatment, and for irrigation and other agricultural purposes. Brink V.S. at ¶¶ 5, 7-9; Brink R.V.S. at ¶ 8. Of course, water recreation is not a trivial activity in Southern California, and Hasa’s disinfectant products are essential for preventing water-associated disease and outbreaks in this application and all of its applications. Brink R.V.S. at ¶ 7. In any event, what UP presents are *post hoc* characterizations of counsel, not anything that UP claims to have

³ The speculation is that of counsel, without any supporting company or expert witness.

⁴ According to the United States Census, Anaheim’s population exceeds 350,000. <https://www.census.gov/quickfacts/anaheimcitycalifornia>.

⁵ The Los Angeles Department of Water & Power provides water service for over four million residents and over 600,000 water meters. https://www.ladwp.com/ladwp/faces/ladwp/aboutus/a-water/a-w-factandfigures?_afdf.ctrl-state=4merdkn3c4&_afdfLoop=912310186184676.

considered at the time of its service reduction initiative, *e.g.*, there are no verified statement or public information citations.

UP also attempts to minimize the significance of Hasa's production by asserting that Hasa's Saugus facility receives only "small volumes of chemical deliveries." Reply at 5. However, even if Hasa's manifest shipments are relatively small compared to some of UP's larger customers, UP does not dispute that Hasa requires its service, that Hasa is a major regional producer and distributor of water treatment products in Southern California, or that Hasa is a critical supplier of products necessary to meet water the requirements for water sanitation in Los Angeles County and the surrounding areas, including Santa Barbara, Ventura, San Luis Obispo, Riverside, San Bernardino, Imperial, Orange, and San Diego counties. Brink V.S. at ¶¶ 6, 10-23. The volumes are relatively modest only by UP's standards, and not in the water treatment business.⁶ In any event, even modest deliveries of critical commodities do not undermine the critical role of the product that Hasa produces from those commodities, which UP also does not dispute. *Id.* at ¶¶ 5-6.

B. UP Ignores or Misapprehends Hasa's Production Needs and Storage Limitations

UP contends that "Hasa makes sweeping, conclusory assertions regarding its production needs, storage capabilities, and potential product degradation." *Id.* at 13. However, it completely ignores that Hasa provided detailed information on its business,

⁶ Hasa adds that UP is able to charge for chlorine shipments what it and other railroads have admitted elsewhere are their highest rates. UP should not be denigrating the needs that allow it to extract such a premium rate for its services.

its products, its infrastructure, its operational requirements, its transportation receipt needs, and its customers' needs. Brink V.S. at ¶¶ 10-23; Brink R.V.S. at ¶ 9. UP fails to meaningfully address or refute any of these factual representations.

UP does call Hasa's product degradation a "red herring" because Hasa's outbound products move by truck and not by rail, from which UP concludes that its service "has no impact on Hasa's ability to truck product immediately after its manufacture." Reply at 14. UP also contends that Hasa misled the Board by "fail[ing] to mention that all of its outbound shipments are made by truck." *Id.* at 3.

UP's criticisms ignore the obvious: Hasa cannot ship what it has not produced, chlorine is essential for production, and the product cannot be made and stored in advance, but must be produced when it is needed. Brink V.S. at ¶¶ 18-23; Brink R.V.S. at ¶ 10. "That is why Hasa requires consistent, constant service from UP of its **inbound** raw materials." Brink R.V.S. at ¶ 10 (emphasis added). Additionally, Hasa made it very clear that it is a receiver, not a shipper of rail products, and that it serves its customers only by truck. Brink V.S. at ¶¶ 9-10; Brink R.V.S. at ¶¶ 11-12. Hasa serves more than a thousand retail and wholesale customers that depend on Hasa to produce and distribute product on a just-in-time bases and Hasa's operations thus depend on efficient, dependable, reliable, and **sufficient** service from its railroad partner, UP. Brink V.S. at ¶¶ 8-9; Brink R.V.S. at ¶ 12. UP simply has no interest in listening to its longstanding customer and comprehending Hasa's situation.

C. UP Did Not Develop Its Service Reduction Plan from the Ground Up in Close Consultation with Hasa

UP claims to have “carefully developed” its service reduction plan at the local level only after verifying the need for change, and only in close consultation with Hasa. *Id.* at 8-10. UP’s interpretation of carefully developed, need for change, and consultation is entirely one-sided and inaccurate.

UP first claims that for at least the past 16 years, UP has handled and processed customer service changes the same way: changes originate at the local level, with local managers “continuously evaluating customer service levels and implementing solutions to improve service levels as needed.” Matya V.S. at 2. Locally-originated proposed changes are submitted to multiple UP departments, including Network Planning and Operations (“NPO”) and Marketing and Sales. *Id.* These teams then analyze data and obtain feedback from customers, and further involve UP Customer Care and Support (“CCS”) and Homeland Security Specialists that all work together, taking into account customer feedback in implementing service changes “to match the customer’s volumes and supply change needs.” *Id.*

However, in terms of need for daily service, UP does not dispute any of the following established facts:

- “The Saugus plant was designed and built to receive daily weekday rail service, in cooperation with UP. Until very recently, UP has reliably provided our required daily service, without interruption.”
- “To Hasa’s knowledge, UP’s provision of daily, weekday service, during the eight-to-nine typically warm-to-hot Southern California months, has been in effect and continuous since [1963] when the Saugus plant opened.”

- “Hasa’s plant and transportation infrastructure at Saugus has been established over the past 56 years, in cooperation with UP.”

Brink V.S. ¶¶ 13-15; Bzdil R.V.S. at ¶ 7. As to all but the past, there is no apparent dispute. “Hasa agrees that UP has continually and closely evaluated Hasa’s service requirements at Saugus for over five decades, and that intense, constant review by UP has supported Hasa’s need for continuing, daily weekday service.” Bzdil R.V.S. ¶ 9. Mr. Matya asserts that UP “will continue to evaluate service levels and will support customers if and as their needs change” (*id.* at 3), but does not identify any changes in Hasa’s service levels or requirements that may have led to any changes in UP’s decades-long close review, confirmation, and verification of Hasa’s need for daily weekday service. Bzdil R.V.S. at ¶ 8.

While UP does not disagree that Hasa has established over a long period of time a demonstrated need for daily, weekday service, it still insists that it carefully originated, developed, and implemented its abruptly-imposed service reduction plan with great care at the local level only after full consultation with Hasa. Reply at 8-10. However, the facts show there was no such careful development, consultation, and implementation of the plan. Brink R.V.S. at ¶ 13. For example, UP asserts that it never actually approved one day a week service and abandoned it after consultation with Hasa, as it “would never have been implemented without ... consultation with Hasa itself.” *Id.* at 8 (citing Matya V.S. at 3-4). However, Hasa explained in its Application that it learned of the planned reduction from the crews on July 2, 2019, and that UP backtracked only after Hasa engaged strongly on the matter, not after UP consulted with or reached

out to Hasa, and UP does not dispute this fact. Brink V.S. ¶ 25; Brink R.V.S. ¶ 13; Bzdil R.V.S. at ¶¶ 10-13. UP also does not dispute that it largely ignored Hasa’s urgent messages following July 2, 2019, for six days. Brink V.S. ¶¶ 26-27; Bzdil R.V.S. ¶ 13.

UP specifically claims that its initial daily service cessation decision “was only a preliminary determination and would never have implemented without input from Union Pacific’s marketing contact with Hasa and consultation with Hasa itself.” Reply at 8. However, when UP’s local service representative eventually responded to Hasa’s pleas, on July 8, 2019, she informed Hasa by email that the service reduction plan had already been fully vetted within UP, including marketing, and finally “approved.” Bzdil R.V.S. ¶ 13, Exhibit 1. She also confirmed that the decision had been made without any prior notification to or consultation with Hasa, that the plan had been spearheaded, not locally, but by the central UP “Operating team,” and that the local managers were not involved at all in the decision making but were instead “only the messengers, in this instance”:

The Operating team spearheaded this change and the Sales team had the opportunity to push back on it before it was approved. I wish I could do more but John and I are only the messengers, in this instance. I would recommend reaching out to the Sales team.

Id.

Contrary to UP’s strong assertions to the contrary on Reply, UP’s service reduction decision did not actually originate at the local level by local managers, but instead was “spearheaded” in central operations. *Id.* Also, the facts show that UP failed to consult with Hasa on any changes, and the local UP managers were powerless to

interfere with the UP Operating department's decision and instead merely passed on the message that the decision had already been made. *Id.*

UP asserts that "Hasa first contacted its Union Pacific customer service representative Steven Haywood about its concern on the evening of July 8, 2019, and Mr. Haywood assured Hasa he would look into the matter." Reply at 8. That assertion is incorrect and misleading in several respects. First, as explained above, UP does not dispute that Hasa first reached out to others at UP on multiple occasions starting July 2, 2019, but it received no response until the confirmation from UP's local representatives on June 8, 2019 that the daily service cessation plan had already been approved. Second, UP fails to advise that when Hasa reached out to UP's regional customer service representative at the next higher level on July 8, 2019, Mr. Haywood actually revealed that he had no understanding or knowledge of the daily service cessation decision at Saugus, except to respond that service was being maintained at historic levels, although he was instead confusingly referring to Hasa's smaller production facility at Eloy, Arizona, located 500 miles away. Bzdil R.V.S. ¶ 14, Exhibit 2.

Further, on July 16, 2019, Ms. Kirchhoefer acknowledged and confirmed that UP's centralized PSR Operating team was the group actually involved in the service decision, and that the local representatives merely awaited further direction from headquarters: "[a]s you stated, Union Pacific is working on our Union Plan 2020 operating model to provide safe reliable, and consistent service," and "[o]ur Operating department is evaluating options and Jackson [Bogatz] will reach out to Rob [Bzdil] directly to discuss further." Brink V.S., at 3, Exhibit 3. While Hasa fully discussed this

exchange in its Application, and UP does not dispute it, UP still somehow insists that it developed and executed the plan at the local level. Bzdil R.V.S. ¶¶ 15-16. Instead, UP confirms that, only after strong protest by Hasa, and after the service reduction decision had already been unilaterally approved by UP, did UP eventually decide to “cancel[]” the previously approved change. Kirchhoefer V.S. at 3; Bzdil R.V.S. at 17-18.

Finally, even after UP cancelled its decision to establish one-time weekly service, and promised to restore daily weekday service while it fully consulted with Hasa on any further changes, UP broke both its commitments the very next day, on July 17, 2019, when it informed Hasa that it had unilaterally approved and implemented its reduced three-day-a-week service starting July 29, 2019. Brink V.S. at ¶ 31, Exhibit 2; Bzdil R.V.S. at ¶ 18. UP also fails to contest this fact.

D. UP Did Not Share Any Detailed Data Analysis with Hasa Prior to Implementing its Service Reduction Plan

In its Reply, UP attaches Excel spreadsheets including shipment information to Saugus that UP intimates it fully shared with Hasa before UP decided to reduce service. UP states that it “presented numbers” to Hasa, to which Hasa provided feedback and that the detailed data was presented to Hasa as early as July 25, 2019. Matya V.S. at 4; Kirchhoefer V.S. at 4-5. However, UP did not actually share any such detailed traffic data with Hasa for feedback before UP implemented its service reduction plan. Bzdil R.V.S. at ¶ 20. Other than some anecdotal information, UP did not share any detailed traffic data with Hasa until after OPAGAC convened a call with the parties on August 6, 2019, where UP insisted that its previously decided service reductions were

fully justified and appropriate. Bzdil R.V.S. at ¶ 21. Contrary to UP's assertions, the facts show that UP did not provide any detailed delivery information to Hasa, or consult with Hasa on that information, until well after it finalized its service reduction decision. *Id.*

E. Hasa Requires Regular Deliveries of Chlorine

One of UP's principal attacks is that Hasa's math is implausible and its claimed needs do not align with actual historical deliveries. *Id.* at 5-7. But UP's analysis suffers from two fatal flaws. First, it often focuses on averages, and not historic shipping patterns based on Hasa's needs to have smaller numbers of cars delivered, spotted, and pulled on multiple individual days. Second, insofar as UP attempts to focus on more granular deliveries, such as a peak week, UP ignores what is critical, namely, the impact of the rail deliveries, or lack thereof, on actual production as required to meet the complexities of Hasa's business and service requirements, as well as the frailty of UP's own service. Brink V.S. at ¶¶ 46-52, Brink R.V.S. at ¶¶ 15-17; Bzdil R.V.S. at ¶¶ 22-26.

As noted *supra*, UP does not dispute that the Saugus plant was developed and built, with UP's cooperation, to receive daily weekday rail service. Brink V.S. at 13; Bzdil R.V.S. at ¶ 23. UP even acknowledges this reality and concedes that "[d]uring some weeks in the summer months of June through August, cars would be delivered five days per week, but not always." Reply at 7. Hasa has not asserted that daily service is always required, but it frequently is during peak periods. Bzdil R.V.S. at ¶ 23. UP's focus on averages and total deliveries is flawed in multiple respects because it ignores, among other things, the inherent fluctuations in Hasa's business, the fact that the three

products received by rail are not fungible, Hasa's limited ability to store rail cars and lack of intraplant switching capability, Hasa's ability to offload chlorine only from three of its slots, and the variability of UP's own service. Brink V.S. at ¶¶ 46-52, Brink R.V.S. at ¶¶ 15-17.

UP asserts that thrice weekly service is completely adequate because "in 2019, Union Pacific is actually already spotting cars at the facility approximately 3 times per week on average." Matya V.S. at 4. However, even if Hasa required average weekly service, which it does not, during Hasa's peak service period thus far in 2019, it has received 3.6 switches per week on average,⁷ and received 3.8 switches per week and 4.4 switches per week on average during 2018 and 2019, respectively. Bzdil R.V.S. at ¶ 25.

As indicated, while Hasa does not always require daily service, especially during the non-peak months, even UP admits that Hasa has required daily weekday switches during many weeks. Reply at 7; Bzdil R.V.S. at ¶ 23. Also, UP's five decades of daily switching service experience verifies and confirms that both UP and Hasa agree that Hasa needs to have daily service to carry out its operations. Bzdil R.V.S. at ¶ 26.

