

EXPEDITED CONSIDERATION REQUESTED
BY AUGUST 23, 2019

ENTERED
Office of Proceedings
August 20, 2019
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Defendant.

[illegible]

Docket No. NOR 42165

***EX PARTE* APPLICATION FOR SECTION 11123(a) SERVICE ORDER AND
SECTION 11701 INVESTIGATION**

HASA, INC.

By: Peter A. Pfohl
Robert D. Rosenberg
Katherine F. Waring
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys for Complainant

FILED
August 20, 2019
SURFACE TRANSPORTATION BOARD

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	2
II. FACTUAL BACKGROUND	6
III. ARGUMENT	14
A. A SECTION 11123(a) SERVICE ORDER SHOULD BE GRANTED	14
B. A TEMPORARY INJUNCTION SHOULD BE GRANTED	22
1. Hasa is Likely to Succeed on the Merits	24
2. Hasa, Its Customers, and the Public Will All Suffer Irreparable Harm Without an Injunction.....	25
3. Issuance of an Injunction Will Not Injure UP, and Will Instead Advance the Public Interest.....	27
C. THE BOARD SHOULD CONSIDER ADDITIONAL OVERSIGHT AND INVESTIGATION	29
IV. CONCLUSION	31

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42165

PETITION FOR TEMPORARY INJUNCTION

Hasa, Inc. (“Hasa”), hereby applies to the Surface Transportation Board (“Board” or “STB”) to issue an immediate emergency service order pursuant to 49 U.S.C. § 11123(a) directing the Union Pacific Railroad Company (“UP”) to restore and maintain the five-day-a-week deliveries of water sanitation commodities to Hasa’s plant at Saugus, California that UP has provided for over five decades, while the parties discuss and implement any reasonably necessary, mutually agreeable changes in service through the assistance of Board-sponsored mediation, commenced under 49 C.F.R. § 1109.2. In addition, or alternatively, Hasa petitions the Board to issue a temporary injunction

pursuant to 49 U.S.C. § 1321(b)(4) and 49 C.F.R. § 1117.1 requiring UP to maintain the pre-existing level of service in order to prevent irreparable harm.

Because UP promises to cease five-day-a-week service for Hasa effective August 26, 2019, expedited action and immediate relief is requested under these extreme circumstances. In particular, Hasa requests the Board to grant its request on an *ex parte* basis¹ **by August 23, 2019**, at least on an interim basis. While a reply by UP is not required or needed in this instance,² if and as the Board deems necessary, Hasa suggests that the Board grant immediate, interim relief, and provide UP five (5) business days to file a reply to this Petition, and in that event, provide Hasa three (3) business days following UP's reply to file a rebuttal.

I. INTRODUCTION AND SUMMARY

After over 50 years of providing reliable, consistent service to a longstanding customer, UP has chosen to abruptly cease its required daily scheduled service, without warning or notice, during a time of peak need for Hasa's chlorine-based products used to provide clean, safe, and clear water to the millions of people in Southern California. In addition to devastating Hasa commercially, UP's reduction in service endangers water safety and public health in Southern California.

¹ 49 U.S.C. § 11323(b)(1) authorizes the Board on its own or on application "to act immediately, without observing normal due process procedures." *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968, 972 (1998).

² The reply filing provided for under § 1146.1(b)(2) is not required here because Hasa does not seek directed service by one carrier over the lines of another carrier.

Hasa's Saugus plant necessarily operates on a "just in time" basis. The parties have developed a mutually beneficial operating and service plan over five decades, consisting of scheduled daily, weekday service performed during a defined, narrow window of time, and the plant's operations are structured around that service. That type of daily service is the default, minimum standard that all railroads are required to provide as part of their common carrier obligation. However, UP very recently informed Hasa that UP is substantially reducing that service to three days a week, if not one day, providing Hasa less than one business day notice of its new service cessation plan.

UP's changes are being made in furtherance of its "Unified Plan 2020," UP's version of so-called precision scheduled railroading ("PSR"), designed to reduce costs, cut services, boost profit, and hike its stock price. UP has touted that plan to the Board and its customers as providing more reliable and predictable service, improved availability of crews and locomotives, less car dwell, more rapid movement of railcars, rather than periodic trains, and direct communications with customers well in advance of any changes. The grim reality of the UP's new service plan for Hasa is, unfortunately, significantly reduced and more erratic service, curtailed availability of crews and locomotives, increased car dwell, including that of hazardous commodities that are not allowed to be detained on the railroad system under governing safety rules, a dramatic reduction in the movement of railcars in favor of periodic train service, and a complete lack of prior notice, communications, or cooperation over proposed service changes. If that were not enough, UP has timed its abrupt and dramatic cut in service in the summer

to cause the most harm to Hasa, its customers, and the public.

Hasa requires its longstanding, standard daily rail service especially now during its current peak season, when water consumption and use is at its highest, to produce and deliver critical water treatment products. UP's decision to disregard its common carrier obligation and Hasa's demonstrated need for daily service based on its over five-decades of operating experience, with virtually no notice, in favor of rigidly pursuing broader business goals of lowered operating ratios and increased profits, will preclude Hasa from being able to meet local requirements for sodium hypochlorite products and significantly and irreparably harm its business. UP's service cessation action will also substantially harm Hasa's customers, and the broader public, which rely on Hasa's product to maintain water sanitation.

Hasa has actively attempted to work with UP over the last several weeks, including through the assistance of the Board's Office of Rail Customer Assistance, to reconsider its decision, or at least delay it, and establish an orderly, reasonable process of service review to produce a mutually satisfactory resolution for the short and long-term. Unfortunately, UP has refused thus far to engage in such a cooperative approach, leaving Hasa little choice but to file this Petition to enable Hasa to continue to be able to fulfill its critical mission to provide products to ensure safe, clean, and clear water for the public.

The circumstances provide compelling justification for the Board to issue an emergency service order under 49 U.S.C. § 11123 directing UP to continue daily weekday service to Hasa in order to avoid an emergency situation while the parties discuss and implement any reasonably necessary, mutually agreeable changes in service,

through the assistance of Board-sponsored mediation, commenced pursuant to 49 C.F.R. § 1119.2. In addition, or alternatively, the Board should issue a temporary injunction pursuant to 49 U.S.C. § 1321(b)(4) requiring UP to maintain existing service to Hasa in order to prevent irreparable harm.³

The Board should also give consideration to whether UP's actions against Hasa are just an extreme example of the burdens that UP and other Class I railroads are inflicting more broadly on shippers and receivers, and the public at large, as part of PSR. Curtailing deliveries is one means to that objective, as well as a possible strategy to "double-dip" and/or collect additional charges for special switching and demurrage caused by UP's reduced service. However, a change that reduces the carrier's costs while placing rigid, abrupt, and unrealistic burdens on customers and creating public health risks, does not constitute reasonable service under 49 U.S.C. § 11101(a). Instead, it represents commercial exploitation and a blatant unreasonable practice. Additionally, UP's service reduction initiative aimed at chlorine shipments to Hasa appears to be a new scheme by UP to fulfill its long-term strategy to demarket service and relieve itself from its common carrier obligation with respect to the transportation of toxic by inhalation hazardous materials such as chlorine, which the Board has thus far denied, and which is clearly against the public interest, public policy, and the statutory framework.

³ If the parties are able to reach an agreement on changes, then the directed service order and injunction would be terminated. If the parties are unable to reach an agreement after discussions and after the end, if any, of the period in which the Board grants relief, and UP insists on reducing service, then Hasa reserves the right to file an unreasonable practice complaint at that time.

While Hasa's focus is on its own immediate situation, the Board should consider whether broader measures are in order, such as a show cause order or the initiation of an investigation pursuant to 49 U.S.C. § 11701.

II. FACTUAL BACKGROUND

As explained in the attached Verified Statement of Christopher James Brink, Hasa's Chief Executive Officer ("Brink V.S."), Hasa is a leading producer and distributor of sodium hypochlorite, commonly known as liquid bleach, and related products, including hydrochloric acid, used to sanitize water for drinking, wastewater treatment, recreational, and other purposes. Brink V.S. at ¶ 3. Sodium hypochlorite is used to provide safe, clean, and clear water for the public, including the majority of the 24 million residents of Southern California. *Id.* ¶ 5. It is also used to treat wastewater and agricultural irrigation, for farm equipment sterilization, and for disinfecting public, private, community, commercial, and residential swimming pool water for recreational use throughout Southern California. *Id.* ¶¶ 5, 8.

Hasa's Southern California bleach production factory located at Saugus, Santa Clarita, California, employs 120 people, operating continuously since constructed in 1963. *Id.* ¶¶ 3-4. Hasa is a critical component of the production and supply distribution chain for sodium hypochlorite and hydraulic acid in Southern California, relied on by communities, businesses, and the public to ensure the region's requirements for water sanitation are met. *Id.* ¶ 6. The reduction of service by UP could affect the supply of these vital products and place water treatment and public health in serious

jeopardy of serious waterborne diseases. *Id.*

Hasa has a wide and diverse group of more than 570 direct customers, large and small, including local municipalities, educational and community institutions, commercial entities, homeowners, and others. *Id.* ¶ 8. Hasa also has an extensive wholesale reach, selling its products through more than 400 resellers and other distributors who distribute the products to many other water treatment, agricultural, and other customers. *Id.* Most of Hasa's customers require and receive deliveries from Hasa on at least a weekly basis, and many require and receive product daily. *Id.* ¶ 9.

Hasa is a railroad receiver exclusively served by UP. *Id.* ¶ 10. Hasa's Saugus plant and infrastructure, including 10 railcar spots, was designed and built, in cooperation with UP, to receive daily weekday service, and UP has been providing reliable daily weekday delivery of chlorine to Hasa, without interruption, for over fifty years. *Id.* ¶¶ 13-15, 24. Not surprisingly, Hasa's operations are organized around those deliveries. Especially during the summer, Hasa cannot produce sodium hypochlorite in the quantities that its customers require without the constant UP deliveries, but with daily service, Hasa's rail track infrastructure and offloading capacity is sufficient to meet Hasa's production supply requirements. *Id.* ¶¶ 16-18.

Thrice-weekly deliveries to the plant as currently configured will cause Hasa to run out of chlorine, caustic soda, and/or hydrochloric acid before the next rail delivery occurs, creating product shortages. *Id.* ¶¶ 15, 18-23. Moreover, the efficacy of the product degrades rapidly, more so in the presence of the high heat and the sunlight of the summer when demand is highest. *Id.* Hasa and its customers have limited storage

capacity and capabilities. Even if Hasa could produce additional volumes of product without the daily weekday deliveries, and it and its customers had additional storage, the product degradation would require more storage, adding to safety risks, as well as adjustment in how customers utilize the product, which is not feasible. *Id.* These and other factors require Hasa to receive daily rail service of its inbound raw commodities, and produce and deliver its finished sodium hypochlorite products, on a “just in time” basis to ensure promised performance. *Id.*

Previously, Hasa has had little or no issue with UP’s standard daily service, or concerns about possible UP service reductions. However, on July 2, 2019, Hasa’s operating personnel at the Saugus plant heard a rumor from UP’s local switching crew that its longstanding daily service of over 50 years would cease, and service would be reduced to one day a week commencing in less than one week. *Id.* ¶ 25. UP management had not consulted with, or provided Hasa with any prior notice of any change in its service. *Id.* In response, Hasa engaged in multiple, urgent communications with UP from July 2 until July 15 on this matter, but UP failed to respond or provide any additional information on possible service changes, even though the change had critical business ramifications for Hasa. *Id.* ¶ 26.

On July 15, 2019, having received no response to Hasa’s urgent communications, Hasa’s Chief Executive Officer sent UP a formal letter informing UP of the critical need for Hasa to continue to receive daily service, and requesting immediate daily service assurances and any information on possible service changes. *Id.* ¶ 27, Exh. 2. UP finally responded the following day that it was canceling “the request for the

change to 1 day/week service,” without elaborating on who at UP had made the request, and promised to “work collaboratively” with Hasa on any further service changes. *Id.* ¶¶ 28-29, Exh. 3 at 2. UP’s Vice President Industrial further responded that same day stating that UP was evaluating service changes under its “Union Plan United 2020 operating model to provide safe, reliable, and consistent service.” At the same time, UP provided Hasa with a service assurance promise, stating that UP will **“find a solution that will work for both of us”** and **“[w]hile we are working with you on options we will continue to service your facility five days per week.”** *Id.* ¶ 30, Exh. 3 at 3 (emphasis added).

UP broke its service assurance promise within a day. *Id.* ¶ 31, Exh. 3 at 1. Without engaging any promised consultation with Hasa, UP instead said it was adopting a completely new service reduction plan of three-day-a-week service to be implemented in less than two weeks. *Id.* Hasa immediately notified UP of its objections to the new service reduction plan, explained the significant problems it posed to Hasa during its peak business season, and asked UP to abide to its promises of consultation and continuing performance. *Id.* ¶ 32, Exh. 3 at 1. While UP did not immediately respond, the parties held conference calls on July 26, 2019, where Hasa explained the need for further consultation over a reasonable period of time, and asked UP to visit Hasa’s plant to learn about its operations in an effort to work on a mutual, bilateral solution as UP had promised. *Id.* ¶ 33.

Late Friday afternoon the same day, July 26, 2019, UP, again without any consultation, informed that Hasa’s service would be immediately reduced to three days a

week starting the **next** business day, Monday, July 29, 2019. That night, and over the weekend, Hasa engaged in a series of urgent communications with UP, explaining the unreasonableness and dire consequences of UP's immediate service reductions, including plant shutdown and the failure of Hasa to provide product required to disinfect and provide safe drinking water to numerous communities in the greater Los Angeles Basin. *Id.* ¶¶ 36-41, Exh. 4. UP responded that it was moving ahead with its daily service cessation plan and that it was "confident in our ability to fully support Hasa's traffic." *Id.* ¶¶ 38, 40, Exh. 4. It was not until Hasa sought the intervention of the STB's Office of Public Assistance, Government Affairs, and Compliance ("OPAGAC") over the weekend, which then contacted UP to address the situation on the morning of July 29, 2019, that UP finally agreed to temporarily hold-off on its service cessation plan. *Id.* ¶ 42.

The parties convened a call with OPAGAC on August 6, 2019. On that call and follow-up discussions over the next week and a half, UP indicated that its decision was firm. UP said that it was only willing to provide Hasa with voluntary "special switches" to supplement Hasa's service for a two-week period, through August 23, 2019, but that such service would end August 23, 2019. *Id.* ¶ 43.

Notwithstanding 50 years of experience confirming the need for daily service that is standard for any rail carrier, UP contends that its service reductions are justified based on a simple, single-factor data approach that averages daily release rates for Hasa's railcars over a several-year period. *Id.* UP asserts that its data model shows that UP can meet Hasa's business needs with service only three days per week or less.

Id. ¶ 44.

