

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

240676

\_\_\_\_\_)  
NORTH AMERICA FREIGHT CAR )  
ASSOCIATION; AMERICAN FUEL & )  
PETROCHEMICALS MANUFACTURERS; )  
THE CHLORINE INSTITUTE; THE )  
FERTILIZER INSTITUTE; AMERICAN )  
CHEMISTRY COUNCIL; ETHANOL )  
PRODUCTS, LLC D/B/A POET ETHANOL )  
PRODUCTS; POET NUTRITION, INC.; and )  
CARGILL INCORPORATED, )  
 )  
Complainants, )  
 )  
v. )  
 )  
UNION PACIFIC RAILROAD COMPANY, )  
 )  
Defendant. )  
\_\_\_\_\_)

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**UNION PACIFIC RAILROAD COMPANY'S MOTION TO COMPEL DISCOVERY  
OF MEMBER INFORMATION FROM ASSOCIATION COMPLAINANTS**

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of commodities in private tank cars using zero-mileage rates rather than rates that provide for the payment of mileage allowances (Count II). However, the Association Complainants have refused to respond to discovery to the extent the requests require them to produce information from their member companies, on the grounds that their members are not formal parties to this case.

The Association Complainants' tactics are particularly unfair and prejudicial for three reasons. *First*, the Association Complainants are asking the Board to reexamine long-established, industry-wide precedent based on arguments that Union Pacific "is far differently situated" than other railroads, that "the railroad industry has changed considerably," and that the Board should "reevaluate" its precedents "in the context of . . .today's rail marketplace." Complainants' Reply to Motion to Dismiss at 9, 14.<sup>1</sup> The Board relied on those arguments in denying Union Pacific's motion to dismiss. *See* Decision served Dec. 21, 2015 at 3. However, most evidence about how Union Pacific is situated as compared with other railroads, and how today's rail marketplace functions with regard to movements to repair facilities and the use of mileage allowances, is in the possession of the Association Complainants' members—*i.e.*, the tank car owners and shippers that interact with Union Pacific and other railroads in the marketplace.

*Second*, the Association Complainants are stalking horses for their members. That is, while the Association Complainants have formally abandoned their claims for damages on behalf of their members, their members will separately file individual damages claims if the Association Complainants prevail here. The Association Complainants admitted as much in their Petition to

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<sup>1</sup> *See also id.* at 14 ("[T]he Board is free to reach a different conclusion under the different facts and circumstances that exist in today's rail transportation industry."); *id.* at 15 ("[A] proper consideration of Complainants' arguments in Count II can only proceed after discovery and presentation of evidence of applicable industry conditions.").

Expedite Procedure.<sup>2</sup> Union Pacific believes such claims could not prevail under any set of facts, given the Board’s precedent establishing the lawfulness of charges for empty repair moves and the use of zero-mileage rates. But it would be fundamentally unjust to allow members of the Association Complainants to challenge that established precedent, yet shield themselves from discovery of relevant information by acting through the veneer of their trade associations.

*Third*, the Association Complainants are pulling a bait-and-switch. As the Board noted, in their response to Union Pacific’s motion to make the Complaint more definite, “Complainants argue[d] that the *information and facts sought* in UP’s request ‘*are more appropriately elicited through discovery.*’” Decision served Dec. 21, 2015 at 5 (emphasis added). The Board accepted that argument, concluding that Union Pacific “seeks information more appropriately obtained in discovery.” *Id.* Now, however, the Association Complainants are relying on their objection to producing discovery from their members in refusing to produce the information they said could be obtained through discovery. The Board should not permit this shell game. Due process requires that Union Pacific have the opportunity to obtain discovery regarding claims the Association Complainants have brought before the Board.

If the Board declines to order the Association Complainants to produce information on behalf of their members, then the Board should authorize in the alternative service of third-party subpoenas directly on the members of the Association Complainants. Contingent on the outcome of this motion, Union Pacific is simultaneously petitioning the Board to issue subpoenas directed

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<sup>2</sup> See Complainants’ Petition to Expedite Procedure at 3-4 (Oct. 28, 2015) (“Further delays in addressing Count I while UP continues to assess these tariff charges could result in rail shippers inundating the Board with multiple legal actions seeking reparations for these new charges, whereas the Board has the opportunity to address this issue now in a single proceeding, thereby establishing precedent that would foster private commercial resolutions of future individual claims.”).

to four car companies that are members of NAFCA (or have corporate affiliates that are NAFCA members). We also reserve the right to petition for issuance of additional subpoenas.<sup>3</sup> However, while third-party subpoenas may be adequate discovery devices in some cases brought by trade associations, Union Pacific should not have to resort to that more time consuming, more burdensome method here, where the members are so plainly the true parties in interest.

In addition, the Association Complainants have hundreds of members, and we cannot practicably subpoena them all. Thus, if the Board does not order them to produce information on behalf of their members, then in addition to authorizing subpoenas, the Board should make clear that if the Association Complainants attempt to use information that they refused to produce in discovery as part of their evidentiary submissions, the Board will impose appropriate sanctions, including but not limited to striking the material from the record. *See, e.g., Potomac Elec. Power Co. v. CSX Transp., Inc.*, NOR 41989, slip op. at 8 (STB served Nov. 24, 1997) (“It is unfair gamesmanship and an abuse of the administrative process for a party to withhold information during discovery and then introduce that information . . .”).

## **II. BACKGROUND**

### **A. The Subject Matter of This Case**

Complainants are five trade associations that represent owners, lessors, and lessees of tank cars and shippers that use tank cars, as well as three individual shippers that use tank cars. They allege Union Pacific violated the Interstate Commerce Commission Termination Act by

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<sup>3</sup> As discussed in the Petition for Subpoenas, counsel for the Association Complainants have represented that three of the four companies together own the “clear majority” of the privately-owned rail tank cars operating in North America. However, the four companies all own tank cars and lease them to shippers, and Union Pacific might conclude, after reviewing the companies’ information, that we require discovery from shippers that own their own tank cars to address fully the matters placed at issue by the Complaint.

adopting charges for certain movements of empty tank cars to and from repair facilities in Tariff 6004-C, Item 55-C (Count I), and by providing transportation in tank cars using zero-mileage rates rather than rates that provide for payment of mileage allowances (Count II).