While UP's Reply seeks to introduce a discussion of peak deliveries, its treatment is highly flawed. For example, consider the following scenario presented in Mr. Bzdil's Statement:

Consider a scenario, such as August 7, 2019, where Hasa has seven cars of chlorine, one car of hydrochloric acid, and two cars of caustic soda. On August 7, 2019, Hasa went through the two cars of caustic soda, and on August 8, 2019,

⁷ Mild early summer weather conditions have resulted in modest reductions in Hasa's local switches. Bzdil R.V.S. at ¶ 25.

it went through an additional two cars of caustic soda. Without daily service, Hasa is unable to switch out the caustic soda and is forced to order trucks, which is more expensive. Additionally, when Hasa has requested caustic railcars be delivered instead of acid, and UP fails to deliver the correct cars, this significantly impacts operations because the trucks of caustic have not been ordered and this can result in production delays and ultimately, will equate to more demurrage. Hasa's operations thus depend on reliable, and consistent rail service.

Id. at ¶ 27.

Also, there are times when UP's railcars are bunched, which can result in Hasa sometimes being flooded by chlorine cars. *Id.* at 28. A surplus of chlorine cars leaves little room for the caustic soda railcars that are normally consumed more rapidly, and the result is a reduction in total deliveries. Against this backdrop, UP is able to assert that during the summer of 2019 "the average switch is only two carloads" and that "[d]uring some weeks in the summer months of June through August cars would be delivered five days per week, but not always." Reply at 7 (quoting Matya V.S at 4). But the assertions in no way justify the reduction in service. If UP switches out more than two chlorine cars at a time, Hasa may need to cease production, exactly what Hasa seeks to avoid.

Additionally, UP does not dispute that Hasa must receive chlorine cars under the 48-hour rule of the Federal Railroad Administration ("FRA") at 49 C.F.R. § 174.14(a)⁸ and that receiving deliveries daily substantially reduces UP's risk of violating

⁸ 49 C.F.R. § 174.14(a).

these requirements, but UP nonetheless claims that the exception for weekly or twice weekly customers will somehow absolve it from compliance. Reply at 25. But UP does not dispute that the FRA has no exception for its planned thrice weekly service, and on occasions UP has missed switches or experienced other service outages that may result in rule violations. Bzdil R.V.S. at ¶ 29.

Further, even if there is no missed switch, but a car arrives in UP's local yard in the early morning hours on a Monday, too late to be included in that day's delivery, UP will be in violation of the 48-hour requirement when it finally delivers the car during its regular delivery hours on Wednesday. *Id.* Finally, UP ignores its own spot on arrival rules that require chlorine cars to be removed from its yards immediately, without dwell, and impose substantial demurrage fees of \$5,000 per car per day should the car not be spotted on arrival. UP Tariff 6004-C, Item 130-B; Bzdil R.V.S. at ¶ 30.⁹ UP has asserted to its customers and the Board that its tariff and demurrage rules are mandatory, but it has not discussed with Hasa how or if it will waive its own rules for expedited service for chlorine (including substantial penalties) under its service reduction plan for Hasa.

UP even claims that Hasa will actually benefit from reduced service because "Union Pacific's policy is to give double demurrage credits for days that it does not switch a customer—including scheduled no-switches." Reply at 11-12. However,

⁹ Mr. Matya emphasizes that UP consults with its Homeland Security Specialist in implementing any service changes for TIH customers (Matya V.S. at 2) but does not discuss any specific consultation made with respect to Hasa's service.

UP fails to disclose that its demurrage rules preclude credits for chlorine cars and specify that \$5,000 daily demurrage fee assessments “cannot be offset by credits.” Bzdil R.V.S. at ¶ 31. UP should not claim that there are ancillary benefits that are accompanied by a \$5,000 daily demurrage fee assessment. *Id.* at ¶ 32-33.

F. UP’s New Claims that Continuation of Daily Service Will Unduly Strain its Resources are Unsupported and Nonsensical

UP’s further claims that daily service once made sense because “this daily service was handled by a local train serving multiple other customers, and thus daily switches made operational sense ... [b]ut in recent years, other local demand for rail service has decreased.” Reply at 7. UP’s claim has several basic flaws. First, it is completely new, unverified, and UP has never mentioned such service constraint issues to Hasa, or that this matter factored into its service reduction plan for Hasa, even though UP claims to have been in close consultation with Hasa on its service. Brink R.V.S. at ¶ 34. Second, the assertion is completely speculative, unsupported, devoid of any details such as when did the reduction occur and why, how much traffic remains, or other pertinent information. Third, it is contradicted by UP’s own witness. *Id.* Mr. Matya states that continued service to Hasa will “constrain[] Union Pacific’s ability to provide, and other customers’ ability to receive, responsive and accurate service.” Matya V.S. at 4-5, 6.

If it is true that UP has reduced local service demands, Mr. Matya’s generalized concerns should be satisfied because UP should actually have available more local service capacity and resources, and not less, to enable it to continue its longstanding daily weekday service to Hasa. Brink R.V.S. at ¶34. Fourth, UP has in no way

suggested, much less proved, that providing daily service to Hasa will render the traffic unprofitable at all, much less so unprofitable that UP will lack resources to serve others. At best, it can be concluded that UP wants to reduce service because doing so is more profitable under its Unified Plan 2020, which is an insufficient justification to provide deficient service and fail to meet a vital public need.

G. UP's Claims Regarding Additional Switches Are Illusory

In footnote 14 of its Reply, UP counsel seeks to mitigate the impact of reducing service to three days a week by claiming UP might make additional switches available at Hasa's cost if needed and "if capacity is available." *Id.* at 10 n.14. UP's claim is a red herring. As Mr. Brink stated in his Opening Statement, UP previously informed Hasa that its special switching service is voluntary on UP's part, and that after August 23, 2019 it will reject such requests as unnecessary. *Brink V.S.* at ¶ 63; *Brink R.V.S.* at ¶ 23. Neither Ms. Kirchhoefer nor Mr. Matya dispute these statements, or seek to retract or change UP's position. They also do not dispute Mr. Brink's statement that even if Hasa did need them, they must be requested 36 hours in advance at a charge of \$3,200, which makes them infeasible for Hasa. *Brink V.S.* at ¶¶ 63-64. For example, if Hasa realizes on Monday that it needs a special switch on Tuesday, it is unlikely to receive it due to insufficient notice and will instead be forced to wait for its "regular" switch the following Wednesday.

Furthermore, Mr. Matya has emphasized that UP has limited capacity and its "resources are needed to meet the service levels requested by other customers." *Matya V.S.* at 6. There is thus no assurance that UP will provide the special switches

when Hasa needs them, even if they are timely requested and are otherwise feasible. As Mr. Brink concludes, “UP’s new ‘offer’ appears less than genuine and instead appears to be intended to support a conclusion that any additional service needs Hasa may require beyond thrice-weekly service will be accommodated through other means. Hasa urges the Board not to be deceived by UP’s belated assurances.” Brink R.V.S. at ¶ 24.

H. Retaliation Remains a Concern

UP strongly denies that UP’s recent deterioration in service may represent retaliation because Hasa contacted OPAGAC and sought relief. Hasa understands that mistakes happen from time to time and that service will fluctuate, just as Hasa appreciates UP’s recent admissions of errors. However, from Hasa’s perspective, UP appears determined to provide service that does not meet Hasa’s needs, and UP has shown little interest in understanding what service Hasa requires and why. Moreover, UP accompanied the threatened reduction in service with the unannounced replacement of experienced crews that provided service on a regular basis that meshed with Hasa’s operations with a new crew that arrived late and brought the wrong cars, creating additional operating difficulties for Hasa. Bzdil R.V.S. at ¶¶ 33-34.

Hasa is grateful that the Board granted Hasa request requiring UP to continue five days a week service to Hasa’s plant at Saugus California on August 21, 2019, on an interim basis. Two days later, August 23, 2019, UP filed a letter acknowledging the Board’s action, and represented that it was complying with the Board’s Order even as UP stated that it strongly disputed Hasa’s factual and legal arguments. However, UP did not restore daily weekday service to Hasa immediately, but

instead continued with three day a week service for 13 more days, forcing Hasa to place “special switch” orders in order to obtain service on Tuesdays and Thursdays. Bzdil R.V.S. at ¶ 35. UP provided no explanation for its failure to comply with the Board’s Order, and it did not finally come into compliance with the Order until September 3, 2019, the date of its Reply filing. *Id.*

Also, as Ms. Kirchhoefer affirms, UP promised not to charge Hasa for special switches prior to August 24, 2019. Kirchhoefer V.S. at 6; UP Reply at 10. Nonetheless, UP invoiced Hasa for the referenced special switches, which invoice states “CHARGES AUTHORIZED BY [HASA],” when Hasa did not approve any such charges. Bzdil R.V.S. at ¶ 36-37. Even after Hasa brought this matter to the attention of its local service representative, he was unwilling or unable to correct it immediately, and instead required Hasa to seek relief for this obviously improper charge through UP’s separate electronic dispute resolution system. *Id.* Inexplicably, UP has not fixed this obvious problem. *Id.*

Hasa has identified UP invoices for special switches ordered on August 13, 15, 22, 27, and 29, 2019 which UP agreed not to charge, but did so anyway. *Id.* Three of these assessed charges for special switches made after the Board’s Order requiring UP to resume its daily, weekday service, all with a UP notation: “CHARGES AUTHORIZED BY [HASA],” but Hasa did not authorize these charges. *Id.* Under the circumstances, and UP’s demonstrated failure to proactively fix obvious errors, one can only assume that UP will soon be sending additional invoices for other special switches it performed after the Board’s Order, and made in violation of the Board’s Order.

Hasa cannot easily dismiss all these developments as mere coincidences, although they may instead reflect sheer indifference or very poor execution even when the spotlight is on, rather than outright retaliation. However, under the circumstances, Hasa believes its concerns about retaliation are justified. *Id.* at 33-36.

III. UP's THREE DAYS A WEEK SERVICE DOES NOT REASONABLY MEET HASA'S NEEDS

UP's claim that its three days a week service reasonably meets Hasa's needs at pages 12-15 of its Reply rests entirely on its improper speculation and analysis addressed previously. In particular, UP asserts that "Hasa has never explained" how that service will be inadequate. *Id.* at 12. The reality is that UP has repeatedly ignored what Hasa has had to say. UP's self-serving narrative lacks credibility. Hasa repeatedly explained to UP, just as it has explained in this proceeding, that UP's single-factor analysis of average deliveries ignores the details of Hasa's operation and that deliveries and service are two different things. UP has been and remains solely fixated on the volume of deliveries and ignores a pattern of daily service for three different commodities over more than fifty years and how its service is integrated into Hasa's operation. UP's intransigence left Hasa with no alternative but to seek relief at the Board.

In attempt to bolster its position, UP contends that Hasa informed the Board that it receives 27.5-33 cars per month of chlorine and receives 50-66 cars per month of caustic soda. Reply at 7, Table 1. That assertion is unfounded and completely misleading. Hasa stated merely that the plant *consumes* approximately 1.25-1.5 railcars

per day of chlorine and 2.5-3 cars per day of caustic soda during peak periods, but that it had limited track space and its caustic soda volumes supplemented by truck deliveries. For example, as Mr. Brink confirms, based on Hasa's production batch figures, Hasa can and does consume 168,750-175,000 gallons of chlorine a day, which is 1.25 tankcars of chlorine, as each tankcar contains 135,000-140,000 gallons of product. Brink R.V.S. at ¶ 16. Some days, its consumption is lower due to plant operating constraints or demand factors, but on other days, Hasa consumes at or above 168,750-175,000 gallons of chlorine. *Id.* Hasa never contended that it is able to sustain deliveries of up to 99 rail cars per month of chlorine and caustic soda, in addition to its hydrochloric acid deliveries. *Id.*

Similarly, UP also faults Hasa for not receiving caustic soda deliveries by rail that are double the volume of Hasa's chlorine deliveries. *Id.* at 13. But as explained, *supra*, Hasa has limited track capacity, and because it is required to receive its chlorine cars under the 48-hour rule and UP's tariff policies, it cannot receive all the other feedstock it requires by rail, and must still depend on UP to perform all of Hasa's railcar spotting requirements. Brink V.S. at ¶¶ 48-49; Brink Rebuttal V.S. at ¶ 17.

Additionally, Hasa's initial review of the railcar totals reported by UP on Reply reveal that the delivery totals UP reports are off, significantly, and Hasa is unable to replicate the UP's numbers. Hasa's records show that UP has understated its deliveries for this summer by approximately 24% or more. Bzdil R.V.S. at ¶ 24.

UP also notes that Hasa's deliveries have not been constant. Reply at 13. But fluctuation is inherent due to the seasonal nature of the demand for Hasa's products

and because the peak weekly need cannot always be predicted in advance. As a result, and because its bleach product cannot be stockpiled in advance, Hasa must be prepared for what may, but is not certain to, occur. *Brink V.S.* at 14, 53; *Bzdil R.V.S.* at 26. Hasa may be able to survive, particularly in the non-peak season, with only three days a week deliveries, as Hasa explained in its Application. *Id.* However, Hasa needs to have five days a week deliveries during the peak period. *Id.* As even UP acknowledges, many weeks Hasa requires five switches per week. Reply at 7. Three days a week deliveries leave a very real risk that Hasa will run out of chlorine for production before the next delivery occurs, for the reasons explained above.

UP dismisses as irrelevant Hasa's receipt of three products by rail because the conversion of Saugus to an order-in facility now enables Hasa to select which product it receives; UP similarly trivializes Hasa's "limited storage capacity and capabilities" because Hasa has ten storage spots and has not received more than sixteen cars in a week. Reply at 13-14. UP ignores the key point: Hasa can unload chlorine only at three of those slots and can easily deplete the contents of more than chlorine car a day during its peak season. As a result, Hasa faces a substantial risk that it will run out of chlorine or otherwise have to shut down production unless it receives daily deliveries. UP's stridency is matched only by its obstinacy.

Instead, UP constricts its focus to only deliveries and its on-time performance. *Id.* UP may claim its "analysis was careful, detailed and took into account, among other things, the seasonal nature of Hasa's business." *Id.* at 15. But that simplistic, total volume driven model incorrectly assumes that as long as UP can meet

Hasa's needs for all Hasa's commodities in the aggregate, on an average monthly or weekly basis, Hasa's service needs for any small interval will be fully satisfied. Brink R.V.S. at ¶ 18. But UP considers only deliveries, and not what else Hasa requires to manufacture produce and distribute its product so that it will function as needed. *Id.*

UP's simplistic model, which shows that Hasa requires service only once a week, which even UP now appears to acknowledge is clearly inadequate, fails to properly consider all of the elements of Hasa's service requirements. *Id.* The expression "to a hammer, everything looks like a nail" can be translated as "to UP, everything looks like a delivery." UP's claim that its service reduction plan is "reasonable" and "data supported," Reply at 15, is true only if one ignores the impact on Hasa and the vital need it serves, which is exactly what UP is determined to do in order to justify its preferred outcome.