However, Hasa's limited review of UP's data and approach show that UP's data-driven service plan is fundamentally flawed in multiple respects. *Id.* ¶¶ 46-52. As discussed by Mr. Brink, the data UP relies on for its analysis is mathematically defective, as the average assumes deliveries occur seven days a week, which reduces the actual release rates for Hasa by close to 30 percent. *Id.* ¶ 46. Furthermore, the reliance on an average release rate over long periods of time ignores the inherent fluctuations in Hasa's business. Assume, for example, that Hasa hypothetically needs three chlorine cars a week half the year and six chlorine cars for the other half. UP concludes that five cars a week will be sufficient for the whole year, when such service will be inadequate for half the year. *Id.* ¶ 47. It is also far too simplistic because it assumes that the three products that Hasa receives by rail are fungible, when they are not, and are consumed in the exact same time periods, when they are not, leading to fundamental misassumptions on Hasa's actual service requirements for individual commodities. *Id.* ¶ 48.

UP's simplistic single factor model also incorrectly assumes Hasa has unlimited track storage and intraplant switching capabilities, and can place and switch around railcars on its own as needed. *Id.* ¶ 49. Instead, Hasa has, in cooperation with UP, relied on UP's daily switching to ensure that its railcars are properly placed, removed, and spotted. *Id.* Additionally, UP's single factor model assumes that UP's service is planned and precise, and that it UP's service is always reliable. That is not the case. In fact, in the two-week period since UP's service reduction announcement, UP has utilized new service crews, with no prior experience serving Hasa. *Id.* ¶ 50. Rather than

provide scheduled service as it has for decades in a fixed window of time in the morning, UP's service is now unscheduled, and performed at various times of the day, from early morning and into the evening, causing Hasa significant business disruption and harm.

Id.

During this same recent period since UP's service reduction notice, UP has also missed switches. And despite promising better, more reliable service through Hasa using UP's Shipment Management Tool, UP's service has deteriorated using these tools, UP has failed to deliver and pick-up cars, and has even sought to assess railcar demurrage charges on its own missed switches. *Id.* ¶ 51. Hasa has serious concerns that UP's abrupt service changes and significant deterioration in service over the past two weeks have been done in retaliation for Hasa's complaints about UP's cessation of daily service.

Id.

Finally, and fundamentally, UP's single factor approach to service for Hasa engineered far away in Omaha by PSR managers unreasonably ignores UP and Hasa's joint experiences, circumstances, and factors related to Hasa's unique local service requirements that have led UP and Hasa to implement and continue in place standard, scheduled daily service for over five decades, without interruption. *Id.* ¶ 52. Having UP drop off more cars each time with three days a week service instead of five is not feasible and would instead create cascading complications. While there may be modifications that might perhaps be feasible given sufficient time, meaning at least months, if not years. *Id.* ¶ 49. However, UP is seeking substantial, fundamental business changes, not just simple modifications, and to require that these changes be made in days, or over a

weekend.

There is no other substitute manufacturer or supplier of sodium hypochlorite in the area, Hasa cannot obtain chlorine deliveries from any other transporter, and Hasa's water treatment customers cannot use substitute products in the short term. *Id.* ¶¶ 6, 11, 17-18, 56. Inadequate deliveries of sodium hypochlorite to Hasa by UP thus not only jeopardize Hasa's business, but the public health of a substantial population. *Id.* ¶¶ 2, 54-65. In short, just delivering more railcars at a time under UP's simplistic PSR model is not a feasible alternative.

As indicated, Hasa has sought repeatedly to have meaningful discussions and work with UP on resolving this matter. Despite early promises to continue standard daily service while the parties work cooperative on any service changes, UP has thus far refused meaningful discussions, as well as to visit its plant to see its operations first-hand, apparently because UP believes that actual knowledge of Hasa's service needs is irrelevant under PSR or its new, rigidly adopted, single factor approach to serving Hasa. *Id.* ¶¶ 52, 60. Nevertheless, in a further effort to negotiate a reasonable resolution, Hasa provided UP with an interim service proposal on Friday, August 16, 2019, which allowed some service reductions, but provided for additional special switching by UP where needed by Hasa, while the parties continued to work out long-term solution to UP's diminished service demands. *Id.* ¶ 53. However, UP also rejected this proposal, necessitating this emergency petition. *Id.*

III. ARGUMENT

A. A SECTION 11123(a) SERVICE ORDER SHOULD BE GRANTED

The ICC Termination Act of 2005 (the “ICCTA”) grants the Board the statutory authority in 49 U.S.C. § 11123 to remedy “situations requiring immediate action to serve the public.” *Id.* UP’s plan to immediately curtail industry standard, daily deliveries to Hasa deemed by both parties as necessary for over 50 years to three days per week or less creates such a situation. Hasa respectfully requests that the Board exercise its authority under Section 11123 and issue an order directing UP to maintain its five days per week deliveries.

Section 11123 specifically authorizes the Board to issue emergency service orders on an ex parte basis for 30 days, subject to extensions of up to 240 days:

(a) [w]hen the Board determines that . . . [a] failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, . . . or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days – (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

(b)(1) . . . the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5. . . .

(c)(1) The Board may extend any action taken under subsection (a) . . . beyond 30 days if the Board finds that a transportation emergency . . . continues to exist. Action by the Board . . . may not remain in effect for more than 240

days beyond the initial 30-day period.

Id.

Hasa procures its raw, water treatment commodities on a delivered cost basis and thus is not a party to the transportation arrangements between its sellers and UP. *Brink V.S.* at ¶ 10. Nonetheless, UP's actions cause direct injury to Hasa, its customers, and the public. Receivers have standing to seek relief before the Board.⁴ Hasa's injuries flow directly from the UP conduct being challenged, and its injuries will be redressed through a favorable STB decision in the form of orders and the provision of prescriptive and injunctive relief. *Rail Transportation of Grain, Rate Regulation Review*, EP 665 (Sub-No. 1) (STB served Dec. 29, 2016), at 7.⁵ Moreover, railroads like UP often transport hazardous materials in common carrier service, and even service provided under a § 10709 contract is subject to a directed service order. "[W]e do not believe that the mere existence of a contract precludes us from providing for temporary emergency service." *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968, 976 (1998). Accordingly, the Board may order UP, a rail carrier providing transportation subject to the Board's jurisdiction (49 U.S.C. § 10102(5)), to maintain its five days per week deliveries to Hasa.

⁴ 49 U.S.C. § 10102(4); *McCarty Farms, Inc. v. Burlington N., Inc.*, 91 F.R.D. 486, 491-92 (D. Mont. 1981) (wheat growers that do not directly pay freight rates or charges have standing to bring a complaint under 49 U.S.C. § 11701).

⁵ While UP's actions will directly damage Hasa, direct damage is not required to obtain Board relief. 49 U.S.C. § 11701 ("the Board may not dismiss a complaint . . . because of the absence of direct damage to the complainant").

In its rulemaking proceeding on expedited service relief, the Board noted that Section 11123 gives the Board wide “latitude to craft a variety of measures to remedy any particular service situation.”⁶ UP’s announced change stands to harm not only Hasa, but also Hasa’s customers and the residents of the Los Angeles Basin generally, and “has the clear possibility of resulting in nothing less than a public health crisis with enormous consequences.” *Brink V.S.* at ¶¶ 54-65. Simply stated, safe water is critical for maintaining public health. Under such circumstances, “section 11123 permits us to act immediately, without observing normal due process procedures.”

Expedited Relief for Service Inadequacies, 3 S.T.B. at 972.

An emergency service order is particularly necessary where Hasa is simply requesting is that UP preserve the status quo and provide the same service that Hasa and UP have demonstrated is necessary, and Hasa has relied upon, based on over five decades experience providing such daily scheduled service. *Brink V.S.* at ¶¶ 2, 10, 12, 25, 36, 49,

⁶ *Expedited Relief for Serv. Inadequacies*, EP 628 (STB Notice of Proposed Rulemaking served May 12, 1998), at 2. The ICCTA consolidated into Section 11123 three previously separate provisions of the Interstate Commerce Act that authorized the ICC to take action to remedy service failures. First, 49 U.S.C. § 11123 (originally Section 1(15)) authorized action, including the compulsory joint use of facilities, to remedy emergency situations. Second, 49 U.S.C. § 11124 (originally Section 1(16)) authorized action to direct the handling, routing, and movement of traffic to promote commerce when a rail carrier cannot transport traffic offered to it in a manner that properly serves the public. Third, 49 U.S.C. § 11125 (enacted as part of the 1978 recodification) authorized action to direct the movement of traffic when a carrier cannot transport traffic offered to it because transportation has been discontinued under court order or for other reasons. The ICCTA gave the Board broader and more flexible authority to remedy service failures than had existed under the old framework. EP 628, Notice of Proposed Rulemaking, at 2 (describing the breadth of the statutory authority).

52. An emergency service order is also necessary to preserve the same basic service required of all common carriers. The longstanding standard is that switch deliveries are to be provided at least once a day, on a five days per week basis, with switches being made the day after cars are received in local yards.⁷

Daily service is especially necessary for hazardous commodities that are required under applicable safety rules to be expedited and not unnecessarily detained. The Federal Railroad Administration (“FRA”) requires railroads to expedite each shipment of hazardous materials such as chlorine and hydrochloric acid, and prevents them from being held for more than 48 hours, except on weekends, holidays, or where service is biweekly or weekly.⁸ Making deliveries five days per week substantially reduces the risk that UP would violate these requirements with tank cars destined for

⁷ E.g., *Savannah Port Terminal R.R.—Pet. for Declaratory Order—Certain Rates & Practices as Applied to Capital Cargo, Inc.*, FD 34920 (STB served May 30, 2008) (finding that daily switching is standard); *Capitol Materials Inc.—Pet. for Declaratory Order—Certain Rates & Practices of Norfolk S. Ry. Co.*, NOR 42068 (STB served Apr. 12, 2004), at 8 (“NS submits that providing one switch every weekday to each facility is the standard of service provided to the vast majority of shippers, not only by NS but by all other major railroads.”); Verified Statement of Brent Baily, Norfolk Southern Railway Company, Manager Central Yard Operations, NOR 42068 (filed June 24, 2002) at 2 (“Apart from a few very large customers who pay a premium for extra switches, one switch every weekday is standard service for the vast majority of NS’ customers and, to my knowledge, is typical of other railroads as well.”); *Louisiana Grocers Coop., Inc. v. Ill. Cent. Gul. R.R.*, 353 I.C.C. 606, 609 (1977) (repeated failure to provide switching to receiver one day after receipt in local yard is a violation of a carrier’s common carrier obligation).

⁸ 49 C.F.R. § 174.14(a). The regulations further specify that a tank car loaded with poisonous gas such as chlorine “may not be received and held at any point, subject to forwarding orders, so as to defeat the purpose” of the regulations. *Id.*, § 174.14(b).

Hasa. However, that risk increases substantially if UP delivers only three days a week.⁹

The FRA's rules thus support the proposition that daily deliveries of chlorine, where feasible, should be the norm. UP's initiative to reduce service to three days or less per week for Hasa poses substantial additional safety concerns and risk of knowing and deliberate safety violations.¹⁰

Additionally, maintaining the status quo of daily, weekday service is the same type of regularly scheduled, daily manifest service that UP has promised the Board and the public that it is seeking to implement generally across its system under its PSR Unified Plan 2020. In announcing its PSR Unified Plan 2020, UP promised to the public and the Board to make service for customers more reliable by: improving manifest service by focusing on moving cars on a daily basis, not trains on a periodic basis; minimizing car dwell; improving service reliability; developing plans for service at the local level with and by those closest to the work; a focus on safety; and communicating proactively with customers well in advance of any service changes. *E.g.*, <https://www.up.com/media/releases/180917-unified-plan-2020.htm>. With Hasa, unfortunately, UP has failed on each of its PSR promises:

⁹ When deliveries are spaced two days apart, missing a daily switch for whatever reason, carries a high risk that a violation will occur. With daily deliveries, in contrast, cars should never sit more than a day, but if a switch is missed, there is an opportunity to switch the car the next day, which is also a general goal of PSR, and maintain compliance with the FRA's 48-hour rules.

¹⁰ Knowing violations of the FRA safety rules result in substantial civil penalties for each day of the violation. 49 C.F.R. § 209.103. Additionally, willful violations of the federal hazardous material transportation laws or regulations are subject to criminal penalties including substantial fines and imprisonment. 49 C.F.R. § 209.131.

United Plan 2020 Promise	Implementation of Plan for Hasa
<i>Reliable, repetitive daily service, with a focus on moving cars to meet customer needs, and not trains</i>	Three-day-a-week train service, with threats to cut service immediately to one train weekly, with a focus on moving trains to meet management and shareholder financial goals, instead of moving cars to meet customer needs
<i>Minimizing car dwell</i>	Increasing car dwell, by intentionally holding cars in yards and failing to promptly deliver cars immediately when received
<i>Improving service reliability</i>	Replacing daily scheduled service in defined windows with periodic service at random times of day; replacing local crews with new crews that have little or no training or experience serving Hasa; implementing new software tools that are not followed and fail to improve service; failing pick-up or drop-off “Scheduled for Today” deliveries; assessing unjustified demurrage charges on cars ordered, even where UP fails to deliver cars
<i>Developing service plans at the local level</i>	New service plan developed at national headquarters to meet internal PSR financial goals; plan ignores local operational needs and cooperative approach developed over 50 years in favor of a rigid, single factor approach that disregards the experiences, circumstances, and complexities of Hasa’s business and service requirements at the local level; refusal to visit Hasa before developing or implementing new centralized service plan, or to meaningfully discuss any potential service changes ahead of time
<i>Safety first focus</i>	New service plan disregards railroad safety rules for hazardous commodities being shipped to Hasa requiring individual shipments to be expedited and not unnecessarily detained
<i>Proactive communication with customers, and well in advance of any possible service changes</i>	No notice of abrupt cessation of daily service in effect for over five decades; no meaningful discussions with Hasa over its business requirements; refusal to visit Hasa before developing and implementing new service changes; refusal to give Hasa any time to consider changes or to undertake measures in a manner that would allow its production facility to function adequately and adjust to any service changes; promising to continue service while developing solutions that will work for both parties, but then breaking its promise within 24 hours

The Board’s recent *Oversight Hearing on Demurrage & Accessorial Charges*, EP 754, revealed that UP and other Class I carriers are generally seeking to deliver railcars on a daily basis, and without unnecessary yard dwell, in order to make

more efficient use of their resources, and are imposing demurrage charges on shippers and receivers that are unwilling or unable to operate on that basis. Singling out a particular receiver for reduced deliveries is inconsistent with UP's professed objectives to increase velocity, reduce dwell, and increase next-day service, and to work with customers to ensure any service changes can be reasonably implemented over time. *E.g.*, Transcript of the EP 754 Hearing, May 22, 2019, at 136 and 225 (response of UP's Kenny Rocker, including agreeing with Commissioner Oberman that some customers will require "some months or a year to get their shop in shape to meet your requirements" and promising that UP will proactively work with such customers on mutual solutions). Expanding track and making additional plant changes require considerable lead time, as UP already knows full well from its own operations. Moreover, especially because the product involved is chlorine, as well as hydrochloric acid and caustic soda, safety is paramount, which provides an additional and compelling justification for ensuring that any changes are done correctly, rather than merely quickly. Time is also needed to comply with permitting and other regulatory requirements.