Almost all tank cars used in rail service are privately owned—that is, they are not owned by railroads. Many of the tank cars are owned by companies in the business of leasing rail cars to shippers, while others are owned directly by shippers. Over many decades, railroads, tank car owners, and shippers have often disagreed about railroads’ obligations to compensate those who furnish private tank cars used to provide transportation and railroads’ right to compensation for costs they incur in providing transportation. Counts I and II grow out of this long history of disagreements.

#### **1. Count I: Challenge to Item 55-C**

For nearly thirty years, railroads have been allowed to establish separate tariff charges for empty repair moves. Before 1987, railroads could obtain compensation for most empty tank car movements only through a collectively established process called “mileage equalization.”<sup>4</sup> In a case called *IHB II*, however, the Board’s predecessor, the Interstate Commerce Commission (“ICC”), reversed course, recognizing that requiring railroads to rely on mileage equalization as

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<sup>4</sup> Mileage equalization is a process that requires computing the total miles of loaded movements of a tank car owner’s fleet by car mark on the national rail network, and comparing them to the total miles of empty movement by that fleet for a calendar year. If the fleet has substantially more empty miles than loaded miles, the owner pays a fee for the “excess” empty miles, and the payments are pooled and distributed to railroads. Under the ICC-approved National Tank Car Allowance Agreement, car owners make mileage equalization payments in any year in which their cars’ empty miles exceed loaded miles by more than six percent. *See Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196, 204 (1986). The detailed mileage equalization rules are set forth in a tariff known as Freight Tariff RIC 6007-Series.

Only tank cars are subject to this complicated framework. For private cars other than tank cars, Union Pacific allows one free empty movement after a loaded movement, and then it imposes mileage-based charges on subsequent empty movements. *See* UP Tariff 6004-C, Item 50-F.

compensation for empty movements to and from repair facilities was contrary to the national rail transportation policy because it “prohibits individual pricing for distinct services. . . , encourages cross-subsidization . . . , and promotes inefficiency by giving private car owners little or no incentive to consider transportation costs in selecting repair facilities.” *Gen. Amer. Transp. Corp. v. Ind. Harbor Belt RR Co.*, 3 I.C.C.2d 599, 611 (1987), *aff’d sub nom. Gen. Am. Transp. Corp. v. ICC*, 872 F.2d 1048 (D.C. Cir. 1989).

In Count I, Complainants are challenging Union Pacific’s adoption of separate charges for certain empty repair moves in Item 55-C of Union Pacific’s Tariff 6004-C (“Item 55-C”), which applies to tank cars the same rules that have long applied to other types of private cars.

## **2. Count II: Challenge to Use of Zero-Mileage Rates**

Historically, railroads compensated shippers for furnishing tank cars by paying them a fixed amount per loaded mile, or a “mileage allowance.” Mileage allowances for tank cars are based on an industry-wide formula that was established in the National Tank Car Allowance Agreement and approved by the ICC. *See Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196, 204 (1986).

Since the early 2000s, however, Union Pacific and shippers furnishing tank cars have typically entered into negotiated arrangements involving zero-mileage rates—that is, transportation rates that do not provide for payment of a mileage allowance. The use of zero-mileage rates appears to be quite common: a study prepared for Complainant North America Freight Car Association found that railroads pay mileage allowances on only ten percent of tank car movements.<sup>5</sup>

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<sup>5</sup> *See* Thomas M. Corsi & Ken Casavant, *Economic and Environmental Benefits of Private Rail Cars in North America* at 21 (Jan. 2011).

Nonetheless, Complainants' belief that Union Pacific is required to pay mileage allowances appears to be the crux of Count II of the Complaint.

**B. The Discovery Disputes**

On April 20, 2015, Union Pacific moved to dismiss the Complaint on the grounds that its adoption of Item 55-C and use of zero-mileage rates were plainly lawful under Board precedent. *See* Union Pacific's Motion to Dismiss at 8-17. In the alternative, Union Pacific asked the Board to require Complainants to make the Complaint more definite to clarify their allegations and simplify discovery. *See id.* at 21-24.<sup>6</sup>

In their opposition to Union Pacific's motion for dismissal or clarification, Complainants argued that the case requires "development of facts *through discovery* and the presentation of evidence." Complainants' Reply to Union Pacific's Motion to Dismiss at 5 (emphasis added). With respect to Count I, Complainants argued, for example, that the Board's *IHB-II* precedent is "inapposite due to different facts and circumstances, including substantial changes that have occurred in the rail industry over the past 25 years." *Id.* at 7; *see also id.* at 8 (arguing that new regulations regarding "retrofitting" tank cars create "overarching factual and policy differences to distinguish *IHB-II* from this case"); *id.* ("[T]he problems of 'cross-subsidization' and 'averaging' that predominated in 1987 do not apply to UP—nor any other Class I Railroad—in 2015."); *id.* at 13-14 ("Twenty-eight years have passed since the ICC decided *IHB II*, during

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<sup>6</sup> Union Pacific also asked the Board to dismiss claims relating to transportation provided under contracts, which is not subject to regulation. *See id.* at 17-19. And Union Pacific asked the Board to dismiss the Association Complainants' claims for damages on behalf of their members. *See id.* at 19-21. The Association Complainants dropped any claims for damages on behalf of their members when they filed an Amended Complaint on June 2, 2015. As their October 28, 2015 Petition to Expedite Procedure makes clear, however, their members are not waiving their claims for damages. The Association Complainants' intent is to use this proceeding to make the case that the charge is unlawful so that individual members can then seek reparations from Union Pacific.

which the rail industry has experienced significant . . . changes that make it appropriate for the Board to reexamine past policies, including the central issue in *IHB II* of how to equitably allocate the burden of empty repair movements among rail carriers.”).