IV. THE BOARD HAS JURISDICTION TO ORDER THE REQUESTED RELIEF

UP next claims that all of Hasa's incoming freight traffic moves under § 10709 traffic and that the Board therefore has no jurisdiction to address UP's service plan. Reply at 15-18.

Hasa purchases its chlorine, caustic soda, and hydrochloric acid on a delivered cost basis and thus no independent knowledge if the products move pursuant to contracts or the terms thereof. That said, Hasa has no basis to dispute UP's factual claim and addressed the Board's authority to order contract service in extreme situations in its Application.

UP acknowledges the Board's assertion of authority to issue directed service orders for contract traffic in Ex Parte No. 628, *Expedited Relief from Service Inadequacies*, 3 S.T.B. 968, 976 (1998), but claims that authority is strictly limited to "where no transportation is being provided." *Id.*; Reply at 17. UP reasons because it is provided some, albeit reduced, service, the Board's authority evaporates.

UP's draws too fine a line. In many cases, UP's distinction between "no transportation" and inadequate transportation might be tenable, but not in Hasa's situation. Hasa needs to receive adequate transportation so that a public health crisis can be avoided in the Los Angeles Basin. Moreover, it is outrageous that UP would assert that it has the prerogative to endanger public health by curtailing service and the Board is powerless to take any action in response. "Where the whole purpose and scheme of regulation is threatened by an industry crisis, an agency may have extraordinary powers to adopt temporary measures Unquestionably agencies have some powers in times of emergency that they would otherwise lack." *Central Forwarding v. ICC*, 698 F.2d 1266, 1285 n.20 (8th Cir. 1983) (citing 2 K. Davis, *Administrative Law Treatise*, § 13:10 (1979)).

Beyond that, Hasa is not asking the Board to override any contract (the terms of which Hasa has never seen), to regulate rates, or to deny service to anyone else.¹⁰ Hasa is also skeptical that UP's contracts would authorize it to withhold

¹⁰ Hasa respectfully suggests that UP might consider the other measures that the Board might take in response to a carrier's intransigence and dereliction of its duties, such as reduce or eliminate UP's ability to enter into contracts, grant another carrier reciprocal switching or trackage rights, review trackage rights agreements, revoke its

reasonable deliveries of a vital product. Hasa is merely asking the Board to require UP to maintain the status quo, and provide the level of service it has provided for fifty years, while the parties discuss how to reach a reasonable accommodation of their respective interests. Such authority resides in the Board's jurisdiction.

V.

UP's REMAINING ARGUMENTS AGAINST RELIEF LACK MERIT

Under its last substantive heading, UP presents a proverbial kitchen sink of arguments for why the Board should not grant relief. Reply at 18-28. In general, its contentions rest on the same disregard of Hasa's receipt limitations and the importance of Hasa's product as UP's other arguments. Moreover, they amount to an assertion that the Board is powerless to act when UP's failure to deliver chlorine presents a public health crisis.

A. An Emergency Service Order is Warranted

UP first seeks to deny that its actions will "create[] an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in

exemptions, etc. It should also be remembered that UP was quick to support the Board's efforts to impose a broad railroad merger moratorium, for which the Board's authority was implied rather than express. *Western Coal Traffic League v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000).

UP also asserts that "[t]he remedy for a railroad's failure to provide adequate service under a contract is for the other party to that contract (or a third party beneficiary) to seek to enforce that contract in court." Reply at 18 n.24. Hasa is not a party to the contracts, and has not even seen them. However, UP has given no indication that the Board's Order conflicts with its contracts in any way. Moreover, the level of service is closely intertwined with, among other things, demurrage, over which the Board does have jurisdiction.

a regional of the United States.” *Id.* at 18 (quoting 49 U.S.C. § 11123). However, its objections are without merit, as shown below. Beyond that, UP entirely ignores that portion of § 11123 that authorizes relief when “a rail carrier providing transportation subject to the jurisdiction of Board under this part cannot transport the traffic offered to in a manner that properly serves the public,” which provides an additional basis for relief.

1. UP’s Service Reduction Does Pose an Emergency

UP first seeks to deny that there is any emergency because Hasa’s receives relatively low (what UP deems “minimal”) volumes. *Id.* at 18-19. As addressed *supra*, the volumes are relatively modest perhaps only because of the potency of chlorine, but those volumes are still critical for preserving public health. *Brink V.S.* at ¶¶ 5-6, 10-23. As addressed *supra*, Hasa is a critical supplier of products necessary to meet water the requirements for water sanitation in Los Angeles County and the surrounding areas, and even modest deliveries of critical commodities do not undermine the crucial need of the product that Hasa produces from those commodities. *Id.*

Also, UP’s claims are premised on the same refusal to recognize the realities and limitations of Hasa’s facilities and processes, which have been built around the daily service that UP willingly provided for fifty years, until its abrupt and unannounced change in plan. Hasa has detailed how and why three days a week service will lead to production problems and how product shortages are likely to lead to severe public health problems. UP may be completely insensitive to the business damage and public harm that will result, but the Board should not be.

2. The Emergency Would Extend Far Beyond Hasa

UP next asserts that the Board may not invoke its § 11123 authority when service to only a single shipper is involved. Reply at 19-20.¹¹ However, Hasa did not premise its Application on merely the harm to Hasa itself (although that harm would be substantial). Hasa also identified a risk of severe harm to its 1,000 wholesale and retail customers that rely on its service a large region, and the public at large. Brink V.S. at ¶¶ 8-9; Brink R.V.S. at ¶ 12. The risk here is not confined to a single shipper, but extends to the public that relies on a critical product, a harm that surely warrants the Board's exercise of its powers.

3. Hasa's Application Complies with the Time Limits

UP criticizes Hasa for appearing "to seek an order of indefinite duration" outside of the time limits of § 11123 and for not filing a complaint. Reply at 20-21 & n.26. However, Hasa's hope is that the parties will be able to reach a reasonable accommodation far within the 240-day limit provided for emergency service orders. Brink R.V.S. at 20. Mr. Brink makes this point abundantly clear:

Hasa knows that, given UP's strong insistence on implementing service reductions, that it needs to make infrastructure and business changes to accommodate UP's business preferences. Hasa is prepared to do so, but those changes need to be meaningfully discussed, and will take some time to plan, permit, and implement. Because of UP's

¹¹ UP's position thus amounts to a claim of immunity to trounce at least its smaller individual shippers on a one-by-one basis, subject only to the possibility that they may bring an unreasonable practice complaint, for which UP would presumably assert that damages are unavailable. Under such circumstances, the Board must be prepared to act preemptively, up front, rather than seek to redress the significant harm after it has occurred, when it will likely be too late.

continuing intransigence, Hasa requires the Board's continuing assistance so that UP will maintain its established level of service as the parties meaningfully discuss necessary Hasa infrastructure and operational changes, and related UP service changes. Board-sponsored mediation should be very helpful in this regard.

Brink R.V.S. at ¶ 20. In any event, more enduring injunctive relief is available, and Hasa is prepared to file a complaint, if that proves necessary.

4. Hasa's Application Does Not Rest on Mere Speculation

UP's next criticism is that its deterioration or other inadequacy has not occurred "over an identified period of time," as required under 49 C.F.R. § 1146.1(a). Reply at 21. However, the situation is hardly one where the risk is "speculative." *Id.* at 21. The ensuing complications are not ones that can be easily corrected after the fact by a restoration of service. UP made abundantly clear that it was about to reduce service in the height of Hasa's peak season, without notice or explanation, and the only reason that reduction did not occur is the Board's issuance of its Order. UP has also made clear that it had no comprehension of, and little care with, how its actions will interfere with Hasa's production. UP's concern with the public interest consequences of its actions is also perfunctory at best. Under the circumstances, there is more than ample justification for the relief requested.

5. Ample Precedent Exists for an Emergency Service Order

UP contends that *Canexus Chemicals Canada L.P. v. BNSF Ry.*—*Emergency Service Order*, NOR 42131 (STB served Oct. 14, 2011), provides an inadequate precedent for Hasa's requested relief. Reply at 22. Any of several responses

should suffice to refute this contention. First, *Canexus* shows that the Board will not hesitate to act in an appropriate instance. Second, UP's distinction between "no traffic" and "some traffic will still" move is an inadequate one to justify withholding relief in the face of a credible threat to businesses and public health. Third, to the extent that there may be a lack of additional precedent, it is because carriers in the past, including UP, have not demonstrated the arrogance and callous indifference that UP exhibits here, and complaints like Hasa's have not been necessary. Moreover, there is no question as to UP's ability to continue to provide the needed service or the profitability of the chlorine movements. The only apparent impetus for UP's chosen course of action is its realization of an opportunity to increase those profits by reducing service. That is not a sufficient justification for the harm that UP would inflict.

B. More Than Ample Justification Exists for a Preliminary Injunction

UP also asserts that Hasa cannot satisfy the standard for a preliminary injunction. Reply at 22-27. UP's contentions consist largely of a rehash of its other arguments.¹²

UP begins by claiming that the Board has no jurisdiction as to contract traffic, particularly in the absence of a formal complaint. *Id.* at 23. However, UP cites only judicial authority, not Board precedent, for the necessity of a complaint, Hasa made a thorough legal and factual showing in its Application, and Hasa is prepared to file a

¹² Hasa does not dispute that a preliminary injunction is an "extraordinary and drastic remedy." Reply at 22 n.28. The consequences of a shortage in Hasa's production due to UP's service reduction more than meet that standard.

complaint, if doing so proves necessary. Beyond that, the Board's injunctive authority is meant to be broad and flexible. Furthermore, Hasa is not a party to any § 10709 contract with UP, and UP has not identified any conflict between the contracts and the requested relief. In any event, the STB must have the authority to protect the public interest from a common carrier that disregards the public interest. For example, just last summer, the Board provided similar service injunctive relief to an agricultural receiver in the Central Valley of California, in order to prevent business harm to the receiver and local dairy farmers relying on its service in order to prevent irreparable harm. *Cent. Valley AG Grinding Inc., et al. v. Modesto Empire Traction Co.*, NOR 42159 (STB served June 12, 2018) (“*CVAG*”). The decision then led to Board-sponsored mediation, and then to a successful commercial resolution. Hasa does not want to continue to litigate with its business partner UP, and has the desire and every reason to seek to reach the same reasonable commercial resolution that was achieved in *CVAG*, as should UP. Brink R.V.S. at ¶¶ 3-5, 20.

UP's claim that Hasa is not likely to succeed because its petition is without merit, Reply at 23, rests on similar claims as to lack of jurisdiction and the reasonableness of UP's reduced service presented in Part III of UP's Reply, which Hasa has already addressed.

UP next disputes Hasa's authority that daily service is the norm by claiming that what is reasonable varies entirely with the circumstances. *Id.* at 24-26. However, even if UP is correct on that point, which it is not, that approach hardly advances UP's cause. As addressed *supra*, UP does not dispute that it has been providing daily weekday

service to Hasa for over 50 years, that this service has been necessary for over 50 years, and that there has been no recent changes in traffic patterns or delivery requests by Hasa that might require any service change by UP. The only apparent change has been UP's recent implementation of its Unified Plan 2020, but that business change designed to lower railroad operating ratios and improve profitability says nothing about Hasa's continuing service requirements.

Hasa's and the public's need for the service has not grown any less acute, and UP is no less able to provide the service. Nor does UP dispute that the Saugus plant was designed and built around receiving daily service (Brink V.S. at ¶ 13) or that the goal and object of precision scheduled railroading under UP's Unified Plan 2020 is to move carloads on a daily basis, not trains on a periodic basis, and to minimize car dwell wherever possible. Application at 18-19. However, UP inexplicably chooses to ignore these goals with regards to Hasa's service, apparently in pursuit of even higher profits.

UP then challenges Hasa's discussion of a railroad's need to avoid holding TIH traffic such as chlorine for more than 48 hours under 49 C.F.R. § 174.14. Reply at 25. As Hasa explained *supra*, three days a week service threatens non-compliance with the FRA's 48-hour rule and violates UP's own rules under UP Tariff 6004-C, Item 130-B that requires that chlorine railcars be removed from its yards immediately without dwell. UP ignores these concerns altogether.

UP then dismisses Hasa's claims of irreparable harm based on its speculation that three days a week service will not disrupt Hasa's production. Reply at 26-27. Hasa has explained in detail *supra*, how UP's conjecture rests on fundamental

ignorance or intentional disregard of Hasa's business and operations. UP counsel also asserts that any service deficiencies can be made up with voluntary special switches, but as also addressed in detail *supra*, such an "offer" is illusory. UP ignores its witnesses' prior communications with Hasa that such special switches are unnecessary and will not be allowed, and even if allowed, are not feasible under UP's restrictive rules that greatly limit the utility of the switches, *e.g.*, Hasa effectively has to request the switch before it knows it needs it.

C. The Board Should Consider Broader Measures

UP dismisses Hasa's suggestion in its Application that the Board should consider broader measures such as a show cause order or investigation. UP seeks to depict its actions as business as usual and without any connection to its Unified Plan 2020 or the associated dispute regarding accessorial and related service issues. Reply at 27-28.

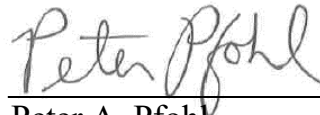
However, as explained *supra*, UP's own communications to Hasa linked the service reduction directly to UP's Unified Plan 2020. Brink V.S. ¶ 30 and Exhibit 3 at 3; Brink R.V.S. at ¶ 14. Unified Plan 2020 has given rise to broad concerns about UP's demurrage and accessorial charges and associated reductions and deterioration in service. It is difficult to dismiss UP's actions towards Hasa as a one-off incident that does not manifest UP's much broader approach to its operations and its treatment of shippers and receivers. Hasa's point is that the matter is worth serious consideration. UP's actions and callous response, and attempts to justify those actions while disregarding a customer's repeated efforts to explain the serious harm that those actions

will create, confirm that the matter is worthy of consideration. UP's inaccurate and highly misleading self-serving denials should not be taken at face value.

VI. CONCLUSION

UP's extended attempt to justify its actions, and its associated failure to give any fair consideration to the reasons why those actions will inflict harm on Hasa and public safety, only confirms the need for Board to grant the emergency service order and/or injunctive relief that Hasa has requested.