The Board previously construed and applied Section 11123 to direct movement of chlorine in *Canexus*.¹¹ In that case, BNSF Railway Company ("BNSF") proposed to cancel Canexus's existing common carrier rates and service terms for chlorine, block interchange, and stop the service that BNSF had been providing. The

¹¹ *Canexus Chems. Canada L.P. v. BNSF Ry. – Emergency Serv. Order*, NOR 42131 (STB served Oct. 14, 2011) ("*Canexus*").

Board quickly responded, on its own motion, to BNSF's actions by issuing a Section 11123 emergency service order directing BNSF to continue to transport chlorine for Canexus under BNSF's existing common carrier rates and service terms for a 30-day period, subject to potential extension for another 240 days. The Board based its action on two findings.

First, the Board held BNSF's actions, along with those of connecting carriers, constituted a "failure of movement" under 49 U.S.C. § 11123 because the Canexus needed service "urgently" and had no practical non-rail service options:

The lack of any readily available alternative service coupled with the carriers' refusal to provide through service cooperatively after October 15, 2011, constitutes a "failure of movement" under 49 U.S.C. § 11123. The record supports a finding that the cessation of service will have substantial adverse effect on a shipper and its customers. Canexus has stated that service from BNSF is "urgently needed." . . . It would be neither safe nor practical for Canexus to seek a non-rail alternative for the movement of this chlorine. Thus, the requirements for exercising our authority under 49 U.S.C. § 11123 have been met.

Id. at 3.

Second, the Board held that ordering BNSF to continue to provide service complied with the Section 11123 requirement that directed service "promote commerce and service to the public" because "safe and efficient shipment of chlorine is in the public interest." *Id.* at 4.

While UP is not proposing to cease chlorine deliveries to Hasa altogether, the reduced deliveries will still be so deficient as to rise to a "failure of movement" that does not "properly serve[] the public." Absent adequate deliveries, Hasa will be at

financial risk for failing to meet its volume commitments, but, far more critically, public health in the Los Angeles Basin will be imperiled. *Brink V.S.* at ¶¶ 54-65. Directing UP to maintain service thus “promotes commerce and service to the public.” This is the sort of “serious, localized railroad service problem[]” for which Section 11123 “enable[s] the Board to provide temporary relief . . . quickly and effectively.” *Expedited Relief for Service Inadequacies*, 3 S.T.B. at 970. Just as in *Canexus*, the Board should enter a similar order directing UP to restore and maintain service as soon as possible, and at the latest, **by August 23, 2019.**¹²

B. A TEMPORARY INJUNCTION SHOULD BE GRANTED

Under 49 U.S.C. § 1321(b)(4), the Board has the authority to “issue an appropriate order, such as a preliminary injunction” that enjoins UP from reducing its deliveries of needed chlorine to Hasa “when necessary to prevent irreparable harm.” *Cent. Valley AG Grinding Inc., et al. v. Modesto Empire Traction Co.*, NOR 42159 (STB served June 12, 2018) (“*CVAG*”), at 4. The Board exercises this authority based on four *Holiday Tours*¹³ criteria, and will grant an injunction where the requesting party shows that: (1) it is likely to prevail on the merits; (2) it will be irreparably harmed absent an injunction; (3) issuance of the injunction will not substantially harm other interested

¹² As indicated *supra*, since no directed service over the lines of another carrier is requested, the reply and rebuttal filings called for by 49 C.F.R. § 1146.1(b)(2) & (3) are not necessary.

¹³ *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977) (citing *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

parties; and (4) granting the injunction is in the public interest.¹⁴

Here, Hasa satisfies each element of the *Holiday Tours* criteria independently.¹⁵ First, Hasa is likely to succeed on the merits, both as a matter of law and a matter of equity. UP has a common carrier obligation to provide regular daily service to Hasa and promised both Hasa and the Board that it would not take the very type of abrupt customer service cessation actions that it has taken with Hasa, and would preserve existing service while cooperatively working with Hasa on mutual options and solutions. Second, Hasa will be irreparably harmed without an injunction, as monetary damages will not provide an adequate remedy to Hasa or, more importantly, the public at large for inadequate deliveries of commodities required for water sanitation. Third, issuance of the injunction will not cause UP any cognizable hardship. To the contrary, the pre-existing status quo service levels will be maintained, and UP will continue to provide the same reliable daily service and movement of railcars that it has long provided Hasa, and that it has promised the public and the Board will be realized as part of its PSR Unified Plan 2020. UP will also still be highly compensated for continuing to provide the five days a week deliveries it has provided for over the past fifty years. Fourth, a stay

¹⁴ *E.g.*, *CVAG; N. Coast R.R. Auth. & Nw. Pac. R.R. v. Sonoma-Marin Area Rail Transit Dist.*, NOR 42148 (STB served Oct. 21, 2016), at 3; *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42149 (STB served May 4, 2012), at 4; *Stagecoach Grp. PLC—Acquis. of Control—Twin Am., LLC*, MC-F-21035 (STB served Mar. 9, 2011), at 2 (“*Stagecoach Group*”); *R.R. Salvage & Restoration, Inc.—Pet. for Investigation & for Emergency Relief Under 49 U.S.C. 1321(b)(4)—Sec. Deposit for Demurrage Charges, Mo. & N. Ark. R.R.*, NOR 42107 (STB served June 30, 2008) (“*Railroad Salvage*”).

¹⁵ *League of Women Voters of U.S. v. Newby*, No. 16-5196, 2016 WL 5349779, at *3 (D.C. Cir. Sept. 26, 2016) (“*League of Women Voters*”).

will promote the public interest by providing the Los Angeles Basin with critical water sanitation and safe drinking water and by holding UP to its service assurance promises made to Hasa and the Board. These matters are addressed further below.

1. Hasa is Likely to Succeed on the Merits

The first element of the injunction test is to demonstrate a “substantial” likelihood of success on the merits. *Id.* at *5. Here, there is a “substantial (perhaps overwhelming) likelihood” that Hasa will successfully demonstrate UP has a duty to provide the type of daily service to Hasa that reasonably meets the needs of Hasa, Hasa’s customers, and the public. *Id.*

As referenced *supra*, the need for daily, scheduled service by Hasa has long been acknowledged and confirmed by UP based on its provision of such service, uninterrupted, for over five decades. The feasibility of the daily weekday service is thus self-evident. The need for daily service by Hasa is also consistent with the longstanding standard that such deliveries are to be provided at least once a day, on a five days per week basis,¹⁶ as well as the relevant railroad safety rules requiring expedited, uninterrupted deliveries of Hasa’s railcars in such service.¹⁷ UP has also promised the Board and the public that it is implementing the same type of regularly scheduled, daily manifest service generally across its system under its PSR Unified Plan 2020.

¹⁶ See relevant authorities set forth in footnote 7, *supra*.

¹⁷ 49 C.F.R. § 174.14.

The injunctive relief that Hasa seeks will require nothing more than that UP provide the same level of service it has been providing for decades in fulfillment of its obligation to provide service upon reasonable request. It is also equitable because it will simply require UP to abide by the service assurance promises it made to Hasa directly, and the Board, generally, that it will preserve the status quo while the parties discuss and work on a mutual solution to addressing any proposed service changes. Hasa's prospects for success on the merits are thus extremely high.

2. Hasa, Its Customers, and the Public Will All Suffer Irreparable Harm Without an Injunction

To show irreparable harm, a party must demonstrate that (1) the harm will be "certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm," and (2) "the harm must be beyond remediation."¹⁸ Those requirements are easily met here. While the absence of adequate deliveries would inflict severe commercial harm on Hasa,¹⁹ the overriding concern is that the Los Angeles Basin would be deprived of a safe water supply, creating

¹⁸ *League of Women Voters*, at *4 (internal quotations and citations omitted); see also *CVAG*, at 5-6 ("[t]o show irreparable harm, a party must demonstrate both the imminence and the irreparable nature of the purported harm").

¹⁹ The commercial harm to Hasa is irreparable given how difficult it would be to quantify the effect a decrease in service days would have on Hasa's operations or how much Hasa would have to spend to compensate for the decrease in days. *E.g.*, *Danielson v. Local 275*, 479 F.2d 1033, 1037 (2d Cir. 1973) ("irreparable injury is suffered when monetary damages are difficult to ascertain or inadequate"); *Railroad Salvage* at 4 (receiver "would be irreparably harmed by the loss of business that would result from a loss of rail service – business that could well be irretrievably lost.").

an existential public health threat, as addressed in detail by Mr. Brink in his Verified Statement. Brink V.S. at ¶¶ 6, 54 – 65. That type of harm cannot begin to be redressed through damages.

Waiting for a full decision on the merits, should one be needed, without at least interim relief is also not a viable option. A review of recent unreasonable practice cases indicates that the merits decision could take up to three to four years.²⁰ The harm, however, will be immediate. Hasa cannot produce adequate quantities of sodium hypochlorite without the five days a week deliveries, and even if it could, the production schedule would need to be altered, product would not be delivered to users with the normal potency, and public health would remain at risk. Brink V.S. at ¶¶ 10-23. UP's plan thus presents a "certain and great" "irreparable harm," and one that will otherwise "be beyond remediation."²¹

²⁰ E.g., *N. Am. Freight Car Assoc. v. Union Pac. R.R.*, NOR 42144 (complaint filed Mar. 31, 2015, and discovery not completed until January 22, 2019, nearly five years later, and the proceeding remains pending); *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557 (taking over 4 years from final complaint to decision on the merits); *State of Montana v. BNSF Ry. Co.*, NOR 42124 (over 2 years and 9 months from filing of complaint to merits decision); *N. Am. Freight Car Assoc. v. Union Pac. R.R.*, NOR 42119 (over 4 years and 10 months from filing of complaint to merits decision).

²¹ *League of Women Voters*, at *4 (internal quotations and citations omitted).

3. Issuance of an Injunction Will Not Injure UP, and Will Instead Advance the Public Interest

A temporary injunction maintaining the status quo will not “substantially harm” UP.²² The worst that will happen to UP is that it will receive full compensation for providing the same level of service that it has provided for years,²³ while it and Hasa discuss whether it makes sense to make service changes. UP’s “survival” is hardly “contingent” on the minimal cost savings it might gain by reducing its established five days per week to three days.²⁴

Preserving service is essential for maintaining public health in Southern California. The public has a vital interest in ensuring an adequate supply of chlorine, which serves the essential function of maintaining water sanitation in the Basin area. UP’s foregone savings from reducing service are dwarfed by the public health consequences of reduced service. *Brink V.S.* at ¶¶ 6, 54 – 65. Additionally, the public interest is served because UP’s service cessation initiative is anathema to UP’s fundamental common carrier service obligation. *E.g., G.S. Roofing Products Co. v. STB*,

²² *Stagecoach Group*, at 2

²³ UP would not be required to provide service at a loss as the movement is surely profitable, whether delivery occurs five days a week or three, as confirmed by UP’s long-standing continued shipment of commodities to Hasa five days a week. Reducing deliveries to three days a week may well increase UP’s profits, but that is not a sufficient justification for refusing to provide otherwise feasible and profitable service that meets a vital public need.

²⁴ *Railroad Salvage*, at 4 (granting preliminary injunction against carrier’s security deposit requirement as carrier’s “survival does not appear contingent on receiving a \$400,000 security deposit”).

143 F.3d 387, 391 (8th Cir. 1997) (discussing how railroads are held to a “higher standard of responsibility” because their “quasi-public nature” involves special public interest considerations).²⁵

UP states that its service reduction initiative is required to fulfill its PSR Unified Plan 2020 goals. Brink V.S. at 30. However, as referenced *supra*, the service plan is directly contrary to the PSR goals that UP has stated to the public and the Board. Additionally, any delay in UP’s implementation of PSR will not injure UP. In theory, PSR involves a carrier’s thorough review of its operations to determine if they can be made more efficient to reduce costs. Cost reduction is not inherently invidious to shippers, particularly if they share in the savings or the transportation is made faster or more reliable. Unfortunately, the opposite has occurred with the implementation of PSR with respect to Hasa. Moreover, in *Pejepscot*,²⁶ the Board emphatically rejected the suggestion that a carrier could rely upon financial or other business considerations to decide for itself whether it must comply with its common carrier obligation:

Respondents cannot lawfully make fulfilling their statutory obligations contingent upon whether they think it is “worth it” to do so. Rather, a carrier must adhere to its statutory obligations even if it suffers hardship in so doing. *See, e.g., Decatur County Comm’rs v. Surface Transp. Bd.*, 308 F.3d 710, 715 (7th Cir. 2002) (“[railroads] may not refuse to

²⁵ An unreasonable practice may be “observed as well in dealing with a single individual or with the general public or a class,” and the proscription against unreasonable practices may be violated where the carrier’s action is for the purpose or effect of hampering competition among local businesses. *Postal Telegraph-Cable Co. v. W. Union Telegraph Co.*, 59 I.C.C. 512, 516 (1920).

²⁶ *Pejepscot Indus. Park, Inc., d/b/a Grimm Indus. – Pet. for Declaratory Order*, FD 33989 (STB served May 15, 2003).

provide service merely because to do so would be inconvenient or unprofitable”) (citing *G.S. Roofing Prods. Co. v. Surface Transp. Bd.*, 143 F.3d 387, 391 (8th Cir. 1998)); *Classification Ratings on Chemicals, Conrail*, 3 I.C.C.2d 331, 337-38 (1986) (Classification Ratings) (railroads may not avoid their obligation to provide rates or service because the commodities in question are hazardous and, if not handled safely, could potentially expose the carriers to substantial financial liability).

Id. at 12-13.

Refusing to provide adequate service would be tantamount to an impermissible selective embargo. Common carriers cannot refuse to provide adequate deliveries of a product in regular service that are essential for maintaining public health. Significantly, UP has previously, but unsuccessfully, sought to limit its common carrier obligation to transport chlorine. *Union Pac. R.R.—Pet. for Declaratory Order*, FD 35219 (STB served June 11, 2009).

Accordingly, the third and four elements of the *Holiday Tours* criteria strongly favor issuance of the requested relief.

C. THE BOARD SHOULD CONSIDER ADDITIONAL OVERSIGHT AND INVESTIGATION

UP’s actions as to Hasa are extreme in consequence, but they are apt to otherwise be similar in kind to how UP and other Class I railroads are treating numerous other shippers and receivers with the implementation of PSR, whether they ship hazardous or non-hazardous materials, in common carrier, contract or exempt service, or are captive or competitive. While the carriers may claim that they are seeking to improve velocity and fluidity and reduce dwell by, for example, requiring shippers to match the

railroads in operating daily service, there are other instances, as with Hasa, where the carriers are proposing to substantially reduce the frequency of service. The common concern is that the carriers seek to reduce their costs, increase their revenues, and lower their operating ratios, with little or no regard for the bigger picture, the impact on the business requirements and total costs for customers, and the impact on the public interest.