With respect to Count II, Complainants similarly argued against applying precedent and asserted that “a proper consideration of Complainants’ arguments in Count II can only proceed *after discovery* and presentation of evidence of applicable industry conditions.” *Id.* at 15 (emphasis added); *see also id.* (“The same industry changes in the last quarter century that call into question UP’s reliance on *IHB II* . . . also merit careful review of UP’s reliance upon [other precedent] for dismissal of Count II.”).

In denying the motion to dismiss, the Board agreed with Complainants that arguments about “whether UP is complying with [Board] precedent and whether that precedent is applicable here” are “fact-specific and, as such can only be sufficiently addressed after the development of a full record.” Decision served Dec. 21, 2015 at 3. The Board also suggested that it would consider arguments about “whether that precedent should stand given changes in the railroad industry, an issue that also has not been fully briefed.” *Id.* Finally, the Board declined to order Complainants to make the Complaint more definite, agreeing with Complainants that Union Pacific was seeking “*information more appropriately obtained in discovery.*” *Id.* at 5 (emphasis added).

In light of Complainants’ claims and the Board’s ruling on the motion to dismiss, Union Pacific has actively pursued reasonable discovery from the Association Complainants and their members. Union Pacific served a first set of discovery requests on April 30, 2015, and a second set of discovery requests on March 1, 2016.<sup>7</sup> In the requests, Union Pacific asked the Association

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<sup>7</sup> Union Pacific’s first set of discovery requests to the Association Complainants is attached as Exhibits 1-5. The Association Complainants’ responses and objections (“First Responses”) are (continued...)

Complainants to provide certain information regarding their members' activities relating to tank cars, and it asked them to produce certain documents in the possession, custody, or control of the Association Complainants *and their members* relating to the issues in this case. Union Pacific had previously reached a compromise with NAFCA to coordinate discovery on behalf of its members in a different proceeding, STB Docket NOR 42119. Unfortunately, the Association Complainants here uniformly refused to gather information or documents from their members.

Moreover, as summarized in Attachment A hereto, the Association Complainants' responses to the discovery requests made clear that the Association Complainants themselves have little or no relevant information and few, if any, relevant documents in their possession—rather, nearly all the responsive material is in the possession of their members.

The parties have engaged in a lengthy and robust meet-and-confer process in an attempt to resolve the current impasse without resort to the Board's assistance. They met in person on July 10, 2015, and on February 23, 2016, and held telephonic conferences during the week of February 8, 2016. Most recently, Union Pacific and the Association Complainants exchanged correspondence regarding stipulations that could potentially eliminate the need for much of the requested discovery, but they ultimately were unsuccessful in resolving this issue on their own.<sup>8</sup>

### **III. THE BOARD SHOULD GRANT THE MOTION TO COMPEL**

Parties are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a). “The requirement of relevance means that the information might be able to affect the outcome of a proceeding.”

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attached as Exhibits 6-10. Union Pacific's second set of discovery requests to the Association Complainants is attached as Exhibits 11-15. The Association Complainants' responses and objections (“Second Responses”) are attached as Exhibits 16-20.

<sup>8</sup> The parties' correspondence is attached as Exhibits 21-30.

*Waterloo Ry.—Adverse Aband.—Lines of Bangor & Aroostook R.R. in Aroostook Cnty., ME.*, AB 124 (Sub-No. 2), slip op. at 2 (STB served Nov. 14, 2003). Relevant information in the possession of one party but not the requesting party is discoverable, notwithstanding that it might also be obtained from a non-party. *See Ballard Terminal R.R.—Acquisition & Operation Exemption—Woodinville Subdivision*, FD 35731, slip op. at 4-5 (STB served Aug. 22, 2013). Moreover, a party responding to discovery cannot pick and choose the relevant information it will provide. A party seeking discovery is entitled to “all relevant and potentially admissible information . . . not only the information that the [responding party] believes is sufficient.” *Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, NOR 42110, slip op. 2 (STB served Feb. 17, 2009).

In proceedings such as this, where a complaint challenges the reasonableness of railroad practices, the scope of discovery is necessarily broad. As the Association Complainants have recognized, “reasonableness” is a concept that “depends on the facts and circumstances of the particular case presented to the Board,” and the Board has “broad discretion to conduct case-by-case, fact-specific inquiries to give meaning to those terms [*i.e.*, reasonable practice], which are not self-defining in the wide variety of factual circumstances encountered.” Complainants’ Reply to Motion to Dismiss at 6 (quoting *Arkansas Elec. Power Coop. Corp.—Petitioner for Declaratory Order*, FD 35305, slip op. at 5 (STB served Mar. 3, 2011)). Industry practice can play an important role in determining whether a challenged practice is reasonable. *See Railroad Salvage & Restoration, Inc.—Petition for Declaratory Order—Reasonableness of Demurrage Charges*, NOR 42102, slip op. at 13 (STB served July 20, 2010) (“Because Railroad Salvage has not presented a reasoned analysis or even addressed industry practice, it has not established that these [challenged] interest charges are unreasonable or that their assessment by [the defendant

railroad] constitutes an unreasonable practice.”)<sup>9</sup> The Board also considers whether a railroad’s actions are consistent with the railroad policies set out in 49 U.S.C. § 10101. *See, e.g., N. Am. Freight Car Ass’n v. STB*, 529 F.3d 1166, 1171-72 (D.C. Cir. 2008).