Respectfully submitted,



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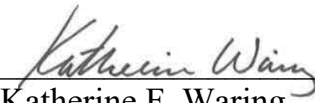
*Attorneys for Applicant-Petitioner
Hasa, Inc.*

Dated: September 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of September, 2019, caused a copy of the foregoing to be served by first class mail and email upon Union Pacific Railroad Company, as follows:

Raymond A. Atkins
Matthew J. Warren
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Katherine F. Waring
An Attorney for Applicant-Petitioner

Verified Rebuttal Statement of Christopher James Brink

1. My name is Christopher James Brink. I am the President and Chief Executive Officer of Hasa, Inc. (“Hasa”). I previously submitted a verified statement (“Opening Statement”) in this proceeding on August 20, 2019.

2. I am submitting this rebuttal statement to respond to some of the more serious factual misstatements made by Union Pacific Railroad Company (“UP”) in its Reply to Hasa’s petition for an emergency service order, and to reemphasize the vital need for Hasa to receive the same daily, weekday service that UP long provided to Hasa’s Saugus production facility, while the parties reasonably discuss and resolve longer-term infrastructure and operational changes necessary to enable UP to provide alternative service that will meet the operational and service requirements of both parties.

Hasa’s Continuing Strong Preference for Reasonable Commercial Resolution

3. Before discussing UP’s factual misstatements, I want to reemphasize at the outset that Hasa has come to the Surface Transportation Board (“Board”) only as a matter of last resort, and because Hasa required the immediate service relief that only the Board can provide under the extreme and urgent circumstances presented.

4. Hasa and its workforce of approximately 435 manufacture and produce vital products used to provide safe, clean, and clear water to the public. We have enjoyed a very cooperative business relationship with UP for over 50 years. We wish and expect to continue that good relationship for another 50 years and beyond. But in the face of UP’s refusal to relent or meaningfully discuss its immediate cessation of daily weekday

service that Hasa has long relied upon and requires, Hasa had little choice but to seek the Board's assistance.

5. We are very appreciative of the swift, interim relief provided by the Board. This relief has enabled Hasa to continue to meet the needs of its customers for a product vital for public health and safety during a period of peak demand for our water treatment products. During that period, we have continued to try to have meaningful discussions with UP.

Misstatements in UP's Reply

6. In its Reply, UP professes to know the importance of and public need for Hasa's water treatment products and its customer base, apparently better than we do, asserting that "Hasa has overstated the importance of its product for 'water treatment and public health,'" and that "Hasa's website emphasizes its recreational water products for pool and spa water treatment." *Id.* at 5, 11. UP even calls Hasa's claims a "strawman." *Id.* at 15. UP's attempt to trivialize the importance of Hasa's products to meet the public's need for water sanitation is unfounded.

7. The provision of safe water is of obvious and vital importance to protecting public health in Hasa's core service area in Los Angeles County and the surrounding region. Hasa's disinfectant products are essential for preventing drinking water-associated disease and outbreaks. They are also essential in preventing recreational water illnesses caused by germs and bacteria found in the water in which the public swims. Additionally, our products are essential to avoiding contamination and to making water safe for irrigation for agricultural purposes and other industrial uses vital to maintaining

public health. UP cannot and does not attempt to dispute these important public safety attributes of Hasa's water sanitation products.

8. UP alleges Hasa has misled the Board on the use of Hasa's products and failed to accurately describe our customer base. Reply at 5. UP is wrong. In my Opening Statement, I identified five dozen public, municipal, and community customers, the majority of which are city, community, and municipal water districts that use Hasa's products to sanitize drinking water, including the City of Anaheim, the Los Angeles Department of Power & Water, and many smaller municipalities in Los Angeles County and the surrounding areas (§ 7). I also described that our product is sold wholesale to more than 400 distribution partners that distribute Hasa's products to additional water treatment plants and facilities (§ 8). Additionally, I referenced the use of our products in disinfecting swimming pools, in wastewater treatment, and for irrigation and other agricultural purposes (§§ 5, 7-9). UP ignores all of these facts.

9. UP also contends that "Hasa makes sweeping, conclusory assertions regarding its production needs, storage capabilities, and potential product degradation." *Id.* at 13. Hasa does not profess to or wish to be experts on railroading, but we know extremely well our business, our products, our infrastructure, our operational requirements, our transportation receipt needs, and our customers' needs and how they rely on our products. My Opening Statement provided detailed facts and information addressing all of these areas (§§ 10-23), none of which UP has attempted to refute, other than to assert that "Hasa's claim of product degradation appears to be a red herring." *Id.* at 14. On that subject, UP asserts that there can be no sodium hypochlorite degradation

caused by its service lapses because degradation occurs after product production, and UP does not handle outbound shipments to Hasa's customers. *Id.* UP also asserts that Hasa "fails to mention that all of its outbound shipments are made by truck." *Id.* at 3.

10. UP's statements on product degradation are confusing and completely miss the point. My Opening Statement made clear that sodium hypochlorite begins degrading immediately after manufacture, and that neither Hasa nor its customers can store it on site, especially during the peak summer production months when decomposition is highest because of high heat and sunlight (§§ 18-23). Because the product degrades significantly in a matter of days, Hasa requires daily deliveries of inbound raw materials from UP in order to be able to manufacture and deliver adequate quantities of its products on a continuing "just in time" basis to ensure the products meet promised purity and customer efficacy requirements. *Id.* In other words, even if Hasa had additional storage, which it does not and cannot install easily or economically, or additional manufacturing capacity, which it does not, Hasa cannot simply produce product half the month or half the week in advance, store it up, and then deliver the product at a later time given the unique chemical characteristics of sodium hypochlorite. That is why Hasa requires consistent, constant service from UP of its **inbound** raw materials.

11. Also, Hasa never misled the Board that it ships products to customers by railroad. To the contrary, as reflected in my Opening Statement, Hasa made clear that it is a receiver of rail services needed to meet its raw material needs, and not a shipper (§10). We also made clear that Hasa serves its customers of packaged, bulk, or mini-bulk formats only by truck, and not by rail (§9). It is difficult to imagine how UP could make

modest-sized deliveries to Hasa's numerous customers on a frequent basis, especially when UP's track does not reach many, if any, of the customers' facilities, nor could a railroad effectively deliver the products required by any such customers on a just-in-time basis.

12. As discussed in my Opening Statement, Hasa has more than a thousand retail and wholesale customers that depend and rely on Hasa to meet their just-in-time business needs, and Hasa delivers product to them, by truck, often on a daily basis (§§ 8-9). We run a very efficient operation, and that operation depends on efficient, dependable, reliable, and **sufficient** service from our railroad partner, UP.

13. UP claims that all it is attempting to do is implement "routine service schedule changes" that were "well calibrated," which Hasa is trying to "block." Reply at 15, 27. UP goes to considerable lengths to explain that it originated and developed its service reduction plan at the local level with great care and only after close review and consultation with Hasa. However, UP made no mention to Hasa of any local, ground up review of Hasa's business and service requirements. As my Opening Statement explained, UP stated to Hasa that its recent service reduction initiative was intended to further its preferences and goals of its "Unified Plan 2020," rather than the result of any meaningful discussion of service changes with Hasa (§§ 24-41). Again, the first we heard of any change was when the local crew mentioned that one day a week service would commence the following week (§25). As explained further in the accompanying Verified Rebuttal Statement of Rob Bzdil, Hasa's Executive Vice President, Supply Chain &

Industrial Sales, UP's assertions on its careful, bottom-up approach with respect to its service reduction plan are erroneous and highly misleading.

14. Also, while UP claims that its service reduction had nothing to do with its Unified Plan 2020 (Reply at 27), UP told Hasa otherwise. When UP finally responded to Hasa's complaints about its planned cessation of daily service, UP confirmed that its planned service reductions were the result of its "Unified Plan 2020 operating model," stating:

I was glad to hear that you have been receiving reliable service for many years. As you stated, Union Pacific is working on our Union Plan 2020 operating model to provide safe, reliable, and consistent service. As we evaluate our train schedules, at times we may find the need to adjust days-of-week service schedules."

(Op. Statement ¶ 30 and Exhibit 3, at 3).

15. UP asserts on Reply that the sole factor that is needed to determine Hasa's service needs is traffic volumes, and "Hasa's entire Petition is . . . based on a fundamental misrepresentation about its incoming volumes," and incorrectly states that Hasa failed to inform the Board that we receive caustic soda both by rail and by truck. *Id.* at 1-2, 5-7. In its Table 1, UP contends that Hasa informed the Board that it receives 27.5 – 33 cars per month of chlorine and receives 50-66 cars per month of caustic soda. That assertion is incorrect and completely misleading. Hasa has not misrepresented its raw material volume requirements. Instead, my Opening Statement stated that "[d]uring the peak summer season, the plant consumes approximately 1.25-1.5 railcars per day of chlorine, and 2.5-3 cars per day of caustic soda. It also has approximately 1-2 railcars of hydrochloric acid on-site. The 10 spots are usually fully occupied during the summer

months, and there is no spot for additional railcars” (§ 15). Later, I stated that these commodity volumes are consumed “during high demand periods” (§ 48). My Opening Statement further acknowledged that, because Hasa had limited track space, its caustic soda volumes are supplemented by truck (§§ 17, 49). Hasa never contended that we are able to sustain deliveries of up to 99 cars per month of chlorine and caustic soda, in addition to our hydrochloric acid deliveries.

16. Each tankcar of chlorine, for example, contains 135,000 – 140,000 gallons of product. Based on Hasa’s production batch figures, Hasa easily can, and does, consume over 1.25 tankcars of chlorine (168,750 – 175,000 gallons) in one day. In addition, while some days our consumption is lower due to plant operational constraints or immediate demand factors, there are other days where we consume in the production process at or above 168,750 – 175,000 gallons of chlorine per day.

17. My Opening Statement also explained that because the chemical formula for sodium hypochlorite requires one part chlorine to two parts caustic soda, we need double the volume of caustic soda to that of chlorine. Because we cannot receive and store that volume of caustic soda, in addition to our hydrochloric acid cars on our ten-spot track, we cannot receive all the feedstock we require by rail (§ 48). Hasa also requires UP to perform all of Hasa’s railcar spotting requirements, and daily service is required to ensure that Hasa’s railcars are properly placed, removed, and spotted (§49).

18. As further explained, UP’s simplistic, total volume driven model, incorrectly assumes that as long as UP can meet Hasa’s needs for all Hasa’s commodities in the aggregate, on an average monthly basis, Hasa’s service needs for any smaller

interval will be fully satisfied. That is incorrect. UP's model, which shows that Hasa requires only one day per week service, which is clearly inadequate, fails to appropriately factor in all of the nuances of Hasa's service requirements, as set forth in my Opening Statement (¶¶ 46-52). Additional flaws in UP's volume driven approach are set forth in the accompanying Verified Rebuttal Statement of Rob Bzdil.

19. UP obviously has little knowledge of Hasa's business operations or specific service needs. Hasa has repeatedly invited UP to visit the Saugus facilities to learn more about our business, our products, our customers, and our service requirements, and we remain hopeful that it will do so soon. If necessary, we also invite the Board and/or its staff to visit our facilities. Once UP takes the time to better understand our business, we are confident that it will be in a much better position to put in place any new service plans that meets both Hasa's and UP's business requirements.

**Hasa Seeks Only Limited, Necessary Relief to Help
Obtain a Reasonable Business Resolution**

20. UP asserts on Reply that Hasa "appears to seek an order of indefinite duration." *Id.* at 20. That is not true. Hasa knows, given UP's strong insistence on implementing service reductions, that it needs to make infrastructure and business changes to accommodate UP's business preferences. Hasa is prepared to do so, but those changes need to be meaningfully discussed, and will take some time to plan, permit, and implement. Because of UP's continuing intransigence, Hasa requires the Board's continuing assistance so that UP will maintain its established level of service as the parties meaningfully discuss necessary Hasa infrastructure and operational changes, and

related UP service changes. Board-sponsored mediation should be very helpful in this regard.

21. There is an obvious place to start. In UP's reply, UP professes to have not been fully aware of Hasa's August 16, 2019 interim service proposal described at Paragraph 53 of my Opening Statement, and states that it has actually not rejected it. Verified Statement of Michael V. Matya at 5. Hasa had proposed that UP provide scheduled service to Hasa four days per week during our peak months April-September, with special switch service, free of charge, for the fifth day when necessary, and then three days per week during the remainder of the year.

22. As stated in my Opening Statement, this is the largest service reduction that Hasa can reasonably withstand at this time while longer term solutions are considered. It is frustrating to Hasa that UP did not fully understand or find the need to seek clarification on Hasa's proposal. Nonetheless, Hasa made this proposal in good faith, and it continues to seek to work with UP in implementing this plan. Hasa is also pleased to know that UP has not rejected our proposal, and we believe that through Board-sponsored mediation, and with both parties' working in good faith, it should be possible to reach a reasonable commercial resolution.

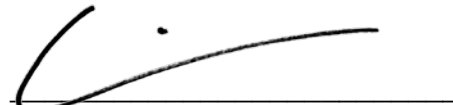
23. Finally, as my Opening Statement explained, UP agreed, for a limited two week period from August 12-23, 2019, but no longer, to waive its 36-hour rule for special switches, and its associated special switch fees, before implementing its thrice-weekly service reduction initiative (¶¶ 43, 63). As further explained, UP notified Hasa that its special switching service is voluntary, and following August 23, 2019 such requests will

be rejected as unnecessary (§ 63). Neither Ms. Kirchhoefer nor Mr. Matya dispute these discussions. Nor does UP dispute the statement in my Opening Statement that, even in the unlikely event UP provides special switches in the future, UP will still require that Hasa request switches 36 hours in advance and pay a charge of \$3,200 or more, in addition to what Hasa pays for transportation on a delivered cost basis (*id.*). Under UP's rules, special switches, even if feasible, are completely voluntary. Again, UP has informed Hasa that its service model shows that Hasa requires only once a week service, and certainly not more than thrice-weekly service (§§ 63-64).

24. Despite these onerous restrictions and limitations, UP represents in footnote 14 of its Reply that should the Board withdraw its interim service order, "Hasa will retain the ability to request special switches in the future at its own cost, and Union Pacific will accommodate those requests if capacity is available." That representation is less than assuring in view of the matters noted above. In addition, Mr. Matya elsewhere emphasizes that UP's capacity is limited and its "resources are needed to meet the service levels requested by other customers." UP's new offer also contradicts Ms. Kirchhoefer's prior statement that UP will not voluntarily provide Hasa with special switches going forward. UP's new "offer" appears less than genuine and instead appears to be intended to support a conclusion that any additional service needs Hasa may require beyond thrice-weekly service will be accommodated through other means. Hasa urges the Board not to be deceived by UP's belated assurances.