From the EP 754 hearing, the Board is already aware that service patterns are being altered for the convenience and profits of the carriers and that demurrage and accessorial charges, including penalty components, are being imposed on shippers that have no ability to alter their conduct, especially in the short period of time for which notice is provided. The effect of many of these changes places many businesses, like Hasa, in significant jeopardy as emphasized by Mr. Brink:

The above-referenced timeline reflecting UP's abusive approach to Hasa, including breaching its continuing service assurance promises in less than a day, and reneging on its promise to engage in meaningful negotiations of service changes to the mutual benefit of UP **and** Hasa, clearly demonstrates UP's lack of understanding of Hasa's operations and complete disregard for Hasa as a long-term customer with a business model built around an established long-term daily service frequency. UP's unreasonable actions as related in this statement also evidences a complete and utter lack of care and interest for the critical mission that Hasa has performed for over 56 years to provide safe, clean and clear water to the millions of people in Southern California.

Brink V.S. at ¶ 59 (original emphasis).

Additionally, railroad efforts to avoid their common carrier obligation to transport, interchange, or deliver certain commodities such as chlorine in regular train service are not permitted. *See, e.g., Classification Ratings of Chemicals, Conrail*, 3

I.C.C.2d 331, 335-36 (1986); *Eric Strohmeyer & James Riffin – Acquisition and Operation Application – Valstir Industrial Track in Middlesex and Union Counties, N.J.* FD 35527 (STB served Oct. 18, 2011). But that is exactly what UP appears to be doing with respect to its hazardous commodities’ service for Hasa.

The Board should consider such measures as requiring UP to show cause why such actions should not be suspended. At a minimum, UP should be required to establish formal internal service change protest and appeal procedures for shippers and carriers, backed by weekly reports to the Board and the availability of Board-sponsored mediation where UP and its customers have not been able to agree upon altered arrangements. Alternatively, the Board should consider initiating its own investigation under 49 U.S.C. § 11701 as to whether PSR is undermining UP’s ability to discharge its common carrier obligation in view “of the impacts of the potential violation on national or regional rail traffic, customers, or third parties, or the geographic scope of the alleged violation.”²⁷

IV. CONCLUSION

For the reasons stated above, Hasa respectfully requests that the Board issue an emergency order and/or a temporary injunction and related relief in the form requested above as soon as possible, and **by August 23, 2019** on an *ex parte* basis, to require UP to maintain the established level of service while the parties discuss possible

²⁷ *Rules Relating to Board-Initiated Investigations*, Docket No. EP 731 (STB served Dec. 14, 2016), at 11.

changes through the initiation of Board-sponsored mediation. While a reply by UP is not required or needed in this instance, if and as the Board deems necessary, Hasa suggests that the Board grant immediate, interim relief, and provide UP five (5) business days to file a reply to this Petition, and in that event, provide Hasa three (3) business days following UP's reply to file a rebuttal.

Respectfully submitted,

A handwritten signature in cursive script, reading "Peter Pfohl", written in dark ink.

Peter A. Pfohl

Robert D. Rosenberg
Katherine F. Waring
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

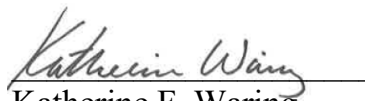
Dated: August 20, 2019

Attorneys for Applicant-Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of August, 2019, caused a copy of the foregoing to be served by overnight mail and email upon the Chief Legal Officer for the Union Pacific Railroad Company, as follows:

Rhonda Ferguson, Esq.
1400 Douglas Street
Omaha, NE 68179

A handwritten signature in cursive script, reading "Katherine Waring", is written over a horizontal line.

Katherine F. Waring
An Attorney for Applicant-Petitioner

**Verified Statement of
Christopher James Brink**

1. My name is Christopher James Brink. I am the President and Chief Executive Officer of Hasa, Inc. (“Hasa”). My business address is 23119 Drayton Street, Saugus, California 91350.

2. I am submitting this Verified Statement in support of Hasa’s petition for an emergency service order. The requested order is needed to enable Hasa to continue to receive the daily weekday rail deliveries of chlorine and sodium hydroxide that it requires to produce and deliver critical water treatment products necessary to provide clean, safe, and clear water for millions of people in Southern California. The requested order requires the Union Pacific Railroad Company (“UP”) only to maintain the same level of service it has provided to a longstanding customer for over the past five decades, while UP and the customer discuss and implement any new service changes that might be reasonably necessary or commercially desirable for UP. UP’s failure to maintain that level of service will leave Hasa unable to meet the public’s need for water sanitation products in Southern California and can very likely result in a public health crisis with enormous consequences.

Background on Hasa and the Critical Need for Its Products

3. Hasa is a leading producer and distributor of sodium hypochlorite (commonly called liquid bleach) and related products, including hydrochloric acid, used to sanitize water for drinking, wastewater treatment, recreational, and other purposes. Hasa has built its business and reputation for reliable delivery of vital products in the

Southern California area for over five and a half decades following the construction of its plant at Saugus, Santa Clarita, California in 1963.

4. Hasa has six (6) production and distribution facilities in the western United States: Saugus, California; Eloy, Arizona; Pittsburg, California; Longview, Washington; Bryan, Texas; and Pomona, California. Hasa's business is centered in Southern California, where products are manufactured exclusively at its Saugus production facility and distributed through its other facilities in the area. Hasa has a total workforce of approximately 435, of which approximately 120 work at its Saugus facility.

5. The application of sodium hypochlorite for safe water treatment is a well-known, and one of the most common, disinfection methods for producing safe drinking water in North America. It is used by municipalities and other public entities in order to provide essential water sanitization for the health and well-being of the public. When added to water, sodium hypochlorite reacts through oxidization with organic matter and the pathogens in the water to inactivate microorganisms and to provide safe, clean, and clear water for the public, including the majority of the 24 million residents of Southern California. The product is also used to treat wastewater to avoid contamination and to make water safe for irrigation for agricultural purposes. In addition, use of the product, along with hydrochloric acid, is a critical and essential public safety requirement for disinfecting the water of public, private, community, commercial, and residential swimming pools and other recreational facilities.

6. There is an established sodium hypochlorite manufacturing capacity and supply network in Southern California, of which Hasa is a critical component, to meet 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. Without adequate and reliable sources of supply of water disinfection products from Hasa, water treatment and public health would be placed in jeopardy. Local residents, livestock, and agriculture would face a much greater risk of the spread of very serious waterborne diseases caused by viruses, bacteria, and other microorganisms in contaminated water. Thus, the reduction of service by UP would not only affect public health, but also have the potential to threaten the successful performance of the local and regional economy.

Hasa's Customer Base

7. Hasa has a broad and diverse customer base, large, medium, and small, with many public, non-profit, and community-based customers. Hasa's municipal, school/university, and community customers include the following:

1 CALIFORNIA WATER SERVICE COMPANY, SAN JOSE, CA (HQ - Customer #IN8049)
2 COUNTYH19:H66 OF VENTURA SAUGUS, 800 S VICTORIA AVE, VENTURA CA 93009-1600 (Customer #IN1712)
3 CRESTVIEW MUTUAL WATER CO., 328 VALLEY VISTA DRIVE, CAMARILLO CA 93010 (Customer #IN1187)
4 CUCAMONGA VALLEY WATER DISTRICT, 10440 ASHFORD STREET, RANCHO CUCAMONGA CA 91729 (Customer #IN8141)
5 OLIVENHAIN MUNICIPAL WATER, 1966 OLIVENHAIN ROAD, ENCINITAS CA 92024 (Customer #IN1927)
6 PALMDALE WATER DISTRICT, 2029 E AVENUE Q, PALMDALE CA 93550 (Customer #IN1259)
7 SCV WATER AGENCY, 27234 BOUQUET CANYON RD., SANTA CLARITA CA 91350 (Customer #IN12008)
8 YUCAIPA VALLEY WATER DISTRICT, PO BOX 730, YUCAIPA CA 82399-0730 (Customer #IN1154)
9 ARCADIA U.S.D., 150 S. THIRD AVE., ARCADIA CA 91006 (Customer #IN8004)
10 CABAZON WATER DISTRICT, P.O. BOX 297, CABAZON CA 92230 (Customer #IN8012)
11 CAL STATE UNIVERSITY FULLERTON, P.O. BOX 6808, FULLERTON CA 92834 (Customer #IN8014)

12 CHEM-SERV, 2060-D AVE. DE LOS ARBOLES-PMB 609, THOUSAND OAKS CA 91362 (Customer #IN8015)
13 CITY OF ALHAMBRA, 111 S. FIRST STREET, ALHAMBRA CA 91801 (Customer #IN8017)
14 CITY OF ANAHEIM, 200 S. ANAHEIM BLVD. #433, ANAHEIM CA 92805 (Customer #IN8018)
15 CITY OF EL MONTE PARKS & REC., 11001 MILDRED STREET, EL MONTE CA 91731 (Customer #IN8023)
16 CITY OF FILLMORE, 250 CENTRAL AVE., FILLMORE CA 93015 (Customer #IN8021)
17 CITY OF HEMET, 445 E. FLORIDA AVE., HEMET CA 92543 (Customer #IN8022)
18 CITY OF LAGUNA NIGUEL, 30111 CROWN VALLEY PKWY., LAGUNA NIGUEL CA 92677 (Customer #IN8041)
19 CITY OF PALMDALE, 38300 N. SIERRA HWY., PALMDALE CA 93550 (Customer #IN8030)
20 CITY OF PICO RIVERA, 6767 PASSONS BLVD., PICO RIVERA CA 90660 (Customer #IN8029)
21 CITY OF SANTA PAULA, P.O. BOX 569, SANTA PAULA CA 93061 (Customer #IN8031)
22 CITY OF SOUTH GATE, 4244 SANTA ANA, SOUTH GATE CA 90280 (Customer #IN8032)
23 CITY OF VERNON, 4305 SANTA FE AVE., VERNON CA 90058 (Customer #IN8034)
24 COUNTY OF VENTURA POMONA, 800 S. VICTORIA AVE. L-1600, VENTURA CA 93009 (Customer #IN8040)
25 EASTERN MUNICIPAL WATER DISTRI, P.O. BOX 8300, PERRIS CA 92572 (Customer #IN8044)
26 GLENDORA U.S.D., 500 N. LORAIN AVE., GLENDORA CA 91741 (Customer #IN8052)
27 INDIO WATER AUTHORITY, 83-101 AVENUE 45, INDIO CA 92201 (Customer #IN8024)
28 JOSHUA BASIN WATER DISTRICT, P.O. BOX 675, JOSHUA TREE CA 92252 (Customer #IN8059)
29 JSERRA CATHOLIC HIGH SCHOOL, 26351 JUNIPERO SERRA ROAD, SAN JUAN CAPISTRANO CA 92675 (Customer #IN8060)
30 LAKE HEMET MUNICIPAL WATER DISTRICT, PO BOX 5039, HEMET CA 92544 (Customer #IN8068)
31 LAKE MANAGEMENT, INC., 2420 RIVER RD. #230-913, NORCO CA 92860 (Customer #IN8070)
32 LAS VIRGENES SCHOOL DISTRICT, 4111 LAS VIRGENES ROAD, CALABASAS CA 91302 (Customer #IN8071)
33 LEROY HAYNES CENTER, P.O. BOX 400, LA VERNE CA 91750 (Customer #IN8073)
34 LOS ANGELES DEPARTMENT OF POWER & WATER
35 MANHATTAN BEACH U.S.D., 325 S. PECK AVE., MANHATTAN BEACH CA 90266 (Customer #IN8075)
36 MARYGOLD MUTUAL WATER CO., 9725 ALDER AVE., BLOOMINGTON CA 92316 (Customer #IN8076)
37 MONTE VISTA WATER DISTRICT, 10575 CENTRAL AVENUE, MONTCLAIR CA 91763 (Customer #IN8035)
38 MT. SAN ANTONIO COLLEGE, 1100 N. GRAND AVE., WALNUT CA 91789 (Customer #IN8083)
39 PALM RANCH IRRIGATION, 4871 W. COLUMBIA WAY (AVENUE 'M'), QUARTS HILL CA 93536 (Customer #IN8089)

40 POMONA COLLEGE, 150 E. 8th STREET, CLAREMONT CA 91711 (Customer #IN8098)
41 REDLANDS UNIFIED SCHOOL DISTRICT, 20 W. LUGONIA, REDLANDS CA 92373 (Customer #IN8101)
42 ROWLAND U.S.D., 1830 NOGALES ST., ROWLAND HEIGHTS CA 91748 (Customer #IN8104)
43 ROWLAND WATER DISTRICT, 3021 S. FULLERTON RD, ROWLAND HEIGHTS CA 91748 (Customer #IN8105)
44 SAGE HILL SCHOOL, 20402 NEWPORT COAST DR., NEWPORT COAST CA 92657 (Customer #IN8107)
45 SAN BERNARDINO U.S.D., 777 NORTH F STREET, SAN BERNARDINO CA 92410 (Customer #IN8109)
46 SAN MARINO U.S.D., 1665 WEST DR., SAN MARINO CA 91108 (Customer #IN8110)
47 SCPPA - CANYON POWER PLANT, CITY OF ANAHEIM, ANAHEIM CA 92806 (Customer #IN8112)
48 SOUTH PASADENA U.S.D., 1327 DIAMOND AVE., SOUTH PASADENA CA 91030 (Customer #IN8116)
49 SUNNY SLOPE WATER COMPANY, 1040 EL CAMPO DR., PASADENA CA 91107 (Customer #IN8119)
50 TEMECULA VALLEY U.S.D., 31350 RANCHO VISTA RD., TEMECULA CA 92592 (Customer #IN8121)
51 UNIVERSITY OF CALIFORNIA, IRVINE, 120 THEORY, SUITE 200, IRVINE CA 92617 (Customer #IN8128)
52 UNIVERSITY OF CALIFORNIA, RIVERSIDE, ACCOUNTING OFFICE - 002, RIVERSIDE CA 92521 (Customer #IN8129)
53 UNIVERSITY OF SO. CALIFORNIA, 3434 SOUTH GRAND AVE., CDF 140F, LOS ANGELES CA 90089 (Customer #IN8130)
54 WALNUT PARK MUTUAL WATER CO., 2460 E. FLORENCE AVE., HUNTINGTON PARK CA 90255 (Customer #IN8132)
55 WALNUT VALLEY WATER DISTRICT, 271 S. BREA CANYON RD., WALNUT CA 91789 (Customer #IN8133)
56 WEST VALLEY WATER DISTRICT, P.O. BOX 920, RIALTO CA 92377 (Customer #IN8134)
57 WHITTIER COLLEGE, 13406 E. PHILADELPHIA ST, WHITTIER CA 90605 (Customer #IN8135)
58 WHITTIER U.S.D., 9401 S. PAINTER AVE., WHITTIER CA 90605 (Customer #IN8136)
59 WOODBURY COMMUNITY ASSOCIATION, 108 LAMPLIGHTER, IRVINE CA 92620 (Customer #IN8137)
60 YMCA OF SAN DIEGO COUNTY, 3708 RUFFIN ROAD, SAN DIEGO CA 92123 (Customer #IN8139)

8. Along with its more than 570 direct retail customers, Hasa also supplies product at wholesale to more than 400 distribution partners that in turn distribute Hasa's products to additional water treatment plants and facilities, greatly expanding the reach and number of users of Hasa's products. For example, Hasa provides large, bulk supplies of sodium hypochlorite to Univar on a daily basis, which then distributes the product to

dozens of other water treatment customers. Hasa also provides bulk supplies to Shepard Brothers, which then blends and sells the finished products at retail to agricultural users, including large-scale dairy farms in the California Central Valley, which use the product to disinfect against bacteria and sterilize dairy farm equipment.