When considering a motion to compel, the Board takes into account the burden of production in relation to the likely value of the information sought. *See Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry.*, FD 35743, slip op. at 8 (STB served Sept. 23, 2014). Here, the Association Complainants defeated Union Pacific’s motion to dismiss by arguing that the Board should focus on fact issues and re-examine its policies in light of changed industry conditions since 1987. *See, e.g.,* Complainants’ Reply to Motion to Dismiss at 9 (“UP is far differently situated than the shortline railroads in *IHB II*.”); *id.* (“[T]he railroad industry has changed considerably since 1987.”); *id.* at 10 (“Without these same concerns the solution fashioned by the ICC to address them in *IHB II* has no application, and would fail to promote the policies originally envisioned by the Board’s ruling.”). Union Pacific’s discovery requests are directed at the factual issues and allegedly changed industry conditions cited by the Association Complainants. In many cases, Union Pacific’s requests seek from the Association Complainants’ members the same type of information that Complainants requested from Union Pacific. As for burden, the Association Complainants would doubtless face some burden in coordinating production of information from their members. But coordinating with

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<sup>9</sup> *See also Savannah Port Terminal R.R.—Petition for Declaratory Order—Certain Rates & Practices as Applied to Capital Cargo, Inc.*, FD 34920, slip op. at 9 (STB served May 30, 2008) (noting that the “tariffs pursuant to which the charges were assessed are typical demurrage tariffs that are common throughout the rail industry”); *Capitol Materials Inc.—Petition for Declaratory Order—Certain Rates & Practices of Norfolk S. Ry.*, NOR 42068, slip op. at 9 (STB served Apr. 12, 2004) (finding railroad’s frequency of service to shipper did not constitute an unreasonable practice because “[m]any railroads provide shippers of Capitol’s size with just one switch per weekday”).

members is part of what trade associations do. Moreover, the burden on each individual member would be low. For most members, rail transportation issues likely account for a small fraction of their business, so responsive information should be easy to locate and produce. As for members that are in the business of leasing tank cars, and thus are likely to have more responsive information, they presumably have the most to gain from this proceeding, so the burden on them would be appropriate.

The Board has previously held subpoenas are an appropriate device for obtaining discovery against members of an organization when they “are not parties to the proceeding in their individual capacities” but “have a clear interest in the proceeding and will obviously be affected by its outcome.” *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 5 (STB served June 25, 2012). In this case, however, given the extraordinarily large number of members at issue—several hundred members, based on Union Pacific’s review of membership lists on the Association Complainants’ web sites—the use of subpoenas to pursue discovery against the full range of members would not be practicable under any realistic procedural schedule. In these special circumstances, the Board should require the Association Complainants to respond to discovery on behalf of their members.

Union Pacific’s discovery requests fall into nine general categories. We discuss each category below.

**A. Tank Car Leases (Interrogatory Nos. 3-10; Document Request Nos. 14-16 and 33)**

Union Pacific’s discovery requests include several requests for information regarding tank car leases. Leases contain information relevant to both Counts in the Complaint.

***The Association Complainants' responses and objections.***

NAFCA, CI, TFI, and ACC did not object to Interrogatory Nos. 3-10 or Document Request Nos. 14-16 on relevance grounds or raise any other specific objection. Each of these four Association Complainants answered each interrogatory by stating that it has “no information responsive to this Interrogatory”<sup>10</sup> and each document request by stating that it has “no information responsive to this Request.”<sup>11</sup>

NAFCA, CI, TFI and ACC objected on relevance grounds to Document Request No. 33, which requested documents sufficient to show average lease rates for tank cars members leased to other persons, but each stated ultimately that it has “no documents within its possession or control that are responsive to this request.”<sup>12</sup>

AFPM objected to the interrogatories as irrelevant “because AFPM is no longer requesting reparations or damages on behalf of its members,” and it asserted similar relevance objections and burden objections to the document requests, but AFPM ultimately stated that it has no information or documents responsive to any of the requests.<sup>13</sup>

***The relevance objections have no merit.***

AFPM's relevance objections have no merit. Leases address, among other things, the division of responsibility between tank car owners and lessees for directing empty movements to repair facilities and paying for empty movements. Understanding this division of responsibility is

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<sup>10</sup> Ex. 6, NAFCA's First Responses at 9-11; Ex. 7, CI's First Responses at 7-10; Ex. 8, TFI's First Responses at 8-10; Ex. 9, ACC's First Responses at 7-10.

<sup>11</sup> Ex. 6, NAFCA's First Responses at 31; Ex. 7, CI's First Responses at 27; Ex. 8, TFI's First Responses at 28-29; Ex. 9, ACC's First Responses at 28-29.

<sup>12</sup> Ex. 16, NAFCA's Second Responses at 7-8; Ex. 17, CI's Second Responses at 6; Ex. 18, TFI's Second Responses at 7; Ex. 19, ACC's Second Responses at 7.

<sup>13</sup> Ex. 10, AFPM's First Responses at 9-12, 36-38; Ex. 20, AFPM's Second Responses at 7.

relevant to understanding the likely impact of Item 55-C's empty mileage charge in today's rail marketplace, including its impact on incentives to manage efficiently the nation's tank car fleet—an issue Complainants themselves raised in their reply to Union Pacific's motion to dismiss. *See* Complainants' Reply to Motion to Dismiss at 2 n.1.

Leases also address lessees' rights to negotiate zero-mileage rates and how the lease payments are affected by the absence of mileage allowance payments—which is relevant to Complainants' claim in Count II that Union Pacific deprives tank car providers of their alleged right to mileage allowance payments. In addition, discovery regarding lease terms, including changes in lease terms and lease rates over time, will provide relevant information regarding current conditions in the tank car market, and whether and how industry conditions have changed since 1987—issues Complainants themselves raised in replying to our motion to dismiss. *See id.* at 15-16.