VERIFICATION

I, Christopher James Brink, verify that I have read the foregoing Verified Rebuttal Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.



Christopher James Brink

Executed on September 10, 2019

**Verified Rebuttal Statement of
Robert Bzdil**

1. My name is Robert Bzdil. I am Executive Vice President, Supply Chain & Industrial Sales, for Hasa, Inc. (“Hasa”). My business address is 23119 Drayton Street, Saugus, California 91350.

2. I am submitting this Verified Statement in response to the Verified Statements of Kari Kirchhoefer (“Kirchhoefer V.S.”) and Michael V. Matya (“Matya V.S.”) that Union Pacific Railroad Company (“UP”) submitted as part of its Reply to Hasa’s petition for emergency service dated September 3, 2019.

3. I have been employed by Hasa and part of Hasa’s Supply Chain & Industrial Sales division for 5 years. My responsibilities include overseeing and leading the supply side transportation and logistics of Hasa. Those operations include the inbound receipt of chlorine, sodium hydroxide (commonly known as caustic soda), both of which are used to manufacture sodium hypochlorite, and hydrochloric acid that Hasa receives at its Saugus, California production facility.

4. I have been directly involved in Hasa’s response to UP’s recent initiative to abruptly cease its daily weekday service to Hasa at Saugus and Hasa’s efforts to restore regular service. I have reviewed the Verified Statement of Christopher James Brink submitted with Hasa’s petition (“Brink V.S.”), as well as Mr. Brink’s Rebuttal Verified Rebuttal Statement being submitted with Hasa’s Rebuttal (“Brink R.V.S.”). The accompanying emails and correspondence that accompany Mr. Brink’s Opening Statement demonstrate that Mr. Brink and I have both been closely involved in Hasa’s

efforts to restore and maintain rail service as the parties seek to develop a solution that will work for both sides. I affirm that Mr. Brink's statements relating to Hasa's transportation and logistics are accurate and true to the best of my information and belief.

5. Ms. Kirchhoefer and Mr. Matya devote much of their statements to addressing the alleged close customer coordination, exchange of information, and care that UP supposedly took in implementing its service reduction plan on Hasa. Their statements contain serious and material factual omissions and inaccuracies.

UP's Service Change Process

6. Mr. Matya explains that he helps lead UP's Customer Care and Support ("CCS") department that directs and manages UP's evaluation and implementation of service changes, in close coordination with UP's Operating and Marketing and Sales Departments. Matya V.S. at 1. CCS acts as the "liaison between customers, the Marketing and Sales Department, and [UP's] operation teams in the field." *Id.*

7. Mr. Matya does not dispute most of Hasa's statements on service, including that "Hasa has been a reliable, constant receiver of UP rail service at Saugus over five decades." Brink Opening Statement at ¶ 13. Nor does Mr. Matya dispute Mr. Brink's following statements:

- "Hasa receives, produces, and distributes a consistent, ratable volume of products year-to-year, with predictable surges in the summer months when water consumption is at its highest, recreational swimming pools are in most active use, and, as explained later in my statement, the product degrades most rapidly. The Saugus plant was designed and built to receive daily weekday rail service, in cooperation with UP. Until very recently, UP has reliably provided our required daily service, without interruption."

- “During the cooler months when demand for water treatment products recedes, Hasa does not always require daily service. This limited, three-to-four month period of reduced service requirements is fairly predictable and constant from year-to-year. Hasa proactively manages its supply chain, and during the days that Hasa does not require service, it simply does not order in a car or release a car for pickup by UP. To Hasa’s knowledge, UP’s provision of daily, weekday service, during the eight-to-nine typically warm-to-hot Southern California months, has been in effect and continuous since 1956 when the Saugus plant opened.”
- “Hasa’s plant and transportation infrastructure at Saugus has been established over the past 56 years, in cooperation with UP.”

Brink V.S. at ¶¶ 13 – 15.

8. Mr. Matya states that “[r]eviews of local service changes start at the local management level,” that “local managers have ownership of the service in their area,” and that these managers have both the responsibility “to review continuously the service demands of the customers located within their territories” and “the authority to seek service changes.” Matya V.S. at 2. Any service changes, according to Mr. Matya, originate with the local manager, who submits a proposed change to Network Planning and Operations (“NPO”) and Marketing and Sales, whose “teams use Union Pacific data and feedback from the customer to make a recommendation regarding the service level change.” *Id.* Mr. Matya states that CCS, Operating managers, NPO, and a Homeland Security Specialist all work together, taking into account customer feedback, in implementing any service changes, “and we then calibrate the service to match the customer’s volumes and supply change needs.”

UP's Close Evaluation and Confirmation of Hasa's Need for Daily Service

9. Mr. Matya explains that UP has, for at least the past 16 years, handled and processed all customer service changes, including those for Hasa, the same way, by “continuously evaluating customer service levels and implementing solutions to improve service levels as needed.” *Id.* at 2-3. As far as Hasa's historical service levels are concerned, I would largely agree. Hasa agrees that UP has continually and closely evaluated Hasa's service requirements at Saugus for over five decades, and that intense, constant review by UP has supported Hasa's need for continuing, daily weekday service.

UP's Implementation of Hasa's Recent Service Changes

10. While Mr. Matya states that UP “will continue to evaluate service levels and will support customers if and as their needs change” (*id.* at 3), he does not identify any changes in Hasa's service needs that may have led to any changes in UP's decades-long close review, confirmation, and verification of Hasa's need for daily weekday service. While Mr. Matya does not claim to be part of any local management team, he asserts that he was part of a “localized review” that initially determined, at some time he does not specify, that “Hasa's volumes showed that their facility required one DOW service,” and that the unidentified “local manager” made a “change of service request” to implement that service change. *Id.* Mr. Matya further asserts that “NPO evaluated the proposed service change and discussed the proposed change with the Sales Manager and Hasa.” *Id.*

11. Mr. Matya's version of the events leading up to UP's cessation of Hasa's daily weekday service is inaccurate and highly misleading. UP's local, regional, and

national “teams” serving Hasa consist of Wendy Goodwin, CCS, West Sunset Service Unit; Steven Haywood, CCS, Southern Region; John Carlucci, Assistant Manager – Customer Relations; and Jackson Bogatz, Marketing and Sales (Spring, Texas).

12. Mr. Matya does not dispute that Hasa first learned of UP’s service change from a rumor communicated by the UP local switching crew on July 2, 2019, that daily weekday service would be reduced to one day per week starting the following week. Brink V.S. at 25. He also does not dispute that UP did not provide Hasa any notice of, and did not have any consultation with Hasa, this service change. *Id.* Mr. Matya also does not dispute Mr. Brink’s statement that, at least prior to this time: “UP had not provided any notice of, or consulted with Hasa on any service changes, let alone the cessation of daily service to a longstanding customer that had received and relied on continuous daily service for over five decades.” *Id.*

13. Mr. Matya and Ms. Kirchhoefer assert that UP had been in constant communication with Hasa over UP’s service reduction plans, but that is also not correct. As Mr. Brink explained, over the next several weeks, beginning July 2, 2019, Hasa urgently reached out to its local service representatives on the possible service changes. Brink V.S. at ¶¶ 26-27. After some delay, Ms. Goodwin responded to a Hasa message to her and Mr. Goodwin on July 8, 2019 stating that “[t]he Operating team spearheaded this change and the Sales team had the opportunity to push back on it before it was approved. I wish I could do more but John and I are only the messengers, in this instance. I would recommend reaching out to the Sales team.” A copy of this exchange is attached as **Exhibit 1** at 2. This exchange shows that, contrary to Mr. Matya’s verified statement,

UP's service reduction plan did not originate at the local level, UP had failed to consult with Hasa on any changes, and the local UP managers were powerless to interfere with the UP Operating department's decision.

14. Hasa then engaged in additional outreach to the UP Sales team, and I personally reached out to Steven Haywood, UP's regional customer service representative, for assistance. Mr. Haywood apparently checked further, and simply responded that "it appears Hasa *at Eloy* has been receiving three day a week service for years according to our operating personnel. Based on service levels this amount of service is warranted, based on team's analysis." (Emphasis added.) However, our message to Mr. Haywood clearly referred to "the proposed service changes to our Hasa-Saugus facility," and not Eloy. Eloy is Hasa's smaller production facility in Eloy, Arizona, located almost 500 miles away from Saugus. A copy of this exchange is attached as **Exhibit 2** at 1.

15. Ms. Kirchhoefer's July 16, 2019 email to Mr. Brink, included as Exhibit 3 to the Brink V.S., at 3, confirmed that UP made the changes as part of UP's centralized precision railroading plan. Ms. Kirchhoefer wrote that "[a]s you stated, Union Pacific is working on our Union Plan 2020 operating model to provide safe reliable, and consistent service," and "[o]ur Operating department is evaluating options and Jackson [Bogatz] will reach out to Rob [Bzdil] directly to discuss further." *Id.*

16. Contrary to Mr. Matya's assertions that UP engaged in a close, careful approach to Hasa's service changes that was initiated at the local level and in full consultation with Hasa, UP's local representatives actually confirmed that they had no

role in UP's daily service cessation initiative. They confirmed that the one day a week service change actually originated with UP's central Operating department, with input by UP sales, and that UP adopted the change without consulting with Hasa's local service managers or Hasa.

17. Ms. Kirchhoefer asserts in her Verified Statement that Mr. Bogatz of her team called me on July 10, and informed me that UP sales would review the change to one day a week service, and again on July 11 to inform me that UP "had started reviewing the proposed change to one DOW service." However, she omits any mention that UP had already approved the decision to cease daily service for Hasa on July 8, 2019, after review and input from her team, but **without** input from or consultation with Hasa, as confirmed by Ms. Goodwin in **Exhibit 1** at 2.

18. Ms. Kirchhoefer further asserts that UP "internally canceled the change to one DOW service before it was ever implemented." Kirchhoefer V.S. at 3. Her statement confirms that UP had already approved the service cessation decision, without consultation with Hasa, and decided to cancel the previously approved change only after it received Hasa's letter to Mr. Rocker and Ms. Kirchhoefer on July 15, 2019, included with the Brink V.S. as Exhibit 2. Her July 16, 2019 response message promised that UP would continue daily weekday service while its central Operating department evaluated Hasa's service. However, as stated in Mr. Brink's Verified Statement, which UP does not dispute, UP broke both its commitment to work with Hasa on a bilateral solution and its continuing service assurances the very next day, when it informed Hasa on July 17,

2019 that it would implement its reduced, thrice weekly service starting July 29, 2019.

Brink V.S. at 31.

19. Mr. Matya asserts that “while the initial service recommendation relied on a ‘single factor’ approach, Union Pacific’s ultimate conclusions regarding service were supported by a deeper study of the data that was guided by Hasa’s feedback,” as well as feedback “by the local manager.” Matya V.S. at 4. Ms. Kirchhoefer further asserts that “Union Pacific was in constant communication with Hasa regarding a change in service.” Kirchhoefer V.S. at 3. However, just as with its initial approval of its one day a week service reduction plan, UPs three day a week service reduction plan was approved immediately by UP’s centralized Operations team involved in UP’s United Plan 2020 initiative, acting in isolation, and without any prior consultation with Hasa. Brink V.S. at 31.

20. In addition, Mr. Matya and Ms. Kirchhoefer both make inaccurate and highly misleading statements regarding how UP shared data with Hasa that supposedly supports its service reduction plan before it implemented its plan. Mr. Matya asserts that UP engaged in a “deeper study of the data . . . was guided by Hasa’s feedback.” Matya V.S. at 4. Ms. Kirchhoefer indicates that UP shared the spreadsheet data included in UP’s Reply with Hasa on July 25, 2019, and additional data with Hasa on July 27, but that Hasa failed to provide UP with its own data “to refute Union Pacific’s position that three DOW service would be sufficient.” However, no such detailed operational data was actually shared with Hasa by UP before UP decided to eliminate daily weekday service on July 17, 2019.

21. In fact, other than some anecdotal information that UP sales provided about Hasa's alleged ability to release cars, UP did not actually provide any underlying data to Hasa until the afternoon of July 25, 2019, and then only provided some aggregated car receipt data for the partial month of July 2019. That information is set forth in the attached **Exhibit 3** at 1-2. Rather than engage in an actual "deep dive" discussion over actual Hasa shipment data, UP informed Hasa one day later, on July 26, 2019, that UP intended to cease daily weekday service effective the next business day. Brink V.S. at 35. UP did share some, but not all of the detailed spreadsheet data included in UP Counsel Exhibits 1 and 2 with Hasa, but only several days after the STB's Office of Public Assistance, Government Affairs and Compliance convened a call with the parties, on August 6, 2019, where UP insisted that its planned service reductions were justified and appropriate. That call was several weeks after UP had made its final decision to cease Hasa's daily weekday service on July 17, 2019. Brink V.S. at 43.

Flaws in UP's Average Volume Approach to Service

22. Mr. Matya contends that his review of the data for average daily car release rates as well as average dwell and throughput shows that UP needs to serve Hasa, on average, no more than three times per week. Matya V.S. at 3-4. However, as explained in Mr. Brink's Opening and Rebuttal statements, UP's restricted railcar release and volume approach for determining Hasa's service needs ignores the nature and complexities of Hasa's business and service requirements and the frailty of UP's own service. Brink V.S. at ¶¶ 46-52, Brink R.V.S. at ¶¶ 15-17.

23. As indicated in Mr. Brink's Opening Statement, which UP does not refute, the Saugus plant was developed and built to receive daily weekday rail service, in cooperation with UP. Brink V.S. at 13. Hasa has not asserted that daily service is always required, but it frequently is during peak periods. UP even acknowledged this reality in its Reply at page 7 (UP's data analysis shows that "[d]uring some weeks in the summer months of June through August, cars would be delivered five days per week, but not always").

24. Based on our initial review of the car totals, UP's data appears to be incorrect and understated. For example, UP reports that in June and July Hasa received a total of 28 and 40 cars, respectively. Kirchhoefer V.S. at 2. Hasa's records indicate that in June and July, Hasa received a total of 34 and 55 cars, respectively. UP had only incomplete data for August, and stated that Hasa received 31 cars, apparently through the date of its Reply filing. *Id.* Hasa's records show that it received a total of 62 cars in August.