9. Hasa's customers generally receive product in packaged, bulk or mini-bulk formats that are delivered by truck. Hasa has a substantial and well-coordinated product distribution and delivery network. Customers generally require and receive deliveries on at least a weekly basis, and many require and receive product on a daily basis.

Hasa's Longstanding Reliance on Daily Weekday Rail Service

10. Hasa is a railroad receiver and exclusively served by UP. Hasa is not a shipper, consignor, consignee, or "in care of" party. Hasa's suppliers are the shippers, and they and UP arrange for transportation service for product that Hasa procures on a delivered cost basis. Nevertheless, Hasa has carefully developed its supply, production, and distribution process in close coordination with its suppliers, UP and its other transportation partners, and its customers over five and a half decades of service.

11. In order to produce sodium hypochlorite, Hasa annually receives as product feedstock approximately 52,000 tons of inbound chlorine, sodium hydroxide (commonly known as caustic soda), and hydrochloric acid at its Saugus facility. All of the chlorine and most of the caustic soda and hydrochloric acid Hasa receives at Saugus arrives by rail, delivered exclusively by UP.

12. Hasa has been a reliable, constant receiver of UP rail service at Saugus over five decades, with over 390 railcars being received per year, and its business is growing.

13. The Saugus plant 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.

14. 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.

15. Hasa's plant and transportation infrastructure at Saugus has been established over the past 56 years, in cooperation with UP. Hasa has on-site private track storage and offload capacity for 10 railcars at Saugus. It reserves 3-5 spots for, and has three offloading stations for, loaded chlorine cars. During 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. A schematic showing Hasa's rail spots is included at **Exhibit 1**. The first three spots are dedicated chlorine offloading stations.

16. Hasa's rail track infrastructure and offloading capacity is sufficient to meet Hasa's production supply requirements and has never constrained Hasa's ability to meet its manufacturing and distribution requirements.

17. Trucking the inbound raw commodities is not feasible as shipping chlorine by truck is not available in California and has virtually been eliminated in the United States. Also, Hasa does not have sufficient plant and unloading equipment and capabilities in place at Saugus to be able to receive the significant volumes of caustic soda and hydrochloric acid it requires by truck (approximately 4 trucks for every railcar). Trucking these products is much more expensive than receipt by rail, introduces significantly more potential process safety risk, and contributes to added congestion on the already crowded highways and local roads.

18. Customer demand and the inherent nature of Hasa's business products require that the plant receive rail service on a daily basis. Sodium hypochlorite, Hasa's core business product, is chemically unstable, and begins degrading immediately after manufacture. The rate of degradation varies depending on strength of the product and exposure to ultraviolet light (sunlight) and heat. Product degradation is more rapid at the higher concentration levels used for drinking water decontamination.

19. These factors combine to make the need for daily service especially acute in the warm spring, summer, and fall months of Southern California, when demand is

highest and when heat and sunlight remain at their highest levels of the year. Significant decomposition of the sodium hypochlorite product can occur in days.

20. Even apart from the significant product degradation issues, Hasa has limited storage room for sodium hypochlorite, and additional capacity requires special and expensive, designed-for-purpose equipment which cannot be permitted and installed in a short period of time. Also, if Hasa continues to receive its inbound raw commodities on a reliable, consistent basis, as UP has done for decades, there is no need to add such expensive, additional storage capacity.

21. As discussed above, Hasa's customers are varied and diverse, and most do not have sophisticated quality assurance intake procedures and equipment. Hasa's customers rely upon Hasa's outtake quality assurance programs to ensure that the product supplied matches their efficacy requirements. Any change in the specifications of Hasa's outgoing product due to production, storage, or delivery delays could cause cascading after-effects in end use markets and applications. The potential consequence of any delay in product distribution include the contamination of water for public water supply, as well as in water used for swimming and other recreational, agricultural, industrial, and food processing sanitation purposes.

22. Additionally, most of Hasa's customers cannot store significant volumes of sodium hypochlorite on site. Even if they could store additional volumes, the product degradation noted previously would require them to store even larger volumes, resulting in further degradation. For that reason, Hasa's customers generally do not order or

receive more than what is needed for immediate water treatment application. Further, increased storage carries increased potential safety risks.

23. These factors require Hasa to receive daily its inbound raw commodities, and produce and deliver its finished sodium hypochlorite products, on a “just in time” basis to ensure promised performance.

UP’s Daily Service Termination Initiative

24. Since Hasa commenced business operations in 1963, UP has assisted Hasa in fulfilling its promise to provide safe, clean, and clear water to millions of Southern Californians by providing five-day-per-week service to Hasa’s Saugus plant, without interruption. Hasa’s business is growing, and it is unaware of any railroad operational, equipment, or business planning issues that might preclude UP from continuing to provide daily service. Until very recently, UP had not notified or consulted with Hasa about any possible service changes, nor is Hasa aware of any changes that might be necessary for UP to be able to continue to meet Hasa’s service needs. Hasa’s consistent delivery requirements, on a ratable basis in manifest service, appear consistent and well-suited to meet the operational preferences and goals of UP’s “Unified Plan 2020,” which is designed to improve on-time delivery of cars, reduce dwell times, and provide scheduled service to its customers on a daily basis as necessary to meet its customers’ business requirements. Furthermore, efforts to “bunch” chlorine deliveries, or provide less frequent deliveries of a greater number of cars, would likely create compliance issues with the requirements of the Federal Railroad Administration rules that tank cars carrying poisonous gasses, such as chlorine, not be held for more than forty-eight (48) hours.

25. Hasa has had little or no issue with UP service in the past, or prior concerns about UP service reductions. That all changed on July 2, 2019, when Hasa's operating personnel reported to Hasa's management a rumor conveyed by the UP local switching crew that service would be reduced from five days a week to one day starting the following week. 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.

26. Immediately thereafter, and for two weeks from July 2 to July 16, 2019, Hasa repeatedly called and emailed UP operating and commercial personnel to substantiate or refute this rumor, but received no response from UP, even though the change had critical business ramifications for Hasa.

27. Having received no response from UP to multiple, urgent communications, Hasa sent a letter to UP's Vice President – Industrial and its Executive Vice President – Marketing and Sales on July 15, 2019, to express grave concerns about possible UP service changes. Hasa informed UP of the critical need for Hasa to continue to receive daily service, and asked UP to provide immediate assurances of continuing daily service and any information on possible service changes UP was considering for Hasa. A copy of Hasa's letter is attached as **Exhibit 2**.

28. On July 16, 2019, UP's Marketing & Sales Manager for industrial finally responded by email stating that he was "glad to hear that you have been receiving reliable service for many years" and promised further review. A copy of this response is attached as **Exhibit 3** at 3.

29. Later that day, without providing any information on the basis or need for any possible service changes, UP sent a second email stating: “As of now, we have cancelled the request for the change to 1 day/week service.” UP did not and has not elaborated further on who had made “the request for the change to 1 day/week service,” when it was made, or the basis for its planned cessation of daily service to Hasa. Hasa assumes the change was simply part of an internal cost savings through reduced service initiative that UP had elected not to discuss with Hasa, its customer of 56 years. UP continued: “Our operations team is re-evaluating and will bring to my attention when they have a re-arranged plan of action and I will work collaboratively with you and discuss once I have this.” A copy of the UP message is attached as **Exhibit 3** at 2.

30. On July 16, 2019, UP’s Vice President Industrial further responded to Hasa’s letter, and finally provided service assurances. UP promised to continue to provide Hasa five-day-per-week service while it meaningfully discussed with Hasa possible service changes going forward. UP also promised to “find a solution that will work for both of us”:

Thank you for your letter regarding your service schedule for your facility in Saugus, California. 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. Jackson Bogatz on my team handles your account and has been working directly with Rob Bzdil from your team. We understand that one day a week service will not work for you and believe **we can find a solution that will work for both of us**. Our Operating department is evaluating options and Jackson will reach out to Rob directly to discuss further.

Again, thank you for bringing this to my attention. **While we are working with you on options we will continue to service your facility five days per week.**

(Emphasis added). A copy of UP's response is attached as **Exhibit 3** at 3.

31. While Hasa was relieved to receive UP's continuing service assurances and its commitment to work with Hasa on a bilateral solution, UP, unfortunately, broke both its promises immediately. Rather than actually discussing with Hasa its business needs, any justification for possible service changes, or a possible bilateral solution, in less than 24 hours, UP simply reinstituted its daily service cessation plan, and announced a whole new service reduction plan:

Our operating team sent me an update on their re-evaluated plan which they hope to implement by July 29. The proposal is 3 days/week service which will occur on Monday, Wednesday and Friday. Year to date, this facility is averaging about 15 cars/week. Our operating team states that they will have no issue supporting this volume with the proposed schedule. I expect to get the formal schedule change request in the coming day or so. Please let me know any questions/concerns.

A copy of this communication is attached as **Exhibit 3** at 1.

32. Hasa immediately responded, notifying UP that its revised service reduction plan contradicted UP's continuing daily service assurances, and its promise of a bilateral solution, and was not acceptable or feasible for Hasa:

This will not work. We cannot make any changes right now especially this time of year. There is no way we can accommodate this kind of change so quickly. Taking the average cars per week does not work with the extreme seasonality of our business. It is very important that we schedule a call to make sure we are aligned as it seemed very

clear from Kari's email this would be a process vs. a simple redirection.

A copy of Hasa's July 17, 2019 response is attached as **Exhibit 3** at 1.

33. UP and Hasa convened a follow-up conference call on July 25, 2019. During the call, Hasa reiterated its significant concerns about any service reductions. Hasa explained why it was essential to work collaboratively to develop possible solutions that were feasible for both parties and requested 90-100 days to work through the process. The call ended with no further announced changes in service and an invitation to UP to visit the Hasa plant to learn about the operation in an effort to work on a mutual, bilateral solution.

34. The parties held a second unscheduled telephone conference on July 25, 2019, where UP inquired about Hasa's railcar releases in July, and Hasa asked to see UP's information and committed to have its operations personnel review the matter further. The call began and ended with Hasa reiterating that any immediate change in service would jeopardize Hasa's ability to provide product to ensure safe, clean, and clear water to the millions of people in Southern California, and that Hasa wanted to work collaboratively with UP on a beneficial solution for both parties. UP represented that it would communicate internally with its staff that Hasa still required daily service.

UP's Immediate Termination of Hasa's Daily Service

35. On Friday, July 26, 2019 without any prior consultation, UP emailed Hasa at 4:09 p.m. to advise that it had "decided that UP will be moving forward" in ceasing daily service to Hasa. It informed Hasa that service would be immediately reduced to

three days a week starting the **next** business day, Monday July 29, 2019. A copy of UP's email is attached at **Exhibit 4** at 7.

36. At 4:57 p.m. that same day, Hasa strongly protested UP's service reduction announcement, responding as follows:

[P]ursuant to our discussions yesterday, we cannot accommodate this change until we have time to appropriately consider a thoughtful solution that will accommodate both parties. There was absolutely no indication a change was imminent at any time in our two discussions yesterday.

For the UP to send this ultimatum so late in the day on a Friday for implementation on a following Monday is entirely unacceptable and puts our business at risk.

Hasa formally requests that the UP continues the same service level of 5 days a week that has been the standard and what we have built our business around for over 50 years.

A copy of Hasa's email response is attached at **Exhibit 4** at 6-7.

37. Later that evening, Hasa emailed UP's Vice President – Industrial and strongly protested UP's planned service shutdown initiative, explaining that UP's "abrupt action" was contrary to UP's previous assurances to continue daily service while the parties meaningfully discussed a solution. Hasa reiterated the dire consequences of UP's service reduction initiative, including plant shutdown and the failure of Hasa to provide product required to disinfect and provide safe drinking water to numerous communities in the greater Los Angeles Basin. A copy of this communication is attached as **Exhibit 4** at 5-6.

38. On Saturday morning, July 27, UP responded by email, again refusing to continue daily service while the parties reasonably discussed any possible service

adjustments. UP said that it was moving ahead with its daily service cessation plan and that “UP is confident in our ability to fully support Hasa’s traffic based on the data for inbound volume and outbound releases.” A copy of this response is attached as **Exhibit 4** at 4-5.

39. Later that morning, Hasa replied by email stating that “the HASA team is not there yet with a suitable operational plan, and this virtually zero-notice change of service on the part of UP is not acceptable.” Our reply noted that UP had abruptly changed course without notice on its prior commitment to work with Hasa on any operational changes, and the parties had agreed that “a joint solution would continue to be evaluated and an appropriate amount of time would be allowed for any adjustment, should one occur.” Hasa reiterated the grave consequences UP’s service reduction actions would have on Hasa’s business and the ability of the numerous communities Hasa serves to be able to provide safe water to the public. In order to avoid the need for Hasa to commence immediate legal actions to protect its interests, and its ability to supply the public with essential water treatment products, Hasa asked UP to:

adjust [its] extraordinary demand of service change made yesterday, de-escalate this immediately, and give the HASA team sufficient time to discuss this matter further, as well as better familiarize yourself and the UP team with the impending impact that this business decision will have upon the communities that UP has the privilege of serving.

A copy of this communication is attached at **Exhibit 4** at 3-4.

40. UP replied on the morning of July 28 that “UP is confident in our ability to support the volume to your facility,” and proposed a conference call on July 29 to discuss matters. A copy of UP’s response is attached at **Exhibit 4** at 2-3.

41. Later that same morning, we responded further that “HASA is equally confident that a resolution can be met. But we are not confident that timeline UP has imposed is in any way acceptable.” Hasa further informed UP that, while we understood UP’s desire to cut costs and increase profits, **“UP is being irresponsible in this artificial time and service change demand.”** I will add that **it puts our business and our communities in significant safety risk**, which will be at great cost to HASA to mitigate in short order.” Hasa again asked UP to revoke its service reduction plan and promised to meaningfully engage in further discussions towards “a joint favorable resolution, in good faith, and in a manner that we can manage with limited resources and time during the busiest part of our season.” A copy of this communication is attached at **Exhibit 4** at 1-2.