Finally, the Association Complainants' relevance objections to producing information about lease rates also have no merit. Leases, and the documents requested in Document Request No. 33, will reveal the changing, market-based nature of lease rates. Evidence regarding the market-based nature of lease rates may help show why shippers willingly entered into zero-mileage rates with Union Pacific rather than insist on rates that reflect a formulaic mileage allowance payment that does not reflect actual market demand for tank cars.

***The burden objections have no merit.***

With regard to AFPM's burden objection, production of lease information should not be unduly burdensome for AFPM members. Many of AFPM's members are also members of one or more of the other Association Complainants, which did not raise burden objections. Nor is there any reason to believe AFPM's members that are not members of other Association Complainants

would face greater burdens than members of those other Association Complainants. Moreover, because rail transportation appears to be only a small part of the business of AFPM members, production of lease information should not impose an undue burden, especially given that its members chose to have AFPM institute this litigation against Union Pacific.

Union Pacific attempted to negotiate a sampling approach as a compromise. Under our proposed approach, Union Pacific would have identified 35 shippers representing the range of products shipped by members of the Association Complainants, and then three largest leasing companies that are members of NAFCA would produce all of the lease agreements between them and those shippers for the period from 2001 to the present.<sup>14</sup> Union Pacific's proposed sampling approach would have provided Union Pacific with a representative sample of lease terms, as well as information about changes in lease rates over time. However, the Association Complainants rejected Union Pacific's proposal.<sup>15</sup>

**B. Movements of Loaded and Empty Tank Cars, Including Empty Movements to Repair Facilities and Work Performed at Repair Facilities (Interrogatory Nos. 14-18)**

Union Pacific's discovery requests include several requests for information regarding movements of tank cars in general, movements of tank cars to repair facilities in particular, and

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<sup>14</sup> See Ex. 29 at 4.

<sup>15</sup> See Ex. 30 at 1. The Association Complainants had previously asserted that production of lease agreements by the three individual shipper complainants in this proceeding would be sufficient. See Ex. 28 at 4-5. However, Union Pacific should not have to rely on representations by Complainants that the leases of the only three shippers to participate directly in this proceeding are representative of the leases of the many other hundreds of shippers that use tank cars, especially as the three shippers generally ship ethanol and grain or oil seed products, while most tank car movement on Union Pacific involve shipments of chemical products. In addition, lease agreements from three shippers would provide little information about changes in lease rates over time on a market-wide basis—and no information at all about tank car types used to transport chemical products.

the work performed on the tank cars that were moved to repair facilities. The requests also seek similar information regarding tank car movements on railroads other than Union Pacific.

***The Association Complainants' responses and objections.***

NAFCA, CI, TFI, and ACC did not object to any of these requests on relevance grounds or raise any other specific objection. Each association answered each interrogatory by stating that it has “no information responsive to this Interrogatory.”<sup>16</sup>

AFPM objected to the interrogatories as irrelevant “because AFPM is no longer requesting reparations or damages on behalf of its members,” it also asserted that work performed at repair facilities is irrelevant, that transactions with other railroads are irrelevant, and that Interrogatory Nos. 17 and 18 are overbroad and burdensome because they request information going back to 1987, but AFPM ultimately stated that it has “no information responsive to” any of the requests.<sup>17</sup>

***The relevance objections have no merit.***

AFPM’s relevance objections have no merit. Information about movements of loaded and empty tank cars is highly relevant to this case. In their own discovery requests, Complainants asked Union Pacific

- to produce detailed records from 1987 to the present regarding every loaded and empty movement of every tank car on Union Pacific, including records identifying whether cars were being moved to or from repair facilities;<sup>18</sup>

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<sup>16</sup> Ex. 6, NAFCA’s First Responses at 13-14; Ex. 7, CI’s First Responses at 11-13; Ex. 8, TFI’s First Responses at 12-14; Ex. 9, ACC’s First Responses at 12-14.

<sup>17</sup> Ex. 10, AFPM First Responses at 14-17.

<sup>18</sup> Ex. 31, Complainants’ First Discovery Requests (“First Requests”), DRs 6 & 7.

- to identify “all tank car Repair Facilities served by UP or a Class III railroad that connects with UP”;<sup>19</sup>
- “[to] identify all movements of tank cars supplied by UP to its customers to and from the shop from 2010 to the present”;<sup>20</sup> and
- to produce information regarding the number of empty tank car shipments to and from repair facilities, and the number of empty tank car miles to and from repair facilities, in 1987 and in 2001 through 2015.<sup>21</sup>

Complainants made the work performed at repair facilities relevant when they opposed Union Pacific’s motion to dismiss on the grounds that Item 55-C is not covered by Board precedent because “[t]he activities upon which UP has imposed separate charges for empty tank car movements . . . range far beyond the ‘ordinary maintenance and repair’ activities at issue in *IHB II*.” Complainants’ Reply to Motion to Dismiss at 7. They also argued that Item 55-C is unreasonable because it applies to movements for “retrofits” and that “[t]he volume of empty tank car movements to repair shops to comply with” new rules regarding retrofits “was not foreseen by the industry or the ICC.” *Id.* at 8. Union Pacific has the right to discovery into the factual basis for arguments that the Board cited in denying our motion to dismiss. *See* Decision served Dec. 21, 2015 at 3. Information about the work performed at repair facilities is also relevant to the issue of Item 55-C’s impact on incentives to manage the nation’s tank car fleet efficiently. For example, such information may help shed light on whether car owners and

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<sup>19</sup> *Id.*, INT 2.

<sup>20</sup> *Id.*

<sup>21</sup> *See* Ex. 32, Complainants’ Second Discovery Requests (“Second Requests”), INT 15; *see also id.*, INTs 5, 7 & 8.

lessees are attempting efficiently to consolidate repair work to minimize empty movements or whether they are moving cars more than necessary, and over greater distances, simply because they regard such movements as being “free.” *See* Complainants’ Reply to Motion to Dismiss at 2 n.1.

