



Gabriel S. Meyer
Assistant General Attorney

December 26, 2006

Via Electronic Filing

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

218344

**Re: STB Finance Docket Number 34939—North American Freight
Car Association—Petition for Declaratory Order**

Dear Secretary Williams:

This letter responds to the North America Freight Car Association's ("NAFCA") December 21, 2006 supplement ("Filing") to its Petition for Declaratory Order ("Petition"), filed on October 11, 2006. For the reasons explained below, Union Pacific Railroad Company ("UP") requests that the Board strike NAFCA's Filing from the record.

Although NAFCA characterizes its Filing as a "letter" and a "supplement," it is, in fact, a reply to UP's Reply, filed on November 14, 2006 in this matter. NAFCA's Filing directly replies to and attempts at length to rebut UP's Reply arguments. Under Board regulations, "A reply to a reply is not permitted." 49 CFR § 1104.13(c). The Board adopted the rule prohibiting a reply to a reply to assure the orderly development of a record in a fair manner. NAFCA's Filing demonstrates the wisdom of this rule.

First, NAFCA's Filing seeks to enter new evidentiary materials into the record. It appears that all materials should have been available to NAFCA when it filed its Petition in October. If NAFCA deemed them relevant, it should have filed them with its Petition, thereby allowing UP to respond to them in its Reply to NAFCA's Petition.

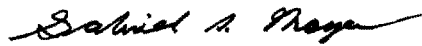
Second, by seeking "voluntary" production of documents and information from UP, NAFCA inappropriately attempts to circumvent Board procedures and elevate this matter to the level of an active declaratory order proceeding. Allowing unilateral discovery at this time would be both counterproductive and unfair. Until the Board has determined whether to institute a proceeding and

what questions the parties are to address, any discovery is premature and potentially irrelevant. One-sided discovery is inherently unfair and UP is in no position to determine what discovery it may wish to pursue since the scope of a potential proceeding is unknown.

Finally, the Board has not yet ruled on NAFCA's request to institute declaratory order proceedings. As UP explained at length in its Reply, there is no controversy at issue that warrants institution of such proceedings. UP has granted OT-5 authority for the railcars at issue in NAFCA's Filing and they continue to operate over UP lines. The OT-5 process does not circumscribe UP's authority to restrict an increase in their loading weight for safety and mechanical reasons.

For the above reasons, UP respectfully requests that the Board strike NAFCA's Filing from the record. If you have any questions, please do not hesitate to contact me.

Sincerely,

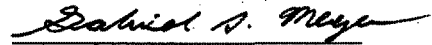
A handwritten signature in cursive script, appearing to read "Gabriel S. Meyer".

Gabriel S. Meyer

CERTIFICATE OF SERVICE

I, Gabriel S. Meyer, hereby certify that on this 26th day of December, 2006, I caused a copy of the foregoing letter to be served via electronic and prepaid first-class mail upon:

Andrew P. Goldstein
Attorney for North America Freight Car Association
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Gabriel S. Meyer