42. UP’s abrupt service reduction actions required Hasa to retain transportation counsel, which assisted us in outreach with the STB’s Office of Public Assistance, Government Affairs and Compliance (OPAGAC) on this matter during the weekend of July 28-29, 2019. In response, OPAGAC staff contacted UP on the morning of July 29. Only after OPAGAC’s intervened did UP finally agree to maintain in place daily service to Hasa, until it had an opportunity to more fully review and understand Hasa’s service needs and discuss the matter further.

43. OPAGAC convened a call between the parties on August 6, 2019. During that call UP insisted that its planned service reductions were appropriate. Hasa strongly disagreed. At the end of the call, UP promised to provide “special switches” to supplement Hasa’s service and enable Hasa to receive daily service for a two-week period, but no longer, while the parties discussed further UP’s service reduction program. However, UP indicated that its service reduction decision was data driven, firm, and not likely to change.

44. The parties continued a dialogue and exchanged service information over the next week. UP provided information to Hasa reflecting that UP had relied solely on a simple, single-factor data analysis that it contended justified an immediate departure from daily service. UP contends that Hasa business is not threatened in any way with UP’s reduction in service initiative because UP’s model shows that it can still fully meet Hasa’s requirements for service even by providing service only three days per week or less.

45. UP’s single factor approach focuses solely on an average daily release rate for railcars. UP’s analysis, based on monthly averages (which are actually annual or multiple-year averages framed as monthly averages), reflects that, since 2016, Hasa has released 1.08 cars on a daily basis, although its daily average release rate has increased above that level over time. As mentioned above, Hasa has 10 unloading spots. Under UP’s single-factor model, UP need only deliver, on average, one train a week of no more than 10 cars to satisfy Hasa’s requirements because even using the more recent, elevated

average release figures since 2018 of 1.21, UP could deliver and pick up the less than 10 cars per week Hasa requires in just one switch per week.

46. Based on Hasa's only limited review, UP's single-factor data approach to reducing Hasa's service is fundamentally flawed in multiple respects. First, the data UP relies on in its analysis is mathematically defective. UP's average railcar release data uniformly assumes seven-day-per-week service, rather than the five-day-per-week service that Hasa has actually received. This obvious flawed assumption substantially reduces the average daily release figure below actual release rates for Hasa based on its five-day-per-week service by close to 30 percent. For example, 7.56 cars per week divided by 7 days equals UP's 1.08 cars per day, but the same 7.56 cars per week divided by 5 days equals 1.512 cars per day.

47. Second, UP's single-factor analysis relies on an average release rate over an extended period of time that ignores the inherent fluctuations in Hasa's business. While Hasa has consistent, reliable service requirements, Hasa's business is not static. Hasa's daily release rates can and do change from month to month, and week to week, depending on demand, weather, scheduled or unscheduled outages, and other factors. However, UP's model incorrectly assumes that as long as UP can meet Hasa's needs on an average monthly basis (which is actually at best a yearly average divided by twelve months), Hasa's service needs for any smaller interval will be fully satisfied. For example, if Hasa hypothetically needs three chlorine cars a week half the year and six chlorine cars for the other half, UP concludes that five cars a week will be sufficient for the whole year, when such service will be inadequate half the year.

48. Third, UP's single-factor approach is further flawed because it considers only the total number of railcars released or received in the aggregate and improperly assumes that the three products received by rail are fungible, when they are not. As explained earlier, Hasa receives chlorine, caustic soda, and hydrochloric acid by rail. The manufacture of sodium hypochlorite requires one part chlorine to two parts caustic soda. As also explained above, during high demand periods, the plant consumes approximately 1.25-1.5 railcars per day of chlorine, and 2.5-3 cars per day of caustic soda. The plant also receives and packages hydrochloric acid as a separate product, the demand for which fluctuates depending on customer needs. Hasa's release rate for its caustic soda railcars is double that of its chlorine railcars (assuming no problems with individual railcars), and its hydrochloric acid railcar release rates typically experience the lowest frequency. Yet UP's simplistic model assumes, incorrectly, that as long as UP meets the average release rates for all of Hasa's commodities in the aggregate, it will satisfy Hasa's service requirements for each individual commodity, even though the consumption and release rates vary considerably by commodity.

49. Fourth, UP's single factor approach assumes, incorrectly, that Hasa has track storage and intraplant switching capabilities allowing Hasa to place and switch around railcars as required by its plant's requirements. Hasa has no such capability, and has instead relied on UP to provide those services. As referenced above, Hasa has three offloading stations for loaded chlorine cars, and it reserves 3-5 spots for chlorine cars. It has 1-2 spots for hydrochloric acid, and the remaining spots are reserved for caustic soda, which supply can be supplemented by truck deliveries. Hasa's limited industry track

space is consumed by railcars in allocated spots. For its five decades long existence, Hasa has relied on UP's daily switching to meet all of its railcar spotting requirements. For example, Hasa may have four chlorine tank cars on site, but once it depletes the three that occupy the offloading stations, it requires UP's switching to remove an empty car and allow the fourth car to be offloaded. Without that switching, the fourth car is essentially useless. UP's single factor model does not factor in Hasa's operational need for daily service to ensure that its railcars are properly placed, removed, and spotted. Additionally, if UP wants Hasa to assume more of UP's longstanding spotting responsibilities, which it has not requested, Hasa will require a trackmobile/railcar mover and will need to consider additional private track requirements to be able reasonably supplement UP's spotting, which will likely take a number of months for Hasa to plan and implement.

50. Fifth, UP's single factor approach assumes, incorrectly, that UP's service is planned and precise. It is not, and in fact Hasa's service has become much more random since UP announced its service reduction initiative. For many years, UP reliably served Hasa on a daily basis under a three-hour service window mid-morning between 9:00 a.m. and noon. However, in the two-week period since UP's service reduction announcement, UP has served Hasa at various times of day, from 9:00 a.m. to past 6:00 p.m. On the first few days of UP's service reduction initiative, UP's new crew, which had only one day of training at Hasa's location, arrived at Hasa very late in the day, and threatened to decline making a switch for Hasa, based on concerns about running out of hours of service. UP's new sporadic arrival times are recorded in **Exhibit 5**. UP's total failure to provide Hasa

service in timely, scheduled windows under its new service plan has caused Hasa significant business disruption and harm.

51. Sixth, UP's single factor approach assumes, incorrectly, that it is always reliable, will not miss any of its promised switches, and will delivered the railcars ordered. However, that is not the nature of railroading, especially in Southern California, where even the best service plans and intentions may be nullified by track outages or operational or crew shortage issues, weather, earthquakes, or other factors. Additionally, Hasa receives chlorine from various locations, often from 1,000 or more miles away, including the Gulf Coast, which experiences unpredictable weather patterns presenting additional service disruption issues. UP's implementation of precision scheduled railroading has not resulted in more reliable service, but instead has generally added another dimension of disruption. UP has requested Hasa use its new Shipment Management Tool, which UP promises will provide Hasa with a reliable means of ordering and releasing railcars and for viewing "Scheduled for Today" deliveries and service window times. However, these tools have not provided Hasa with better service. Instead, its service has deteriorated using these tools. As referenced, UP has abruptly eliminated, without notice, its longstanding mid-morning daily service window to Hasa. Additionally, over the past several weeks, UP's local crews have failed to deliver and pick-up Hasa's railcars ordered using UP's new electronic management tools, and UP has even assessed demurrage charges on cars that Hasa ordered but which UP failed to deliver. **Exhibit 6** contains communications with UP reflecting some of these problems. Hasa has considerable concerns that UP's abrupt service changes and deterioration in

service were done in retaliation for Hasa's complaints about UP's cessation of daily service.

52. Finally, UP's single factor approach gives no consideration to the multiple experiences, circumstances and factors related to Hasa's service that have led to UP and Hasa to reasonably implement and continue in place coordinated daily service for over five decades, without interruption. Additionally, UP management has thus far refused Hasa's invitation for them to visit Hasa's plant to see its operations first-hand, apparently because UP believes its single-factor model does not require it to understand the nature and complexities of Hasa's business and service requirements. Replacement of Hasa's longstanding daily service that has long been deemed necessary to meet the operational and service requirements of both parties, and public needs, based on a new, rigidly adopted, single factor approach focusing solely on average release times is, with all due respect, completely unreasonable.

53. In a final effort to negotiate a reasonable resolution, on Friday, August 16, 2019, Hasa provided UP with an interim service proposal, while the parties continued to work out long-term solution to UP's diminished service demands. The proposal was based on Hasa's historical 2017-2019 (year to date) service requirements. Hasa proposed that UP provide scheduled four-day-per-week service to Hasa, and special switch service, free of charge, for the fifth day when necessary during our peak months from April to mid-September. It proposed three-day-per week service during the remainder of the year. While this proposal places substantial new constraints on our business, it is the minimum

possible service restrictions that Hasa can reasonably sustain at this time while longer term solutions are considered. Unfortunately, UP flatly rejected this proposal.

The Impacts of UP's Cessation of Daily Service

54. Hasa's need to receive rail service from UP on a daily weekday basis is nothing less than critical. Hasa cannot otherwise meet stringent product quality and customer demand requirements. Failure to meet those requirements has the clear possibility of resulting in nothing less than a public health crisis with enormous consequences in the communities which HASA serves.

55. Any reduction in service will cause considerable and likely irrecoverable business harm and damage to Hasa, as we have no alternative means of receiving our essential chlorine supply, and our entire production and distribution model built over five decades depends on the receipt of railcars from UP on a daily basis.

56. Any supply disruptions to Hasa customers would likely result in significant disruptions in water treatment. Hasa has both substantial retail and wholesale customers that rely on Hasa to meet critical water treatment product requirements. Much of Hasa's customer base is served solely by Hasa, which has a long-standing commercial relationship with its customers. In the short-term, there is no alternative supplier that can produce and deliver the product in the volume and with the quality required to maintain water sanitation.

57. UP's cessation of daily service places Hasa's business in critical jeopardy. Continuation of service reductions will have a devastating impact on our business, employees, millions of dollars in plant investments, our ability to serve our customers'

requirements, and cause at least recurring, temporary suspensions of our production and distribution business.

58. Hasa has informed UP repeatedly that it will work with UP to implement any reasonable service changes. But those changes will likely require at least several months of work for both parties, and Hasa has reasonably requested 90-100 days to work through the process. However, Hasa notes in that regard that obtaining additional track or other equipment may require a substantial lead time, especially in light of the permits and other regulatory approvals that may be required.

59. The above-referenced timeline reflecting UP's abusive approach to Hasa, including breaching its continuing service assurance promises in less than a day, and reneging on its promise to engage in meaningful negotiations of service changes to the mutual benefit of UP **and** Hasa, clearly demonstrates UP's lack of understanding of Hasa's operations and complete disregard for Hasa as a long-term customer with a business model built around an established long-term daily service frequency. UP's unreasonable actions as related in this statement also evidences a complete and utter lack of care and interest for the critical mission that Hasa has performed for over 56 years to provide safe, clean and clear water to the millions of people in Southern California.

60. The parties have a fundamental dispute over service changes which negatively impact Hasa in a significant manner. UP management has not taken a reasonable review of our service requirements and the impact of its changes. It is not appropriate for UP to suddenly cease daily service, especially given its previous

commitment to continue to reasonably serve Hasa on a daily basis while collaboratively working through a process of review in order to produce a mutually satisfactory result.

61. UP's cessation of daily service, if realized, will force the periodic shutdown of Hasa's Saugus production facility during its peak business season. Hasa has no reasonable intra- or intermodal service alternatives to UP service. Hasa's ability to meet the critical water treatment product supply needs of its many public, non-profit, and community-based customers will also be foreclosed by UP's discontinuance of daily rail service. UP's service disruption actions, if allowed to be implemented, will immediately irreparably jeopardize Hasa's business, harm our customers, and produce serious after-effects.

62. As noted, Hasa is a critical and substantial part of the limited sodium hypochlorite production capacity and supply network in Southern California. There is no simple replacement for the company's position in this critical supply chain of providing safe, clean, and clear water to the region. The "domino effect" of UP's initiative to discontinue daily service will be widespread and substantial, although Hasa is unable to quantify with precision the total economic harm that will result. UP's service reduction initiative, if realized, will potentially result in unsafe water entering the community or being used for recreational and institutional swimming by the public.

63. In response to Hasa's concerns, UP voluntarily agreed to provide Hasa with a "special switch" on Tuesdays and Thursdays in order to temporarily maintain daily service, but only during a short, two-week interim period, expiring August 23, 2019. UP has further notified Hasa that its special switching service is voluntary, and following

August 23, 2019 such requests will be rejected as unnecessary. Even in the unlikely event UP reconsiders its decision to deny Hasa's special switch requests going forward, Hasa understands that UP would still require 36 hours' notice for each day a special switch is needed, and impose substantial fees of \$3,200 or more per request on top of the line haul rates already being paid for the service. The unreasonable notice requirement alone would likely render the possible provision of special switch service infeasible for Hasa in the future, as the remaining thrice-weekly service should mean that Hasa would be receiving another deliver in no more than 48 hours.

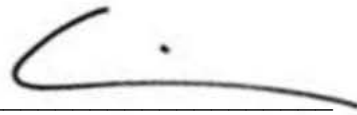
64. Additionally, UP has informed Hasa that its single-factor service model shows that Hasa requires only one-day-per-week service. It was only after Hasa put considerable pressure on UP, and with the assistance of the STB's Office of Consumer Assistance, that UP agreed to provide three-day-per-week service. However, UP has not provided Hasa with any assurances that even three-day-per-week service will be continued for any period of time. Because of UP's continued strict reliance on its single factor approach to service, Hasa believes that UP's three-day-a-week service will likely be short-lived, and Hasa faces the real and imminent threat of service being diminished to one-day-per week, without notice, as evidenced by UP's rigid implementation of its current service cessation plan. This continuing service threat raises heightened business uncertainty and places Hasa's ability to reliably plan and serve its customers in further jeopardy.

65. As the manufacturer and provider of a product that is vital for public health and safety, Hasa must be able to retain customer confidence in our ability to continue to

provide continuity of service. UP's cessation of daily service would cause Hasa to lose goodwill with present and future customers that need to be confident that Hasa will meet their water treatment product requirements on a reliable basis. Loss of Hasa's stellar brand recognition and reputation would have potentially lasting and irreparable detrimental effects on Hasa's business relationship with many of its customers and the larger community.

VERIFICATION

I, Christopher James Brink, verify that I have read the foregoing 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.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

Christopher James Brink
Chief Executive Officer
Hasa Inc.