Likewise, Complainants made information relating to movements on other railroads relevant. They argued in reply to Union Pacific’s motion to dismiss that the Board’s *IHB II* precedent does not apply because Union Pacific allegedly does not have disproportionately more empty moves to or from repair shops than other railroads as a result of changes in the railroad industry. *See* Complainants’ Reply to Motion to Dismiss at 9-10. While Union Pacific does not agree that *IHB II* applies only if railroads have a disproportionate share of empty shop moves, we are entitled to discovery of facts underlying arguments that the Complainants have made or may make. This is especially so because the Complainants convinced the Board to deny our motion to dismiss because discovery should take place and could affect the outcome of this proceeding. *See* Decision served Dec. 21, 2015 at 3 (denying motion to dismiss because the question of “whether [Board] precedent should stand given changes in the railroad industry” is “an issue that . . . has not been fully briefed”). In addition, as discussed above, industry practice can play an important role in determining whether a challenged practice is reasonable. *See, e.g., Railroad Salvage & Restoration*, slip op. at 13.

***The burden objections have no merit.***

AFPM’s burden and overbreadth objections are especially unwarranted, since AFPM joined its fellow Complainants in propounding similarly comprehensive data requests on Union Pacific. Moreover, AFPM has not suggested any way to reduce the alleged burdens—it simply objected out of hand to providing any information on behalf of its members.

In discussions with Union Pacific and in correspondence among the parties, the Association Complainants have asserted that the requested information is already in Union Pacific's possession.<sup>22</sup> But Union Pacific does not have information about the work performed on tank cars when they visit shops on its railroad, much less when tank cars move to shops on other railroads.<sup>23</sup> And Union Pacific had not collected data that show whether empty tank cars were moving to or from repair shops before adopting Item 55-C in 2015. The tank car owners and/or lessees using those cars—that is, the members of the Association Complainants—are obviously the most appropriate source for all of this relevant information.

**C. Empty Mileage Charges Paid or Received (Interrogatory Nos. 19-21; Document Request No. 23)**

Union Pacific's discovery requests include several requests for information regarding the amounts billed or paid to cover costs associated with empty miles under the mileage equalization provisions of Freight Tariff RIC 6007-Series or lease provisions addressing other charges for empty mileage.

*The Association Complainants' responses and objections.*

NAFCA, CI, TFI, and ACC did not object to any of these requests on relevance grounds or raise any other specific objection. Each association answered each interrogatory by stating that it has "no information responsive to this Interrogatory,"<sup>24</sup> and each answered Document Request No. 23 by stating that it has "no information responsive to this Request."<sup>25</sup>

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<sup>22</sup> See, e.g., Ex. 26 at 2-3.

<sup>23</sup> See Ex. 27 at 4.

<sup>24</sup> Ex. 6, NAFCA's First Responses at 15-16; Ex. 7, CI's First Responses at 13-14; Ex. 8, TFI's First Responses at 14-15; Ex. 9, ACC's First Responses at 14-15.

<sup>25</sup> Ex. 6, NAFCA's First Responses at 34; Ex. 7, CI's First Responses at 29; Ex. 8, TFI's First Responses at 31; Ex. 9, ACC's First Responses at 31.

AFPM asserted a combination of relevance and burden objections similar to those already described, but AFPM ultimately stated that it has “no information responsive to” any of the requests.<sup>26</sup>

***The relevance objections have no merit.***

AFPM’s relevance objections have no merit. Information regarding amounts billed and paid for empty mileage charges is highly relevant to this case. In their own discovery requests, Complainants asked Union Pacific for “all documents that Identify, calculate, refer or relate to the total amount of Mileage Equalization Payments UP has received from the transportation of tank cars, by year, for each year from 1987 to the present.”<sup>27</sup> In addition, it is likely that tank car leases address, among other things, the allocation of responsibility between tank car owners and tank car lessors for paying mileage equalization charges or similar charges. The allocation of responsibility for these empty mileage charges is relevant to analyzing the impact of Item 55-C’s empty mileage charge in today’s rail marketplace, and specifically Item 55-C’s impact on incentives to manage efficiently the nation’s tank car fleet—precisely an issue that Complainants asked the Board to explore. *See* Complainants’ Reply to Motion to Dismiss at 2 n.1; *see also id.* at 13-14 (asserting that rail industry changes “make it appropriate for the Board to reexamine past policies, including the central issue in *IHB II* of how to equitably allocate the burden of empty-repair movements”); Decision served Dec. 21, 2015 at 3 (denying Union Pacific’s motion to dismiss because the question of “whether [Board] precedent should stand given changes in the railroad industry” is “an issue that . . . has not been fully briefed”).

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<sup>26</sup> Ex. 10, AFPM’s First Responses at 17-18, 41-42.

<sup>27</sup> Ex. 31, Complainants’ First Requests, DR 3.

In correspondence with Union Pacific, the Association Complainants have belatedly asserted that Union Pacific has access to the information requested in Document Request No. 23 from its own files or from Railinc, a subsidiary of the Association of American Railroads. But only tank car owners and lessees would have all the documents regarding mileage equalization payments, which would include internal communications shedding light on the incentives (or lack of incentives) created by such payments. Even as to basic data regarding the amount of mileage equalization bills and payments, Union Pacific has no special right or obligation to obtain the information from Railinc, a non-party. Union Pacific is seeking the information from the appropriate parties—the litigants in this case. *Cf. Ballard Terminal R.R.*, slip op. at 4-5 (holding that relevant information in possession of one party but not the requesting party is discoverable, notwithstanding that the information might also be obtained from a non-party).

***The burden objections have no merit.***

As for AFPM's burden objections, Union Pacific's interrogatories simply seek the total amount billed each year by car reporting mark (for lessees) or by car reporting mark and lessee (for owners). If AFPM's members (or members of the other Association Complainants) have retained the information, production should not be burdensome. Union Pacific's document request, which seeks all documents relating to mileage equalization payments, is a focused request for a narrow category of documents. If members have retained such documents, production should not be burdensome.