25. Mr. Matya also asserts that three day a week service is justified because "in 2019, Union Pacific is actually already spotting cars at the facility approximately 3 times per week on average." However, UP's own data shows that Hasa has averaged more than 3 switches per week during the peak months. For example, in 2019, during Hasa's peak service period, Hasa required an average 3.6 of switches per week; during its peak service period in 2018, Hasa required an average of 3.8 switches per week; and during its peak service period in 2017, Hasa required an average of 4.4 switches per week. Switches

were modestly reduced in May and June 2019 in part due to unseasonably cooler weather.

26. However, averages encompass periods of higher and lower than average demand. Hasa does not operate on an average service need basis, but instead on a customer demand basis. As even UP acknowledges, many weeks Hasa requires five switches per week. Reply at 7. As Mr. Brink previously stated, Hasa does not always require daily service, and during the non-peak months, Hasa can sustain less than five day a week service. Brink V.S. at 14, 53. However, the past five decades of UP continuous service to Hasa confirms that Hasa needs to have daily weekday service available to carry out its operations.

27. UP ignores what is critical, namely, the impact of its service reduction on actual production. Consider a scenario, such as August 7, 2019, where Hasa has seven cars of chlorine, one car of hydrochloric acid, and two cars of caustic soda. On August 7, 2019, Hasa went through the two cars of caustic soda, and on August 8, 2019, it went through an additional two cars of caustic soda. Without daily service, Hasa is unable to switch out the caustic soda and is forced to order trucks, which is more expensive. Additionally, when Hasa has requested caustic railcars be delivered instead of acid, and UP fails to deliver the correct cars, this significantly impacts operations because the trucks of caustic have not been ordered and this can result in production delays and ultimately, will equate to more demurrage. Hasa's operations thus depend on reliable, and consistent rail service. **Exhibit 4** includes email exchanges between Hasa and UP

regarding a missed “special request” for a caustic car on August 13, 2019, and problems getting a hydrochloric acid car that was “ordered in” delivered on August 28, 2019.

28. Additionally, as mentioned by Mr. Brink in his Opening Statement, there are times when railcars are bunched. Brink V.S. at ¶ 24. For example, Hasa was flooded with chlorine cars late May – early June 2019. Specifically, on May 30, June 3, June 4, and June 5, Hasa’s there were 10 chlorine cars onsite that filled all available spots. Hasa has to take chlorine cars, both under the “48-hour” rule, and under UP’s own rules.

29. UP acknowledges that the FRA/PHMSA “48-hour rule” requiring that railroads not hold tank cars carrying poisonous gasses, such as chlorine, for more than 48 hours applies to Hasa’s shipments. UP contends that the exception for weekly or twice weekly customers will somehow absolve it from compliance. Reply at 25. However, UP is seeking to place Hasa on three day a week service, not two days, and the applicable rules do not provide for an exception for that level of service. In addition, if UP misses any switch, which is a fairly regular occurrence (Brink V.S. at ¶ 51), it will violate the 48-hour rule. For example, Hasa received no UP service on August 20, 2019, because Metrolink experienced a fatality on Metrolink, as unfortunately occurs periodically. In that instance, UP missed Hasa’s switch even though it was not its fault. Also, even if a switch is not missed, if a car arrives in UP’s yard Monday morning at, say, 2:00 a.m., and is too late to be included in the Monday switch, UP will be in violation of the 48-hour rule when it finally delivers the car on Wednesday during its regular daylight deliver hours (9:00 a.m. to noon) under its new service reduction plan. UP’s reduced service plan for Hasa fails to address this significant safety compliance issue.

30. In addition, UP's service reduction plan does not comply with its own rules requiring expeditious switching of chlorine cars. UP Tariff 6004-C, Item 130-B requires "Spot on Arrival for Toxic Inhalation Hazards," which includes chlorine:

**GENERAL RULE ITEM 130
SPOT ON ARRIVAL FOR TOXIC INHALATION HAZARDS (TIH)**

When a consignee, care-of party or a billed destination facility is unable to accept a railcar containing a Toxic Inhalation Hazard (TIH) at the time the railcar is first available for delivery and the railcar must be held at Union Pacific's facilities, a charge of **\$5,000.00** per railcar per 24 hour period, or fraction thereof, will be assessed to the consignee from the first midnight after the railcar is first available for delivery until the railcar is placed at the billed destination facility. Please refer to UP 6004 Item 49-series for a complete listing of applicable TIH Commodities. Charges billed under this provision cannot be offset by credits earned through Sections 1 & 9 of UP 6004-series.

Under its Tariff, UP requires that chlorine railcars be removed from its yards immediately, without dwell, and it assesses substantial charges for non-compliance, along with removal of demurrage credits.

31. UP also claims in its Reply that reduced, three day a week service will benefit Hasa from an accessorial charge perspective because "Union Pacific's policy is to give double demurrage credits for days that it does not switch a customer—including scheduled no-switches." Reply at 11-12. However, UP's own Tariff specifies that demurrage for chlorine cars "cannot be offset by credits." UP should not claim that there are ancillary benefits when they come with a \$5,000 daily demurrage fee assessment.

UP's New Reasons for Its Service Reduction

32. Mr. Matya also presents a new justification for the service reduction: "Union Pacific serves customers other than Hasa and cannot continue to provide unnecessarily frequent service," and continued service to Hasa will "constrain[] Union Pacific's ability to provide, and other customers' ability to receive, responsive and

accurate service.” Matya V.S. at 4-5, 6. UP never mentioned to Hasa any operating or capacity constraints that might hinder its ability to continue its daily weekday service to Hasa or other local customers. To the contrary, UP states elsewhere in its Reply that “other local demand for rail service has decreased.” Reply at 7. If true, UP should actually have more service capacity and resources, and not less, to enable it to continue its longstanding daily weekday service to Hasa.

UP Service Changes/Practices

33. As Mr. Brink described in his Opening Statement, UP’s single factor approach to service assumes, incorrectly, that UP is always reliable and never misses promised switches. Both assumptions are unfounded. In addition, UP’s new “precision scheduled railroading” changes and Shipment Management Tools have not made Hasa’s service any better, but have instead caused service to deteriorate and made dealing with those service problems more difficult. The tools have enabled UP to assess charges on shippers and receivers where UP failed to perform as promised. Brink V.S. at ¶ 51. UP does not dispute any of these facts, but still attempts to defend its behavior.

34. For example, Hasa provided information and data showing that, after UP announced its service reduction and brought in an inexperienced service crew to serve Hasa, UP regularly failed to meet Hasa’s three-hour service window between 9:00 a.m. and noon. *Id.* at ¶¶ 50-51. UP simply responds that it has “never served [Hasa] before 9:00 AM, and only twice was it served after 3:00 PM (and those times were 5:34 PM and 6:09 PM).” Reply at 11. UP’s reply is perplexing and completely ignores UP’s failure to meet Hasa regular service window from 9:00 a.m. to noon. Nonetheless, Hasa is pleased

to note that after the Board issued its August 21, 2019 Decision restoring its service, UP brought back its longstanding, regular service crew, and service has appeared to stabilize. However, a Board decision should not be required to have Hasa's regular service delivery window restored. Hasa has significant concerns that should the Board's service order be lifted, UP's service will deteriorate again.

35. Significantly, UP did not immediately restore daily weekday service to Hasa after the Board issued August 21, 2019 Decision directing UP to do so immediately and even after UP represented to the Board on August 23, 2019, that it was complying. UP instead continued with three day a week service for 13 more days and required Hasa to place "special switch" orders in order to obtain service on Tuesdays and Thursdays. UP did not provide Hasa with any explanation for its almost two-week compliance failure. It was not until the date of UP's Reply filing, Tuesday September 3, 2019 that UP finally came into compliance with the Board's Decision.

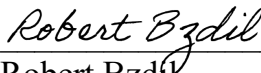
36. As Mr. Brink discussed in his Opening Statement, UP agreed to provide Hasa with a special switch on Tuesdays and Thursdays at no charge, and it temporarily waived its requirement for 36 hours advance notice, but only for a two-week temporary period, from August 12, 2019 through August 24, 2019. Brink V.S. at 63. Hasa arranged for additional switches on each Tuesday and Thursday during the two-week period, and for almost two weeks following the Board's Decision until UP restored its service, demonstrating its need is not as speculative as UP claims. **Exhibit 5** are the invoices Hasa received for the special switches it ordered on August 13, 15, 22, 27 and 29.

Exhibit 6 is an email from UP to Hasa dated August 27, 2019 stating UP will reinstate five-day service starting the following week.

37. None of these switches were supposed to be subject to charges. Ms. Kirchhoefer confirms that, for example “[o]n Tuesday, August 13, Hasa requested a special switch. Union Pacific provided this switch and did not charge Hasa for the special switch.” Kirchhoefer V.S. at 6. However, UP did charge Hasa for this switch. Attached at **Exhibit 5** at 1 is a copy of a UP invoice of \$3,200 for this special switch, under UP 6004-Item 7040, which also states that these are “CHARGES AUTHORIZED BY [HASA],” when Hasa did not approve them. **Exhibit 7** shows that after discovering this erroneous charge, Hasa requested UP to fix/eliminate it. Rather than immediately address the problem, UP asked Hasa if it had disputed the invoice through UP’s separate electronic dispute resolution system. UP assessed this charge at the very time UP was required by the Board to restore daily, weekday service to Hasa and when UP was representing that Hasa would not, temporarily, be charged for such switches. Even when Hasa brought the matter to UP’s attention, UP’s service representative was not willing or able to fix even an obvious erroneous assessment. Instead, UP required Hasa to seek relief for an obviously improper charge itself through UP’s separate, unnecessary electronic dispute resolution process. As shown on **Exhibit 5**, UP has failed to fix this problem and continues to send special switch charge invoices, even after the Board’s August 21, 2019 Order.

VERIFICATION

I, Robert Bzdil, verify that I have read the foregoing Verified Rebuttal Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.



Robert Bzdil

Executed on September 9, 2019

EXHIBIT 1

From: Rob Bzdil <RobBzdil@hasapool.com>
Sent: Monday, July 8, 2019 6:14 PM
To: Steven J. Haywood <SJHAYWOO@up.com>
Subject: FW: Schedule Change?

Steven – here is the email. My contact phone number is 503-730-4285. This is my cell phone.

Thank you,

Rob Bzdil



From: Donna Leonhardt
Sent: Monday, July 8, 2019 1:46 PM
To: indchemicals@up.com
Cc: Rob Bzdil <RobBzdil@hasapool.com>; Vinny Sharma <VinnySharma@hasapool.com>; John C. Carlucci <jccarluc@up.com>; Wendy A. Goodwin <WGOODWIN@up.com>
Subject: FW: Schedule Change?

Good Afternoon,

I was advised from Wendy Goodwin from the Union Pacific to reach out to you regarding the proposed service changes to our Hasa-Saugus facility.

*We are a manufacturer of Sodium Hypochlorite (bleach) and we service many industrial customers including Water Municipalities, Nuclear Power plants, Agricultural/Farming...etc. along with our large list of Pool Distributor customers. We have just begun our busiest season and any disruption in our daily switches would **seriously** impact us from manufacturing our product and delivering it to our customers. I am releasing at least 4 empty railcars per day and receiving a least that much coming in on a daily basis. We do not have enough track space to allow us to keep an abundant amount of railcars....we only have 10 spots. I am bringing in multiple products (Chlorine Gas, Sodium Hydroxide (caustic soda) and Hydrochloric Acid). We only have 3 spots on our tract that we can offload Chlorine Gas and I am releasing 1 car almost every day. The remaining spots are dedicated to Caustic and Acid railcars. It takes 2 of the caustic railcars to 1 chlorine gas car to produce our product of Sodium Hypochlorite. As soon as I receive the caustic or acid it is consumed the same day and released to be pulled the following day. There is just no way we could stay in business without the constant daily service from the Union Pacific.*

We have been in business for over 57 years and have never had an issue with receiving service from the Union Pacific formally Southern Pacific...on a daily basis 5 times per week.

Please reconsider your decision in reducing train service to Hasa.

Thank you,

Donna Leonhardt
Purchasing Manager

HASA, Inc. – Saugus
DonnaL@hasapool.com
661-259-5848 ext. 5428



From: Wendy A. Goodwin <WGOODWIN@up.com>
Sent: Monday, July 08, 2019 12:59 PM
To: Donna Leonhardt <donnal@hasapool.com>
Subject: Re: Schedule Change?

Hi Donna,

I was out of the office all last week so I apologize for the delay. The Operating team spearheaded this change and the Sales team had the opportunity to push back on it before it was approved. I wish I could do more but John and I are only the messengers, in this instance. I would recommend reaching out to the Sales team at **281-350-7180** or at indchemicals@up.com and explain how this will negatively effect your specific location. They can escalate this issue on the commercial side. Please let me know if you have any other questions.

Thank you,

Wendy A. Goodwin

Regional Manager - Customer Care & Support | West Sunset Service Unit
Union Pacific Railroad | 1400 Douglas Street STOP 1470 | Omaha NE 68179
☎: 800.269.2706 | ☎: 402-544-9164 | 📠: 402.271.3242 | ✉: wgoodwin@up.com | www.up.com
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From: Donna Leonhardt <donnal@hasapool.com>
To: "John C. Carlucci" <jccarluc@up.com>, "Wendy A. Goodwin" <WGOODWIN@up.com>
Date: 07/02/2019 04:21 PM
Subject: Schedule Change?

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

John/Wendy

What am I hearing that the rail service deliveries are being changed to 3 times per week!! Now??? In the beginning of Summer when I need my product the most..... every day!! Who decided this??

Donna Leonhardt
Purchasing Manager
HASA, Inc. – Saugus
DonnaL@hasapool.com
661-259-5848 ext. 5428



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**

EXHIBIT 2

From: Rob Bzdil <RobBzdil@hasapool.com>
Sent: Tuesday, July 9, 2019 7:03 PM
To: Steven J. Haywood <SJHAYWOO@up.com>
Subject: Re: Schedule Change?

Steven,

This email was pertaining to Saugus, CA not Eloy.

Thank you,
Rob Bzdil
Hasa, Inc.
661-259-5848

On Jul 9, 2019, at 3:54 PM, Steven J. Haywood <SJHAYWOO@up.com> wrote:

Rob,

In further review it appears Hasa at Eloy has been receiving three day a week service for years according to our operating personnel. Based on service levels this amount of service is warranted, based on team's analysis. We can review more tomorrow.