Executed on August 20, 2019

EXHIBIT 1

Saugus Birdeye View

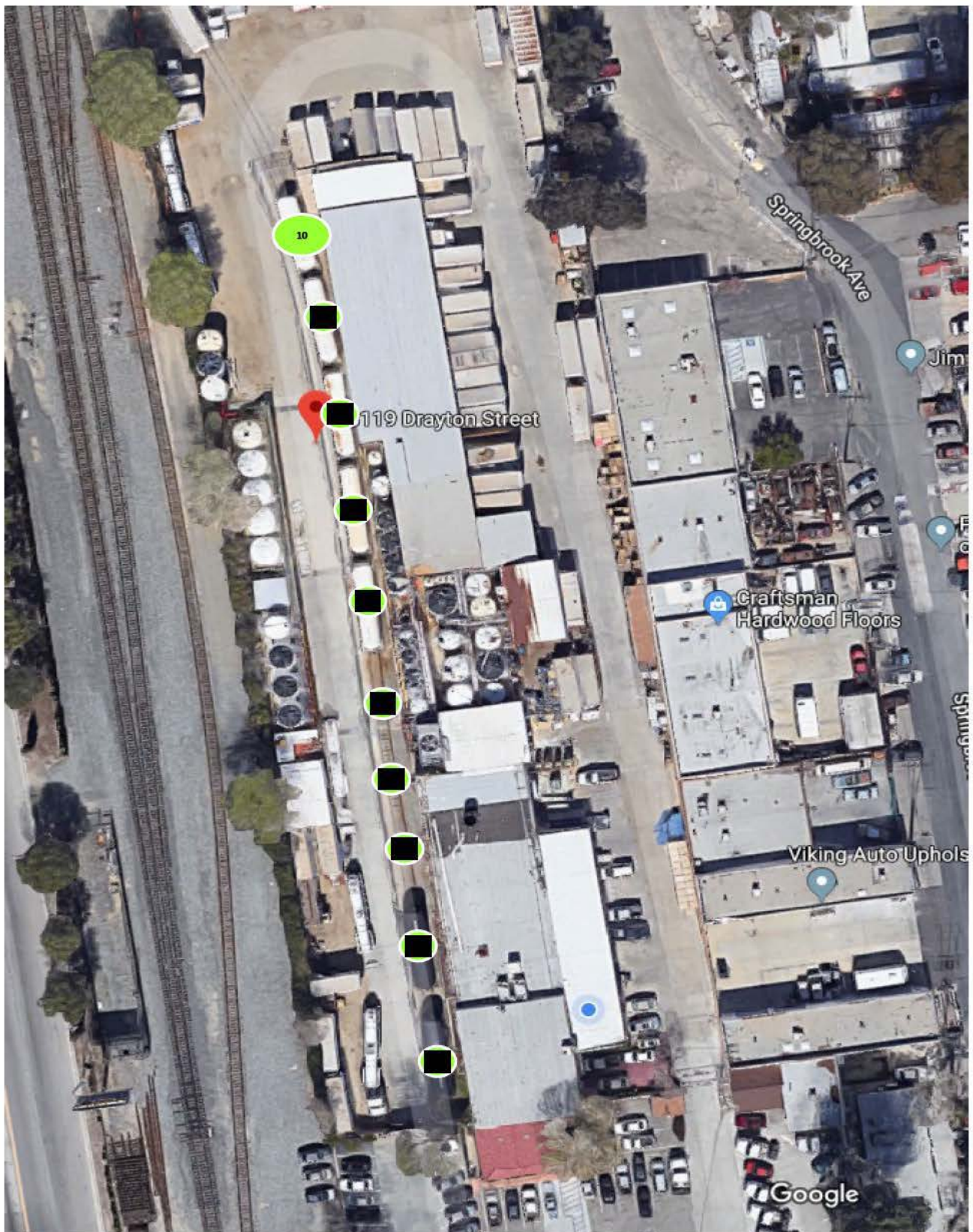


EXHIBIT 2



July 15, 2019

VIA EMAIL AND OVERNIGHT MAIL

Ms. Kari Kirchhoefer
Vice President – Industrial
Union Pacific Railroad Company
1400 Douglas Street, STOP 1480
Omaha, NE 68179

Mr. Kenny Rocker
Executive V.P. – Marketing and Sales
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Dear Ms. Kirchhoefer and Mr. Rocker:

We have recently become aware of possible operational changes being considered by Union Pacific Railroad Company (“UP”) to dramatically reduce the longstanding five-day-per-week service to Hasa, Inc. (“Hasa”) for shipments received at our Saugus, California production plant. Any such changes would be devastating to our business as well as the communities which rely upon our efficient delivery of critical products for safe water treatment. We respectfully request that UP refrain from taking actions that might reduce our service and provide us with immediate assurances that it will maintain its essential five-day-per-week service to Hasa without interruption.

Hasa is a leading producer and distributor of sodium hypochlorite and other products supplied to the water treatment and swimming pool industries for over 55 years. Our Saugus, California plant produces sodium hypochlorite, an essential and irreplaceable product used for the sanitation of safe, clean, and clear water for the 24 million people of Southern California. Hasa has been a reliable, constant receiver of UP rail service at Saugus for many years, with over 500 railcars received annually (primarily chlorine), and our business is growing.

The Saugus plant produces products that are made and consumed on a consistent manner, with predictable surges in the summer months. The plant requires rail service on a daily basis to meet our production and customer requirements. UP has reliably provided our required daily service for many years. Any reduction in service will cause considerable and likely irrecoverable business harm and damage to Hasa, as we have no alternative means of receiving our essential chlorine supply, and our entire production and distribution model relies on the receipt of railcars on a daily basis.

With UP's new "Unified Plan 2020" UP is moving to a model of improved service, focused on manifest service and daily spotting and pulling of cars on a timely manner. Hasa supports UP's initiative to provide more reliable and predictable service offerings, improved availability of crews and locomotives, and enhanced communications with customers in advance of any changes. Hasa's longstanding business requirements for daily manifest service on in consistent, rate-able manner fits extremely well with UP's precision scheduled railroading manifest model. There are no operational or system impediments to five-day-per-week service to our Saugus plant of which we are aware.

Again, Hasa's need for five-day-a-week service on a consistent, planned basis is essential, and meets UP's commitment under precision railroading to provide consistent, regular service to meet the needs of its customers. In addition, we understand that the chlorine cars shipped to Hasa may not be held on UP system for any reason under Federal Railroad Administration safety rules, and any UP reductions or restrictions on its daily service would run afoul of those rules.

Please confirm to us at your earliest convenience that UP will continue five-day-per-week service at Hasa, and provide us with any additional information on any operational changes UP is considering with respect to our service. We would also be pleased to meet with you to discuss these essential service issues further.

Thank you for your prompt attention to this matter.

Sincerely,



Chris Brink
Chief Executive Officer

cc: Rob Bzdil, Executive Vice President, Supply Chain & Industrial Sales, Hasa

EXHIBIT 3

From: Rob Bzdil <RobBzdil@hasapool.com>
Sent: Wednesday, July 17, 2019 11:41 AM
To: Jackson L. Bogatz <jlbogatz@up.com>
Subject: RE: Hasa's Letter to Union Pacific Regarding Deliveries

Jackson,

This will not work. We cannot make any changes right now especially this time of year. There is no way we can accommodate this kind of change so quickly. Taking the average cars per week does not work with the extreme seasonality of our business. It is very important that we schedule a call to make sure we are aligned as it seemed very clear from Kari's email this would be a process vs. a simple redirection.

I am tied up in a board meeting this week however, would be available early next week to discuss.

Thank you,

Rob Bzdil



From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Wednesday, July 17, 2019 7:38 AM
To: Rob Bzdil <RobBzdil@hasapool.com>
Subject: Re: Hasa's Letter to Union Pacific Regarding Deliveries

Rob,

Our operating team sent me an update on their re-evaluated plan which they hope to implement by July 29. The proposal is 3 days/week service which will occur on Monday, Wednesday and Friday. Year to date, this facility is averaging about 15 cars/week. Our operating team states that they will have no issue supporting this volume with the proposed schedule. I expect to get the formal schedule change request in the coming day or so.

Please let me know any questions/concerns.

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](#)



BUILDING AMERICA®



VISIT US: www.up.com/trackrecord

From: Rob Bzdil <RobBzdil@hasapool.com>
To: "Jackson L. Bogatz" <jlbogatz@up.com>
Date: 07/16/2019 12:18 PM
Subject: Re: Hasa's Letter to Union Pacific Regarding Deliveries

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

Thanks Jackson. I appreciate the follow up and maintains our current service level. I will look for further details from your Operating Team.

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

On Jul 16, 2019, at 10:08 AM, Jackson L. Bogatz <jlbogatz@up.com> wrote:

Rob,

As of now, we have cancelled the request for the change to 1 day/week service. Our operations team is re-evaluating and will bring to my attention when they have a re-arranged plan of action and I will work collaboratively with you and discuss once I have this.

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](#)

<mime-attachment.gif>

<mime-attachment.gif>

VISIT US: www.up.com/trackrecord

----- Forwarded by Jackson L. Bogatz/UPC on 07/16/2019 12:07 PM -----

From: Kari A. Kirchhoefer/UPC
To: Chris Brink <cbrink@hasapool.com>
Cc: Frankie Paice <frankiep@hasapool.com>, Rob Bzdil <RobBzdil@hasapool.com>, Jackson L. Bogatz/UPC@UP
Date: 07/16/2019 12:02 PM
Subject: Re: Hasa's Letter to Union Pacific Regarding Deliveries

Mr. Brink,

Thank you for your letter regarding your service schedule for your facility in Saugus, California. 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. Jackson Bogatz on my team handles your account and has been working directly with Rob Bzdil from your team. We understand that one day a week service will not work for you and believe we can find a solution that will work for both of us. Our Operating department is evaluating options and Jackson will reach out to Rob directly to discuss further.

Again, thank you for bringing this to my attention. While we are working with you on options we will continue to service your facility five days per week.

Sincerely,

Kari Kirchhoefer

Kari Kirchhoefer

Vice President | Industrial
Union Pacific Center | 1400 Douglas St. STOP 1210 | Omaha, NE 68179
Ph 402.544.3463
Email kakirchh@up.com | www.uprr.com

<mime-attachment.gif>

VISIT US: www.up.com/trackrecord FOLLOW US: [<mime-attachment.gif>](#) [<mime-attachment.gif>](#)

From: Frankie Paice <frankiep@hasapool.com>
To: "kakirchh@up.com" <kakirchh@up.com>, "krocker@up.com" <krocker@up.com>
Cc: Chris Brink <cbrink@hasapool.com>, Rob Bzdil <RobBzdil@hasapool.com>
Date: 07/15/2019 04:48 PM
Subject: Hasa's Letter to Union Pacific Regarding Deliveries

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

Good Afternoon,
Attached please find the letter from Chris Brink.
A letter will be FedExed to you as well.
Thank you,

Frankie Paice
Executive Assistant
Hasa Inc. Saugus CA 91350
661-259-5848 EXT. 5406

<mime-attachment.jpg>

[attachment "Hasa's Union Pacific Railroad Letter Dated July 15, 2019.pdf" deleted by Kari A. Kirchhoefer/UPC]

**

This email and any attachments may contain information that is confidential and/or privileged for the sole use of the intended recipient. Any use, review, disclosure, copying, distribution or reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please contact the sender immediately, delete the e-mail and destroy all copies.

**

EXHIBIT 4

From: Chris Brink

Sent: Sunday, July 28, 2019 10:03 AM

To: 'Jackson L. Bogatz' <jlbogatz@up.com>

Cc: Kari A. Kirchhoefer <KAKIRCHH@up.com>; Camillia S. Wright <CSWRIGHT@up.com>; Marty Russell <MRUSSELL@up.com>; Vinny Sharma <VinnySharma@hasapool.com>; Rob Bzdil <RobBzdil@hasapool.com>; Mike V. Matya <MVMATYA@UP.COM>; Douglas S. Craven <DSCRAVEN@up.com>

Subject: RE: UPRR Service Change URGENT response to Jack Bogatz

Jackson,

HASA is equally confident that a resolution can be met. But we are not confident that timeline UP has imposed is in any way acceptable.

We also do not have the resources that UP seemingly has to analyze our business needs, other than to have had an already successful multi-decade track record of supplying the critical infrastructure needs of the communities to which we are inextricably linked.

Surely, you appreciate clean safe drinking water in your own community. **Your business decision puts this at risk for the greater LA basin. The potential liability is incalculable.** The complexity of our relationships and the QA related to our products to maintain high quality standards requires time, work, and will require investment. As well, we need to account for a myriad of complex and interconnected commercial commitments to insure our obligations to supply continuity for these critical customers.

If you can appreciate this, we are willing to continue to discuss how to shift service, over time, to something that represents a win-win-win for UP, HASA, and our customers.

This won't happen overnight.

I'll add that your unnecessary and selfish urgency (which is clearly not motivated by anything other than profit margin), is inappropriate in the case of HASA, we are capitalists and respect efficient business operations as well as anybody but **UP is being irresponsible in this artificial time and service change demand.** I will add that **it puts our business and our communities in significant safety risk,** which will be at great cost to HASA to mitigate in short order, and rest on the head of UP if you decide to continue your current course and demands.

This has been made repeatedly clear to you now in the brief time during which we have begun a dialogue. HASA is an exception to what are probably your normal business dealings with other more basic types of manufacturers.

If you will revoke the 3 day a week service, we will engage you in additional meetings to get to a joint favorable resolution, in good faith, and in a manner that we can manage with limited resources and time during the busiest part of our season.

Alternatively we will have no option but to aggressively defend our customers and the communities which have imparted their trust in us over several decades, I would be surprised if this does not in legal action, we seek to avoid this.

We are exceptionally serious about this matter, and I hope I have conveyed enough information for you to reconsider your approach.

Please advise if you intend to revoke the 3 day service, and we will schedule meeting at times that are appropriate and sufficiently structured to get to a meaningful course of action.



Chris Brink
Chief Executive Officer

Hasa Inc.
Office (661) 259-5848 ext 5442
Office Direct (661) 259 5848
Mobile (909) 520-5735
cbrink@hasapool.com



From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Sunday, July 28, 2019 8:20 AM
To: Chris Brink <cbrink@hasapool.com>
Cc: Kari A. Kirchhoefer <KAKIRCHH@up.com>; Camillia S. Wright <CSWRIGHT@up.com>; Marty Russell <MRUSSELL@up.com>; Vinny Sharma <VinnySharma@hasapool.com>; Rob Bzdil <RobBzdil@hasapool.com>; Mike V. Matya <MVMATYA@UP.COM>; Douglas S. Craven <DSCRAVEN@up.com>
Subject: Re: UPRR Service Change URGENT response to Jack Bogatz

Chris,

UP is confident in our ability to support the volume to your facility based on the data we provided and were given from Hasa in my previous note. We would appreciate any data you can provide that would indicate what we are proposing would cause a shut down situation.