**D. Information Relating to Union Pacific's Adoption of Item 55-C (Interrogatory Nos. 22 and 23; Document Request No. 17)**

Union Pacific's discovery requests include several requests focused specifically on Item 55-C, including requests for information about association members' communications regarding the adoption of Item 55-C and any changes in members' practices related to sending tank cars to

repair facilities resulting from the adoption of Item 55-C, as well as members' documents that refer or relate to Item 55-C.

***The Association Complainants' responses and objections.***

NAFCA, CI, TFI, and ACC did not object to any of these requests on relevance grounds or raise any other specific objection. NAFCA stated that it will produce responsive information "within its knowledge, possession or control" and responsive documents "within its possession, custody or control."<sup>28</sup> CI, TFI, and ACC each stated that it will produce information about responsive communications "within its knowledge, possession or control," and responsive documents within its "possession, custody or control,"<sup>29</sup> but each stated that it "has no information" regarding changes in members' practices (*i.e.*, Interrogatory No. 23).<sup>30</sup>

AFPM asserted a combination of relevance, overbreadth, and burden objections similar to those already described, but AFPM ultimately stated that it will produce information regarding responsive communications and documents "within its possession or control," and that it "has no responsive information" regarding changes in members' practices (*i.e.*, Interrogatory No. 23).<sup>31</sup>

***The relevance objections have no merit.***

AFPM's relevance objections once again have no merit. Information regarding Union Pacific's adoption of Item 55-C and changes in members' practices as a result of Item 55-C is highly relevant to this proceeding. Moreover, Union Pacific is entitled to information from the

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<sup>28</sup> Ex. 6, NAFCA First Responses at 16-17, 32.

<sup>29</sup> Ex. 7, CI's First Responses at 14-15, 27-28; Ex. 8, TFI's First Responses at 15-16, 29; Ex. 9, ACC's First Responses at 15-16, 29.

<sup>30</sup> Ex. 7, CI's First Responses at 15; Ex. 8, TFI's First Responses at 16; Ex. 9, ACC's First Responses at 16.

<sup>31</sup> Ex. 10, AFPM First Responses at 19-20, 38.

Association Complainants' members, not just any information in the Association Complainants' possession or control. In their own discovery requests, Complainants made multiple requests for similar information and, therefore, they ought to be estopped from now contending that such information is somehow irrelevant. They asked Union Pacific to produce "all documents that refer or relate to UP's decision to begin charging for empty tank car movements to/from Repair Facilities as set forth in Tariff 6004, Item 55."<sup>32</sup> They asked Union Pacific to identify "all persons who participated in" a variety matters relating to the adoption of Item 55-C.<sup>33</sup> They also requested additional information regarding Union Pacific's application of Item 55-C and the rates charged for movements covered by Item 55-C.<sup>34</sup>

Union Pacific's requests seek comparable information from the Association Complainants' members. The members' communications regarding Item 55-C, their documents regarding Item 55-C, and information about members' changes in practices of sending tank cars to repair facilities are relevant to issues *Complainants* have raised, including the impact of Item 55-C on "current incentives to effectively manage the nation's tank car fleet" and the "empty-repair movement burden in today's rail marketplace." Complainants' Reply to Motion to Dismiss at 2 n.1 & 14. Moreover, the Association Complainants will almost certainly make claims about the impact of Item 55-C on their members—indeed, they already have, *see id.* at 2, 6 & 8—and Union Pacific is entitled to discovery from those members so we are prepared to respond to those and other potential claims about the impact of Item 55-C.

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<sup>32</sup> Ex. 31, Complainants' First Requests, DR 10.

<sup>33</sup> *Id.*, INT 3; Ex. 32, Complainants' Second Requests, INTs 9 & 10.

<sup>34</sup> Ex. 32, Complainants' Second Requests, INTs 11 & 17.

***The burden objections have no merit.***

As for AFPM's burden and overbreadth objections, AFPM says the requests should be more "narrowly tailored" given "the number of AFPM members."<sup>35</sup> Union Pacific is willing to consider reasonable suggestions for narrowing the requests, but we do not believe the requests impose undue burdens on any individual AFPM member—indeed, AFPM does not make that claim. To the extent AFPM is complaining about the burdens of coordinating responses from multiple members, that is a consequence of the decision to pursue litigation through a trade association. It is not a reason to constrain Union Pacific's right to discovery in defending itself.

**E. Requests for Payment of Mileage Allowances or Reduced Line-Haul Rates (Interrogatory Nos. 24-27 and 34; Document Request Nos. 10-13)**

Union Pacific's discovery requests include several requests for information regarding requests by members of the Association Complainants to Union Pacific or other railroads to establish rates that include payment of a mileage allowance or to establish reduced rates to reflect the member's furnishing tank cars, as well as a request for information regarding the industry-wide prevalence of paying mileage allowances on tank cars.

***The Association Complainants' responses and objections.***

NAFCA, CI, TFI, and ACC did not object to any of these requests on relevance grounds, though NAFCA, TFI and ACC complained that the document requests lacked a date limitation. Each stated that it has "no information responsive" to the interrogatory regarding the prevalence of mileage allowance payments (*i.e.*, Interrogatory No. 34).<sup>36</sup> NAFCA and CI each stated that it

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<sup>35</sup> Ex. 10, AFPM's First Responses at 19.