Thank you,

Steven Haywood

Manager- Southern Region | Los Angeles & Big Springs/Odessa, TX| Customer Care & Support|
Ph:800-269-2057 | Ph: 402-544-9063 | NCSC-Toll Free 800.272.8777

✉:sjhaywoo@up.com

[Submit a Rate Request](#) | [Trace a Car](#) | [Report a Service Issue](#) | [Find a Rate](#)

From: Rob Bzdil <RobBzdil@hasapool.com>
To: "Steven J. Haywood" <SJHAYWOO@up.com>
Date: 07/08/2019 05:14 PM
Subject: FW: Schedule Change?

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

Steven – here is the email. My contact phone number is 503-730-4285. This is my cell phone.

Thank you,

Rob Bzdil

<mime-attachment.png>

From: Donna Leonhardt

Sent: Monday, July 8, 2019 1:46 PM

To: indchemicals@up.com

Cc: Rob Bzdil <RobBzdil@hasapool.com>; Vinny Sharma <VinnySharma@hasapool.com>; John C. Carlucci <jccarluc@up.com>; Wendy A. Goodwin <WGOODWIN@up.com>

Subject: FW: Schedule Change?

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I was advised from Wendy Goodwin from the Union Pacific to reach out to you regarding the proposed service changes to our Hasa-Saugus facility.

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Please reconsider your decision in reducing train service to Hasa.

Thank you,

Donna Leonhardt

Purchasing Manager

HASA, Inc. – Saugus

DonnaL@hasapool.com

661-259-5848 ext. 5428

<mime-attachment.png>

From: Wendy A. Goodwin <WGOODWIN@up.com>

Sent: Monday, July 08, 2019 12:59 PM

To: Donna Leonhardt <donnaL@hasapool.com>

Subject: Re: Schedule Change?

Hi Donna,

I was out of the office all last week so I apologize for the delay. The Operating team spearheaded this change and the Sales team had the opportunity to push back on it before it was approved. I wish I could do more but John and I are only the messengers, in this instance. I would recommend reaching out to the Sales team at **281-350-7180** or at indchemicals@up.com and explain how this will negatively effect your specific location. They can escalate this issue on the commercial side. Please let me know if you have any other questions.

Thank you,

Wendy A. Goodwin

Regional Manager - Customer Care & Support | West Sunset Service Unit
Union Pacific Railroad | 1400 Douglas Street STOP 1470 | Omaha NE 68179

☎: 800.269.2706 | ☎: 402-544-9164 | ☎: 402.271.3242 | ✉: wgoodwin@up.com | www.up.com

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From: Donna Leonhardt <donnal@hasapool.com>

To: "John C. Carlucci" <jccarluc@up.com>, "Wendy A. Goodwin" <WGOODWIN@up.com>

Date: 07/02/2019 04:21 PM

Subject: Schedule Change?

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

John/Wendy

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Donna Leonhardt

Purchasing Manager

HASA, Inc. – Saugus

DonnaL@hasapool.com

661-259-5848 ext. 5428

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**

EXHIBIT 3

From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Thursday, July 25, 2019 2:45 PM
To: Rob Bzdil <RobBzdil@hasapool.com>; Vinny Sharma <VinnySharma@hasapool.com>
Cc: Camillia S. Wright <CSWRIGHT@up.com>
Subject: Hasa: July UP Volume

Rob,

Below is the data we referenced from our call today. I also outline what each number under each column represents. The "private" and "railroad" columns represent car ownership, so you can disregard that as all cars are private tank cars.

Arrived: Cars that arrived into the UP Saugus yard that day
To Ind: Cars we delivered into your facility that day
Released: Cars released empty from Hasa to UP that day

Date	#Cars in Serving Area				#Cars at Industry		
	Arrived	To Ind	Private	Railroad	Private	Railroad	Released
Mon, 7-1	<u>1</u>	<u>5</u>	<u>1</u>	0	<u>7</u>	0	<u>3</u>
Tue, 7-2	0	<u>1</u>	0	0	<u>5</u>	0	<u>3</u>
Wed, 7-3	<u>2</u>	0	<u>2</u>	0	<u>5</u>	0	0
Thu, 7-4	<u>1</u>	0	<u>3</u>	0	<u>4</u>	0	<u>1</u>
Fri, 7-5	<u>2</u>	<u>5</u>	0	0	<u>5</u>	0	<u>4</u>
Sat, 7-6	0	0	0	0	<u>5</u>	0	0
Sun, 7-7	0	0	0	0	<u>5</u>	0	0
Mon, 7-8	<u>2</u>	0	<u>2</u>	0	<u>4</u>	0	<u>1</u>
Tue, 7-9	<u>7</u>	<u>6</u>	<u>3</u>	0	<u>7</u>	0	<u>3</u>
Wed, 7-10	0	<u>3</u>	0	0	<u>8</u>	0	<u>2</u>
Thu, 7-11	0	0	0	0	<u>6</u>	0	<u>2</u>
Fri, 7-12	<u>1</u>	<u>1</u>	0	0	<u>7</u>	0	0
Sat, 7-13	0	0	0	0	<u>5</u>	0	<u>2</u>
Sun, 7-14	0	0	0	0	<u>5</u>	0	0
Mon, 7-15	<u>3</u>	<u>3</u>	0	0	<u>8</u>	0	0
Tue, 7-16	0	0	0	0	<u>5</u>	0	<u>3</u>
Wed, 7-17	<u>3</u>	<u>3</u>	0	0	<u>6</u>	0	<u>2</u>
Thu, 7-18	0	0	0	0	<u>5</u>	0	<u>1</u>
Fri, 7-19	<u>3</u>	<u>3</u>	0	0	<u>5</u>	0	<u>3</u>
Sat, 7-20	<u>5</u>	0	<u>5</u>	0	<u>5</u>	0	0
Sun, 7-21	<u>3</u>	0	<u>8</u>	0	<u>5</u>	0	0
Mon, 7-22	0	<u>5</u>	<u>3</u>	0	<u>7</u>	0	<u>3</u>
Tue, 7-23	<u>2</u>	<u>3</u>	<u>2</u>	0	<u>7</u>	0	<u>3</u>
Wed, 7-24	<u>6</u>	<u>3</u>	<u>5</u>	0	<u>8</u>	0	<u>2</u>

Regards,

Jackson Bogatz

Marketing & Sales | Manager- Sales | Industrial
 Union Pacific Railroad | 24125 Aldine Westfield Road | Spring, TX 77373
 Cell: (281) 898-2637 • Office: (281) 350-7180 • Email: jbogatz@up.com

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**

EXHIBIT 4

Donna Leonhardt

From: Donna Leonhardt
Sent: Tuesday, August 13, 2019 9:52 AM
To: Wendy A. Goodwin; Jackson L. Bogatz; Steven J. Haywood
Cc: Rob Bzdil; Vinny Sharma; Felix Sandoval
Subject: FW: Service Issue #16845- Service Plan Update for GATX063242

Wendy,

The request for caustic cars to be brought in on Tuesday 8/13 was made on Sunday 8/11. What is the purpose of this "special request" if we can't get the cars I requested! This has put us into a terrible situation where as I hope we don't have to "shut down" due to the fact that our caustic product that is a huge part of the formula to make Sodium Hypochlorite was not delivered as requested. ☹️

The request below was due to releasing cars yesterday and your website spun up a corrosive car to come in.

Donna Leonhardt
Purchasing Manager
HASA, Inc. – Saugus
DonnaL@hasapool.com
661-259-5848 ext. 5428



From: upcustomernotifications- Please Do Not Reply <upcustomernotifications-p-id-194484625-1@up.com>
Sent: Tuesday, August 13, 2019 8:46 AM
To: Donna Leonhardt <donnaL@hasapool.com>
Subject: Service Issue #16845- Service Plan Update for GATX063242



Greetings Donna,

Service issue #16845 for Equipment Id GATX063242 has been updated.

UP Response: We have additional information regarding your service issue: Hello, unfortunately the local team was unable to deliver 2 caustic cars instead of corrosive cars on the special today and on behalf of the local team, I apologize. Typically we do not as many cars to sort through and unfortunately, although I did communicate this, the manager on duty acknowledges that he missed this request. We sincerely apologize for the caustic cars being spotted and please

advise if you have any questions on this. Thank you, Wendy.

Problem Reason: SPOT/PULL CAR TO/FROM INDUSTRY

Description: When I released an empty car today this corrosive car GATX-63242 was spun up to come in tomorrow 8/13. I do not need this product and would like to request a caustic car (GATX-216696) to come in its place. Thank you!

Additional Equipment:

For further assistance with this issue please respond back to UP's CC&S Regional Team

Click on the link to view the current trace of the equipment on the UPRR website.

Thank You

Wendy

Union Pacific Railroad

For non service related issues, please contact the CC&S or ICSC at the following numbers Union Pacific Customer Care & Support at 800-272-8777 or the International Customer Service Center at 800-877-0531.

Union Pacific has developed an app that allows users to create, view or respond to a service issue directly from your mobile device. The app is available for free download from the App Store and Google Play. To download, simply access the App Store or Google Play and search for MyUPRR or click this [MyUPRR link](#) for more information. If you have any questions about our new MyUPRR app, please contact our eBusiness Team at 1-800-872-1045.



This message was generated from an automated email service. Please do not reply to this E-mail.

Donna Leonhardt

From: upcustomernotifications- Please Do Not Reply <upcustomernotifications-p-id-195056086-1@up.com>
Sent: Tuesday, August 27, 2019 11:38 AM
To: Donna Leonhardt
Subject: Service Issue #23788- Service Plan Update for GATX063242



Greetings Donna,

Service issue #23788 for Equipment Id GATX063242 has been updated.

UP Response: We have additional information regarding your service issue: This car still showed a future hold status that I have corrected. Please order this car in again now and let me know if you have any other problems with this. Thank you, Wendy.

Problem Reason: SPOT/PULL CAR TO/FROM INDUSTRY

Description: This car (GATX-63242) shows it was "Ordered in" but it never comes in! Would you please bring this car into our facility tomorrow 8/28. Thank you!

Additional Equipment:

For further assistance with this issue please respond back to UP's CC&S Regional Team

Click on the link to view the current trace of the equipment on the UPRR website.

Thank You

Wendy

Union Pacific Railroad

UPRR - Service Issue Entry
Service Issues

https%3A%2F%2F02.my.uprr.com%2Fwpr%2Fsecure%2FWprManualEntry.jas
Page Received From Server On: Tuesday August 27, 2019 12:48 PM CDT

**Informational Message**

Customer Service will respond to your electronic service issue request Monday - Saturday, 7am - 5pm CST. For assistance outside these hours, please call our Customer Service Team at 1-800-272-8777 (Manifest) or 1-800-877-5123 (Intermodal).

**Problem Reason**

Customer Service Center has added additional Problem Reason categories to the list and is now providing a tool tip description. These changes were made to more accurately capture the root causes of our service issues and to ultimately lead to better solutions for our customers.

Open Service Issues

View Service Issues

Customer Information

User: DONNA LEONHARDT
Title: PURCHASING MANAGER
Company: HASA
Reference #:

Additional UPRR Notification

- ☒ Email: DONNAL@HASAPOOL.COM Alternate Email(s) ?
☐ Phone: 661-259-5848 Alternate Phone ?
☐ None

- [Sign-up](#) for Service Issue Notifications.
- Using a [Group ID](#)? [Register](#) for your own user ID.

Equipment Information

Equipment ID: GATX063242

Add Equipment

Last Known Location: Gemco, Ca
Last Movement Date: Aug 16 13:56

Origin: Eldon, TX
Destination: Saugus, CA

Tell us how we can help

Problem Reason Selection Required

SPOT/PULL CAR TO/FROM INDUSTRY

Description Required

This car (GATX-63242) shows it was "Ordered in" but it never comes in! Would you please bring this car into our facility tomorrow 8/28. Thank you!

Submit

Cancel

Consignee Critical Need Information

Date:

Critical Need Time: (HH:MM AM)

Contact First Name:

Contact Last Name:

Contact Phone No:

**UPRR - Service Issue Entry
Service Issues**

https%3A%2F%2F02.my.uprr.com%2Fwpr%2Fsecure%2FWprManualEntry.jas
Page Received From Server On: Friday August 23, 2019 01:09 PM CDT

Informational Message

Customer Service will respond to your electronic service issue request Monday - Saturday, 7am - 5pm CST. For assistance outside these hours, please call our Customer Service Team at 1-800-272-8777 (Manifest) or 1-800-877-5123 (Intermodal).

Problem Reason

Customer Service Center has added additional Problem Reason categories to the list and is now providing a tool tip description. These changes were made to more accurately capture the root causes of our service issues and to ultimately lead to better solutions for our customers.

Open Service Issues

View Service Issues

Customer Information

User: DONNA LEONHARDT
Title: PURCHASING MANAGER
Company: HASA
Reference #:

Additional UPRR Notification

☒ Email: DONNAL@HASAPOOL.COM Alternate Email(s)
☐ Phone: 661-259-5848 Alternate Phone
☐ None

- [Sign-up](#) for Service Issue Notifications.
- Using a [Group ID](#)? [Register](#) for your own user ID.

Equipment Information

Equipment ID: GATX063242

Add Equipment

Last Known Location: Gemco, Ca

Origin: Eldon, TX

Last Movement Date: Aug 16 13:56

Destination: Saugus, CA

Tell us how we can help

Problem Reason Selection Required

SPOT/PULL CAR TO/FROM INDUSTRY

Description Required

I ordered this car GATX-63242 (Corrosive) to be spotted today 8/23 and they brought me UTLX-630610 (Caustic). What's good about "Order In" if they wont bring me the cars I ask for! :(

Submit

Cancel

Consignee Critical Need Information

Date:

Critical Need Time: (HH:MM AM)

Contact First Name:

Contact Last Name:

Contact Phone No:

EXHIBIT 5



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UNION PACIFIC RAILROAD COMPANY

Exhibit 5

ORIGINAL BILL
SPECIAL SWITCH INVOICE

Page 1

HASA CHEMICAL CO
ACCOUNTS PAYABLE
23119 DRAYTON ST
SAUGUS, CA 91350

Invoice Number

302240418

Account Number 189231	Statement Date 08/16/2019	Equipment ID RCRX 2164	Waybill Number 299329	Shipment Date 08/01/2019	Customer Reference Number
Shipper COVESTRO LLC ELDON, TX		Consignee REAGENT CHEMICAL RESEARCH SAUGUS, CA		Commodity Code 4930228	
Revenue Origin ELDON, TX		Revenue Destination SAUGUS, CA		Revenue Route UP	

Units	Rate	Rate Unit	Amount	Price Authority/Additional charge description
1	\$3,200.00	PC	\$3,200.00	UP 6004, Item 7040
TOTALS:			\$3,200.00	

Additional Information:

Problem Log Number: 16145

Detail: SPECIAL SWITCH REQUESTED BY HASA ON 2019-08-11
CHARGES AUTHORIZED BY DONNA LEONHARDT (XTME121)

Lading Description: CHARGEABLE

Note: PLEASE BRING IN THIS CORROSIVE CAR (TILX-112345) ON TUESDAY 8-13-19. REQUESTED BY DONNA LEONHARDT.