I am proposing a conference call to discuss further on Monday to help us better understand. We are available [at 10am](#) or [1pm CST](#). On the call from UP will be myself, Camillia Wright and our AVP Doug Craven.

Please let me know your availability to discuss on Monday and I will send a calendar invite.

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

On Jul 27, 2019, at 9:55 AM, Chris Brink <cbrink@hasapool.com> wrote:

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

Jackson,

Thank you for your response, the HASA team is not there yet with a suitable operational plan, and this virtually zero-notice change of service on the part of UP is not acceptable.

My understanding is that there was an agreement at the end of the meeting this week between HASA and UP, that a joint solution would continue to be evaluated and an appropriate amount of time would be allowed for any adjustment, should one occur.

HASA has a nearly 50 year track record of successfully serving our communities and customers in the high season, and are in a better position to judge the requirements than UP, who is at a distance from our day to day operations as well as the needs of our communities ad customers.

Because UP has not only inappropriately (and unprofessionally) notified HASA to the service change, but is seemingly refusing to work in good faith with HASA to forge a durable resolution which will allow us to continue to guarantee service, we will have no option but to notify customers next week.

This will have direct impact on our business as well as potentially affect the ability of numerous communities we serve to be able to provide safe drinking water to their communities. This is serious and beyond a matter of normal business operations. It is a matter of public health and safety.

The lack of sensitivity to this issue on the behalf of UP is staggering, given the simplicity of the explanation that has been provided to your management team as to why we require additional time to address any shift in supply continuity.

At the minimum, it would stand that you could give HASA an appropriate amount of time to properly adjust our operations to meet changing delivery schedules, if it can be done.

In the absence of a reasonable process forward to allow us to work jointly to a resolution, we have no option other than to seek alternative measures to compel UP to maintain service and protect our customers and the communities that UP serves through HASA.

If you would like to have an additional discussion, the HASA team is available this weekend to advance this issue.

Alternatively, you can simply adjust your extraordinary demand of service change made yesterday, de-escalate this immediately, and give the HASA team sufficient time to discuss this matter further, as well as better familiarize yourself and the UP team with the impending impact that this business decision will have upon the communities that UP has the privilege of serving.

We await your further response.

<image001.png>

Chris Brink
Chief Executive Officer

Hasa Inc.
Office (661) 259-5848 ext 5442
Office Direct (661) 259 5848
Mobile (909) 520-5735
cbrink@hasapool.com

<image002.png>

From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Saturday, July 27, 2019 7:30 AM
To: Chris Brink <cbrink@hasapool.com>
Cc: Kari A. Kirchhoefer <KAKIRCHH@up.com>; Camillia S. Wright <CSWRIGHT@up.com>; Marty Russell <MRUSSELL@up.com>; Vinny Sharma <VinnySharma@hasapool.com>; Rob Bzdil <RobBzdil@hasapool.com>; Mike V. Matya <MVMATYA@UP.COM>; Douglas S. Craven <DSCRAVEN@up.com>
Subject: Re: UPRR Service Change URGENT response to Jack Bogatz

Chris & Rob,

UP has been in communication with Hasa regarding our proposal to adjust the service plan to 3 days since July 17. UP has been proactive in a willingness to discuss our proposed plan since this date. UP is confident in our ability to fully support Hasa's traffic based on the data for inbound volume and outbound releases.

In regards to the comment of a potential shut down next week, we are comfortable that the revised plan is suitable to avoid a rail-caused shutdown.

As of [Saturday morning](#), there are 7 loaded cars at industry (6 chlorine, 1 HCL) as well as 3 empties that have been released to UP (2 caustic, 1 HCL). There are also another 5 cars in our serving yard ready to be delivered Monday (4 caustic, 1 chlorine) based on industry space available.

In addition, 1 chlorine, 2 caustic and 3 HCL cars are to arrive in the serving area on Monday in time to be delivered to your facility that day should they be needed depending on capacity made available from any releases. There are 5 more cars scheduled to arrive on Wednesday (2 chlorine, 2 HCL, 1 caustic) and another 4 on Friday (3 caustic, 1 HCL).

Based on data shared to UP by Hasa, the facility during this peak season is able to release as many as 4 cars per day. This includes 1 chlorine car per day and a combination of 1 or 2 caustic and HCL. We have seen 4 cars released to UP once during July, and only one weekend day where any cars were released. More consistently this month, there have been 2 or 3 empty releases per weekday and no releases over the weekend. The current release rate (Cars released each week/7 days) for the facility over the last 30 days is 1.6 cars per day.

Based on this data, there is enough chlorine at industry and on hand to support the facility with the revised schedule throughout next week. We also are confident that there is enough inbound and on hand HCL and Caustic to support the facility given the release data with our revised plan.

In the interim, should there be any critical needs situations, we can work with the local operations team to advise any availability for a special additional switch Tuesday or Thursday.

Please reach out with any questions.

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](#)

<image003.gif>

<image004.gif>

VISIT US: www.up.com/trackrecord

On Jul 26, 2019, at 7:06 PM, Chris Brink <cbrink@hasapool.com> wrote:

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

Kari,

We were under the understanding that we would continue to get 5 day a week service until we can review thoroughly with your team.

If we go to 3 day a week operation next week **we will be shut down and not be able to serve the greater LA basin, which will in turn result in a discontinuation of safe drinking water to numerous communities.** This was made patently clear in discussions this week.

We will be forced to declare force majeure as a result of this, and legal action will follow.

Please review with you team and advise how we are getting to this point without any reasonable recourse?

I am sorry to inform you of this at 5 PM (Pacific time) on a Friday, but that is what we are reacting to as a result of your team's abrupt action below.

Please review and advise. We wish to find a beneficial outcome here.

Respectfully,

<image006.png>

Chris Brink
Chief Executive Officer

Hasa Inc.
Office (661) 259-5848 ext 5442
Office Direct (661) 259 5848
Mobile (909) 520-5735
cbrink@hasapool.com

<image007.png>

From: Rob Bzdil <RobBzdil@hasapool.com>

Sent: Friday, July 26, 2019 4:57 PM

To: Jackson L. Bogatz <jlbogatz@up.com>; Vinny Sharma <VinnySharma@hasapool.com>; Chris Brink <cbrink@hasapool.com>; Kari A. Kirchhoefer <KAKIRCHH@up.com>

Cc: Camillia S. Wright <CSWRIGHT@up.com>; Marty Russell <MRUSSELL@up.com>

Subject: RE: UPRR Service Change

Importance: High

Jackson,

First, Hasa never received the “original 1 day/week service plan” proposal. Rather, Hasa’s production personnel said it was mentioned to them by the train engineer. Second and pursuant to our discussions yesterday, we cannot accommodate this change until we have time to appropriately consider a thoughtful solution that will accommodate both parties. There was absolutely no indication a change was imminent at any time in our two discussions yesterday.

For the UP to send this ultimatum so late in the day on a Friday for implementation on a following Monday is entirely unacceptable and puts our business at risk.

Hasa formally requests that the UP continues the same service level of 5 days a week that has been the standard and what we have built our business around for over 50 years.

Thank you,

Rob Bzdil
<image008.png>

From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Friday, July 26, 2019 4:09 PM
To: Rob Bzdil <RobBzdil@hasapool.com>; Vinny Sharma <VinnySharma@hasapool.com>
Cc: Camillia S. Wright <CSWRIGHT@up.com>; Marty Russell <MRUSSELL@up.com>
Subject: UPRR Service Change

Rob,

I am reaching out to follow up on our conversations regarding UP's revised service plan for the facility in Saugus. We appreciate the information provided from all at Hasa since the original 1 day/week service plan was proposed in early July. We took your questions and concerns into consideration, and created a revised plan for 3 days/week service which was shared with you on 7/17. UP is confident this plan will be able to support your inbound and outbound traffic throughout the year, including your peak volume season.

We have analyzed the situation with our Operating and Commercial leadership, and have decided that UP will be moving forward with the proposed Monday/Wednesday/Friday service schedule effective 7/29.

<image009.gif><image010.gif>

Please let me know if there are any questions.

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](#)
<image011.gif>

<image012.gif>

VISIT US: www.up.com/trackrecord

**

This email and any attachments may contain information that is confidential and/or privileged for the sole use of the intended recipient. Any use, review, disclosure, copying, distribution or reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please contact the sender immediately, delete the e-mail and destroy all copies.

**

**

This email and any attachments may contain information that is confidential and/or privileged for the sole use of the intended recipient. Any use, review, disclosure, copying, distribution or reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please contact the sender immediately, delete the e-mail and destroy all copies.

**

**

This email and any attachments may contain information that is confidential and/or privileged for the sole use of the intended recipient. Any use, review, disclosure, copying, distribution or reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please contact the sender immediately, delete the e-mail and destroy all copies.

**

EXHIBIT 5

SAUGUS									
PLACED AT INDUSTRY									
Union Pacific Arrival Times									
<u>DATE</u>	<u>TIME</u>								
8/13	9:48	AM							
8/12	2:38	PM							
8/9	2:35	PM							
8/8	1:15	PM							
8/7	11:38	AM							
8/6	2:14	PM							
8/5	11:20	AM							
8/2	11:48	AM							
8/1			No cars placed only pulled - (Scheduled for Today notice sent at 10:08am)						
7/31	6:09	PM							
7/30	5:34	PM							
7/29	2:17	PM							
7/26	9:26	AM							
7/25	9:30	AM							
7/24	9:23	AM							
7/23	9:17	AM							
7/22	1:16	PM							
7/19	11:34	AM							
7/18			No cars placed only pulled - (Scheduled for Today notice sent at 6:15am)						
7/17	9:38	AM							
7/16			No cars placed <u>OR</u> pulled						
7/15	9:50	AM							
7/12	9:30	AM							
7/11			No cars placed only pulled - (Scheduled for Today notice sent at 8:54am)						
7/10	9:45	AM							
7/9	9:43	AM							
7/8			No cars placed only pulled - (Scheduled for Today notice sent at 6:29am)						
7/5	10:25	AM							
7/4			Holiday						
7/3			No cars placed only pulled - (Scheduled for Today notice sent at 6:12am)						
			It indicated that 2 cars were to be delivered then at 8:09am another notice sent stating No Deliveries for 7/3 only pulls.						
7/2	9:01	AM							
7/1	9:24	AM							
6/28	10:33	AM							
6/27			No cars placed only pulled - (Scheduled for Today notice sent at 6:00am)						
6/26	9:09	AM							
6/25	9:56	AM							
6/24	11:04	AM							
6/21	11:48	AM							
6/20	9:03	AM							
6/19	10:30	AM							
6/18	9:50	AM							
6/17	9:40	AM							
6/14	10:27	AM							
6/13	10:19	AM							
6/12	10:19	AM							
6/11	9:17	AM							
6/10	9:55	AM							
6/7			No cars placed <u>OR</u> pulled						
6/6	9:43	AM							
6/5			No cars placed only pulled - (Scheduled for Today notice sent at 6:04am)						
6/4			No cars placed <u>OR</u> pulled						
6/3	10:30	AM							

EXHIBIT 6

Donna Leonhardt

From: Union Pacific Railroad <upcustomerNotificationsena4-p-id-41117928@up.com>
Sent: Thursday, August 08, 2019 6:54 AM
To: Donna Leonhardt
Subject: Event Notification: Local Train Service - Scheduled for Today



Train LOF42X is scheduled to provide local service to Hasa at Saugus, CA.

Please help us serve you safely and efficiently by removing any obstacles and hazards from the cars to be moved as well as the track prior to the train arriving.

Cars scheduled for delivery: CRDX180003 RCRX2182 NATX160222

Cars scheduled for pick up: None ?? **RELEASED 3 ON 8/7**

PLEASE NOTE:

- If you release cars after the local train serving you has left the terminal but before it arrives at your facility, the cars released will be added to our work plans for pick up today. **This does not apply to cars containing or last containing hazardous materials.**

Thank you for your business.

You are currently subscribed to receive notifications from Union Pacific. [Unsubscribe](#) from this notification or see our [Manage Notifications](#) page. Please do not reply to this e-mail.

From: [Donna Leonhardt](#)
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
Date: Tuesday, August 13, 2019 12:52:25 PM
Attachments: [image001.png](#)

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

HASA LOGO



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.

From: [Donna Leonhardt](#)
To: [Jackson L. Bogatz](#)
Cc: [Felix Sandoval](#); [Rob Bzdil](#); [Vinny Sharma](#); [Wendy A. Goodwin](#)
Subject: RE: Caustic at Serving Yard
Date: Tuesday, August 13, 2019 3:04:29 PM
Attachments: [image001.png](#)

Ok...but I did just release a car and a corrosive car was spun up (GATX-63242) to come in tomorrow. Because the crew brought in corrosive today instead of caustic....that hurt us....so now I don't have room to bring in any more than 1 caustic car. Please be sure that caustic is delivered tomorrow.

If you would change our profile and allow spot 11 to be used....I could bring in 2 caustics!

Thank you!

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

HASA LOGO



From: Jackson L. Bogatz <jlbogatz@up.com>
Sent: Tuesday, August 13, 2019 11:53 AM
To: Donna Leonhardt <donnaL@hasapool.com>
Cc: Felix Sandoval <felix@hasapool.com>; Rob Bzdil <RobBzdil@hasapool.com>; Vinny Sharma <VinnySharma@hasapool.com>; Wendy A. Goodwin <WGOODWIN@up.com>
Subject: Re: Caustic at Serving Yard

Donna-

I apologize for the crews bringing the HCL cars this morning. I show 1 HCL, 1 Caustic and 2 Chlorine cars brought in on Monday. As soon as on hand cars are released, we can deliver needed material at next switch.

I am having the process reviewed moving forward on how to best deliver needed cars. In regards to demurrage, we will provide credits for any unfilled capacity. The balance is showing below \$0 for the month.

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](#)



VISIT US: www.up.com/trackrecord

From: Donna Leonhardt <donnal@hasapool.com>
To: "Jackson L. Bogatz" <jlbogatz@up.com>, "Wendy A. Goodwin" <WGOODWIN@up.com>
Cc: Rob Bzdil <RobBzdil@hasapool.com>, Vinny Sharma <VinnySharma@hasapool.com>, Felix Sandoval <felix@hasapool.com>
Date: 08/13/2019 01:35 PM
Subject: Caustic at Serving Yard

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

Jackson,

Now I'm sitting with 6 caustic railcars in CP status at Gemco that could have been brought in between Monday and Tuesday and used up... then released to allow for the corrosive cars to come in on Wednesday! This is not right that I'm being charged \$250 per day per car for product that I requested that was not brought in! I see over \$2,500 in demurrage charges that we should not be charged for!

Donna Leonhardt

Purchasing Manager

HASA, Inc. - Saugus

DonnaL@hasapool.com

661-259-5848 ext. 5428

HASA LOGO



This email and any attachments may contain information that is confidential and/or privileged for the sole use of the intended recipient. Any use, review, disclosure, copying, distribution or

reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please contact the sender immediately, delete the e-mail and destroy all copies.

**