For Assistance:

Call: (800) 925-6396

Fax: (402) 233-2908

UPACC@UP.COM

Remit Payment and Invoice Number To:

UNION PACIFIC RAILROAD
P.O. BOX 502453
SAINT LOUIS, MO 63150-2453

Original Billed Amount : \$3,200.00

Paid or Adjusted : \$0.00

Last Payment ID :

Last Payment Date :

Due Date : 08/16/2019

Invoice Number : 302240418

Amount To Pay : \$3,200.00



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UNION PACIFIC RAILROAD COMPANY

Exhibit 5

ORIGINAL BILL
SPECIAL SWITCH INVOICE

Page 1

HASA CHEMICAL CO
ACCOUNTS PAYABLE
23119 DRAYTON ST
SAUGUS, CA 91350

Invoice Number

302279397

Account Number 189231	Statement Date 08/19/2019	Equipment ID CRDX 180002	Waybill Number 328908	Shipment Date 08/02/2019	Customer Reference Number
Shipper DOW CHEMICAL PITTSBURG, CA		Consignee UNIVAR USA SAUGUS, CA		Commodity Code 4935240	
Revenue Origin PITTSBURG, CA		Revenue Destination SAUGUS, CA		Revenue Route UP	

Units	Rate	Rate Unit	Amount	Price Authority/Additional charge description
1	\$3,200.00	PC	\$3,200.00	UP 6004, Item 7040
TOTALS:			\$3,200.00	

Additional Information:

Problem Log Number: 17886

Detail: SPECIAL SWITCH REQUESTED BY HASA ON 2019-08-14
CHARGES AUTHORIZED BY DONNA LEONHARDT (XTME121)

Lading Description: CHARGEABLE

Note: PLEASE BRING IN NATX-160213, PROX-64061 & CRDX-180002 ON THURSDAY, AUGUST 15TH. THANK YOU! REQUESTED BY DONNA LEONHARDT.

For Assistance:
Call: (800) 925-6396
Fax: (402) 233-2908
UPACC@UP.COM

Remit Payment and Invoice Number To:
UNION PACIFIC RAILROAD
P.O. BOX 502453
SAINT LOUIS, MO 63150-2453

Original Billed Amount : \$3,200.00
Paid or Adjusted : \$0.00
Last Payment ID :
Last Payment Date :
Due Date : 08/19/2019
Invoice Number : 302279397
Amount To Pay : \$3,200.00



UNION PACIFIC RAILROAD COMPANY

Exhibit 5

ORIGINAL BILL
SPECIAL SWITCH INVOICE

Page 1

HASA CHEMICAL CO
ACCOUNTS PAYABLE
23119 DRAYTON ST
SAUGUS, CA 91350

Invoice Number

302403648

Account Number 189231	Statement Date 08/26/2019	Equipment ID GATX 216684	Waybill Number 409404	Shipment Date 08/08/2019	Customer Reference Number
Shipper K2 PURE SOLUTIONS PITTSBURG, CA		Consignee UNIVAR USA SAUGUS, CA		Commodity Code 4935240	
Revenue Origin PITTSBURG, CA		Revenue Destination SAUGUS, CA		Revenue Route UP	

Units	Rate	Rate Unit	Amount	Price Authority/Additional charge description
1	\$3,200.00	PC	\$3,200.00	UP 6004, Item 7040
TOTALS:			\$3,200.00	

Additional Information:

Problem Log Number: 21351

Detail: SPECIAL SWITCH REQUESTED BY HASA ON 2019-08-21
CHARGES AUTHORIZED BY DONNA LEONHARDT (XTME121)

Lading Description: CHARGEABLE

Note: RE: GATX-216662, UTLX-630610, GATX-216684 I ORDERED A SPECIAL SWITCH ON 8/20 FOR THE 8/22 DELIVERY. I RELEASED 3 CARS TODAY 8/21 AND "ORDERED IN" THESE 3 CARS (SINCE I WAS JUST SWITCHED OVER FROM SPOT ON ARRIVAL CUSTOMER TO ORDER IN CUSTOMER TODAY)...WHICH I PREVIOUSLY REQUESTED WITH THE SPECIAL SWITCH. NOW THE REPETITIVE INQUIRY REPORT SHOWS THESE CARS COMING IN FRIDAY 8/23 INSTEAD OF THURSDAY 8/22. WE NEED THESE CARS TOMORROW 8/22. REQUESTED BY DONNA LEONHARDT.

For Assistance:

Call: (800) 925-6396

Fax: (402) 233-2908

UPACC@UP.COM

Remit Payment and Invoice Number To:

UNION PACIFIC RAILROAD
P.O. BOX 502453
SAINT LOUIS, MO 63150-2453

Original Billed Amount : \$3,200.00

Paid or Adjusted : \$0.00

Last Payment ID :

Last Payment Date :

Due Date : 08/26/2019

Invoice Number : 302403648

Amount To Pay : \$3,200.00



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Exhibit 5

ORIGINAL BILL
SPECIAL SWITCH INVOICE

Page 1

HASA CHEMICAL CO
ACCOUNTS PAYABLE
23119 DRAYTON ST
SAUGUS, CA 91350

Invoice Number

302492145

Account Number 189231	Statement Date 08/30/2019	Equipment ID UTLX 631597	Waybill Number 461678	Shipment Date 08/13/2019	Customer Reference Number
Shipper BLUE CUBE OPERATIONS LLC PLAQUEMINE, LA		Consignee HASA SAUGUS, CA		Commodity Code 4935240	
Revenue Origin PLAQUEMINE, LA		Revenue Destination SAUGUS, CA		Revenue Route UP	

Units	Rate	Rate Unit	Amount	Price Authority/Additional charge description
1	\$3,200.00	PC	\$3,200.00	UP 6004, Item 7040
TOTALS:			\$3,200.00	

Additional Information:

Problem Log Number: 22612

Detail: SPECIAL SWITCH REQUESTED BY HASA ON 2019-08-25
CHARGES AUTHORIZED BY DONNA LEONHARDT (XTME121)

Lading Description: CHARGEABLE

Note: PLEASE BRING IN THE FOLLOWING CARS ON TUESDAY 8/27/19 GATX-10858 (CAUSTIC) TILX-110834 (CORROSIVE) UTLX-631597 (CAUSTIC) GATX-61413 (CORROSIVE) THANK YOU! REQUESTED BY DONNA LEONHARDT.

For Assistance:
Call: (800) 925-6396
Fax: (402) 233-2908
UPACC@UP.COM

Remit Payment and Invoice Number To:
UNION PACIFIC RAILROAD
P.O. BOX 502453
SAINT LOUIS, MO 63150-2453

Original Billed Amount : \$3,200.00
Paid or Adjusted : \$0.00
Last Payment ID :
Last Payment Date :
Due Date : 08/30/2019
Invoice Number : 302492145
Amount To Pay : \$3,200.00



UNION PACIFIC RAILROAD COMPANY

Exhibit 5

ORIGINAL BILL
SPECIAL SWITCH INVOICE

Page 1

HASA CHEMICAL CO
ACCOUNTS PAYABLE
23119 DRAYTON ST
SAUGUS, CA 91350

Invoice Number

302653304

Account Number 189231	Statement Date 09/09/2019	Equipment ID GATX 63242	Waybill Number 263205	Shipment Date 07/30/2019	Customer Reference Number
Shipper COVESTRO LLC ELDON, TX		Consignee REAGENT CHEMICAL RESEARCH SAUGUS, CA		Commodity Code 4930228	
Revenue Origin ELDON, TX		Revenue Destination SAUGUS, CA		Revenue Route UP	

Units	Rate	Rate Unit	Amount	Price Authority/Additional charge description
1	\$3,200.00	PC	\$3,200.00	UP 6004, Item 7040
TOTALS:			\$3,200.00	

Additional Information:

Problem Log Number: 24510

Detail: SPECIAL SWITCH REQUESTED BY HASA ON 2019-08-28
CHARGES AUTHORIZED BY DONNA LEONHARDT (XTME121)

Lading Description: CHARGEABLE

Note: PLEASE BRING IN THE FOLLOWING CARS ON THURSDAY 8/29/19. GATX-63242 (CORROSIVE), GATX-12785 (CAUSTIC) AND TILX-111722 (CORROSIVE). THANK YOU! REQUESTED BY DONNA LEONHARDT.

For Assistance:
Call: (800) 925-6396
Fax: (402) 233-2908
UPACC@UP.COM

Remit Payment and Invoice Number To:
UNION PACIFIC RAILROAD
P.O. BOX 502453
SAINT LOUIS, MO 63150-2453

Original Billed Amount : \$3,200.00
Paid or Adjusted : \$0.00
Last Payment ID :
Last Payment Date :
Due Date : 09/09/2019
Invoice Number : 302653304
Amount To Pay : \$3,200.00

EXHIBIT 6

Donna Leonhardt

From: John C. Carlucci <jccarluc@up.com>
Sent: Tuesday, August 27, 2019 9:29 PM
To: Donna Leonhardt
Cc: Felix Sandoval; Rob Bzdil; Vinny Sharma; Joseph G. Martell; Trevor M. Wiley; William P. Enos
Subject: Re: FW: BACK TO NORMAL SCHEDULE

Yes, starting next week.

John C. Carlucci

Assistant Manager of Terminal Operations

Cell 626-494-2619

Fax 402-997-4248

E-mail jccarluc@up.com

"We make a living by what we get, but we make
a life by what we give." Winston Churchill

From: Donna Leonhardt <donna@hasapool.com>
To: "John C. Carlucci" <jccarluc@up.com>
Cc: Rob Bzdil <RobBzdil@hasapool.com>, Vinny Sharma <VinnySharma@hasapool.com>, Felix Sandoval <felix@hasapool.com>
Date: 08/27/2019 04:22 PM
Subject: FW: BACK TO NORMAL SCHEDULE

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

John,

Please confirm phone conversation today... that our daily U.P. schedule is back to 5 days per week.

Donna Leonhardt

Purchasing Manager

HASA, Inc. - Saugus

DonnaL@hasapool.com

661-259-5848 ext. 5428



From: Donna Leonhardt
Sent: Tuesday, August 27, 2019 10:27 AM
To: John C. Carlucci <jccarluc@up.com>
Cc: Rob Bzdil <RobBzdil@hasapool.com>; Vinny Sharma <VinnySharma@hasapool.com>; Felix Sandoval <felix@hasapool.com>
Subject: BACK TO NORMAL SCHEDULE

Good Morning John,

I was told that starting next week we are back to a normal schedule of 5 day a week U.P. deliveries! Can you please confirm this?

Thank you,

Donna Leonhardt
Purchasing Manager
HASA, Inc. – Saugus
DonnaL@hasapool.com
661-259-5848 ext. 5428



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EXHIBIT 7

Donna Leonhardt

From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Tuesday, September 03, 2019 12:41 PM
To: Donna Leonhardt
Cc: Rob Bzdil; Wendy A. Goodwin
Subject: RE: Special Switch charge

Thanks that should take care of it.

Regards,

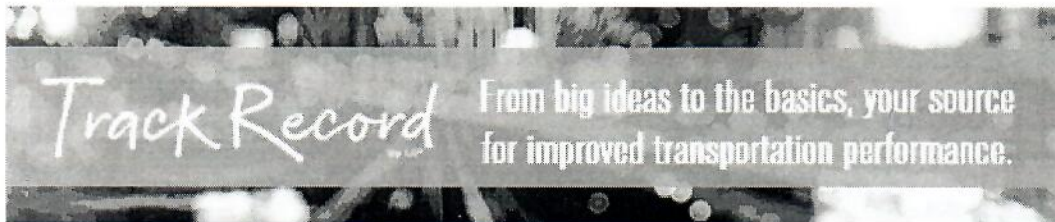
Jackson Bogatz

Marketing & Sales | Manager- Sales | Industrial
Union Pacific Railroad | 24125 Aldine Westfield Road | Spring, TX 77373
Cell: (281) 898-2637 • Office: (281) 350-7180 • Email: jlbogatz@up.com

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From: Donna Leonhardt <donna@hasapool.com>
To: "Jackson L. Bogatz" <jlbogatz@up.com>
Cc: Rob Bzdil <RobBzdil@hasapool.com>, "Wendy A. Goodwin" <WGOODWIN@up.com>
Date: 09/03/2019 01:56 PM
Subject: RE: Special Switch charge

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

No...I just reached out to you! I will do that as well.

Donna Leonhardt
Purchasing Manager
HASA, Inc. - Saugus
DonnaL@hasapool.com



From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Tuesday, September 03, 2019 6:25 AM
To: Donna Leonhardt <donna@hasapool.com>
Cc: Rob Bzdil <RobBzdil@hasapool.com>; Wendy A. Goodwin <WGOODWIN@up.com>
Subject: Re: Special Switch charge

Donna,

Have you disputed this invoice by chance in the system?

Regards,

Jackson Bogatz

Marketing & Sales | Manager- Sales | Industrial
Union Pacific Railroad | 24125 Aldine Westfield Road | Spring, TX 77373
Cell: (281) 898-2637 • Office: (281) 350-7180 • Email: jlbogatz@up.com

[Register for UPRR](#) • [Price Inquiry](#) • [Report a Service Issue](#) • [Car Trace](#)



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VISIT US: www.up.com/trackrecord

From: Donna Leonhardt <donna@hasapool.com>
To: "Jackson L. Bogatz" <jlbogatz@up.com>, "Wendy A. Goodwin" <WGOODWIN@up.com>
Cc: Rob Bzdil <RobBzdil@hasapool.com>
Date: 08/29/2019 05:00 PM
Subject: Special Switch charge

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

Jackson / Wendy,

Attached is a bill from U.P. for the charge of a Special Switch that came in on 8/13/19. We were not supposed to be charged for these Special Switches.

Could you please look into this?

Thank you,

Donna Leonhardt
Purchasing Manager
HASA, Inc. - Saugus
DonnaL@hasapool.com
661-259-5848 ext. 5428



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