<sup>36</sup> Ex. 6, NAFCA's First Responses at 34; Ex. 7, CI's First Responses at 21-22; Ex. 8, TFI's First Responses at 22-23; Ex. 9, ACC's First Responses at 22-23. As discussed below, the Association Complainants have subsequently (and incorrectly) argued that information regarding the practices of other railroads is irrelevant.

will produce other responsive information within its “knowledge, possession or control” and responsive documents “within its possession, custody or control.”<sup>37</sup> TFI and ACC each stated that it has “no information responsive” to Interrogatory Nos. 24-27 but will produce responsive documents “within its possession, custody or control.”<sup>38</sup>

APFM asserted relevance objections, but it ultimately stated that it has “no information responsive to” any of the interrogatories.<sup>39</sup> APFM did not say whether it has any documents responsive to the document requests or agree to search for responsive documents.<sup>40</sup>

***The relevance objections have no merit.***

APFM’s relevance objections have no merit. Information regarding requests to establish rates with mileage allowances or reduced rates to reflect the member’s furnishing tank cars, no less than information about the prevalence of mileage allowance payments, is highly relevant to Count II. Moreover, Union Pacific is entitled to information from the Association Complainants’ members, not just the information in the Association Complainants’ possession. In their own discovery requests, Complainants requested similar information from Union Pacific. They asked Union Pacific to “[i]dentify all tank car movements beginning in 2010 for which UP has established tariff rates, or proposed a contract rate, that offered a choice between a line-haul rate with full mileage allowance payments or zero mileage allowance.”<sup>41</sup> They asked Union Pacific to identify “all arrangements . . . for railroad transportation by You of commodities in tank cars in

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<sup>37</sup> Ex. 6, NAFCA’s First Responses at 17-18, 29-31; Ex. 7, CI’s First Responses at 15-17, 25-27; Ex. 8.

<sup>38</sup> Ex. 8, TFI’s First Responses at 16-17, 27-28; Ex. 9, ACC’s First Responses at 16-17, 27-28.

<sup>39</sup> Ex. 10, APFM First Responses at 20-22, 28.

<sup>40</sup> *Id.* at 34-36.

<sup>41</sup> Ex. 31, Complainants’ First Requests, INT 1.

which You compensated, or currently compensate, the tank car provider for the use of private tank cars through a Mileage Allowance Payment.”<sup>42</sup> They also requested “all documents relating to, discussing, referring to, mentioning or commenting on UP’s internal deliberations on whether to compensate shippers and/or private tank car owners for the use of their tank cars through Mileage Allowance Payments or through Zero-mileage rates.”<sup>43</sup> Complainants also requested “all documents that refer or relate to and/or quantify, discounts or reductions to line-haul rates that UP contends that it has provided to any shipper in exchange for an agreement to waive Mileage Allowance Payments on tank cars,” and “all documents that Identify, calculate, refer or relate to the level of rate reductions UP has offered shippers in lieu of compensating them by making Mileage Allowance payments on tank cars.”<sup>44</sup>

AFPM claimed the requested information is not relevant “because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.”<sup>45</sup> But Union Pacific’s requests go beyond damages issues. We seek information relating to whether the alleged conduct actually took place or violated duties under the Interstate Commerce Commission Termination Act. Complainants claim that Union Pacific unlawfully refuses to pay mileage allowances or negotiate reduced line-haul rates to compensate parties for car ownership costs. *See* Complaint ¶¶ 32-35. Union Pacific is entitled to information regarding any alleged refusals to pay. Union Pacific is also entitled to information regarding any alleged refusals to negotiate rates reflecting the provision of tank cars, given Complainants’ bold

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<sup>42</sup> Ex. 32, Complainants’ Second Requests, INT 13.

<sup>43</sup> Ex. 31, Complainants’ First Requests, DR 2.

<sup>44</sup> *Id.*, Complainants’ First Requests, DR 9 & 12.

<sup>45</sup> *See, e.g.*, Ex. 10, AFPM First Responses at 20-22.

allegation that Union Pacific is violating the law because it “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ tank cars.” Complaint ¶ 33.

AFPM also asserted that the requested information is not relevant because “the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition-precedent to the railroad’s duty to compensate.”<sup>46</sup> AFPM is wrong to claim railroads must pay mileage allowances even when allowances are not requested, but even if AFPM were correct, Union Pacific would be entitled to discovery into circumstances in which requests were made, in order to address Complainants’ allegations that center on Union Pacific’s alleged “refusal to compensate Association Complainants’ members” for use of tank cars they provide. Complaint ¶ 35; *see also* Decision served Dec. 21 at 3 (“The record shows that there is a significant underlying dispute regarding the rate and method of compensation for the use of privately owned or leased tank cars . . .”).

Finally, AFPM (in its objections) and the Association Complainants (belatedly, in correspondence) have asserted that information regarding the practices of other railroads is irrelevant. However, as discussed above, industry practice is potentially an important factor in determining whether a challenged practice is reasonable. Moreover, information about other railroads’ practices is central to understanding industry conditions, which will likely be an important issue in this case, given Complainants’ assertion that “a proper consideration of Complainants’ arguments in Count II can only proceed *after discovery* and presentation of evidence of *applicable industry conditions*.” Complainants’ Reply to Motion to Dismiss at 15

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<sup>46</sup> *See id.*

(emphasis added); *see also* Decision served Dec. 21, 2015 at 3 (citing Complainants' arguments about industry conditions in denying the motion to dismiss). Indeed, Complainants have already made assertions about the reasons for the "widespread use of 'zero-mileage rates' for tank cars in 2015," and Union Pacific is entitled to discovery regarding association member's dealings with other railroads in order to test such claims. Complainants' Reply to Motion to Dismiss at 16.

**F. Information Regarding Tank Car Ownership and Maintenance Costs  
(Interrogatory Nos. 30-33; Document Request Nos. 4, 5, 9 and 18-22)**

Union Pacific's discovery requests include several requests for information and documents regarding tank car ownership and maintenance costs. This should be expected in a case in which Complainants allege that Union Pacific is not appropriately compensating tank car owners by paying mileage allowances or offering reduced line haul rates and that "[t]he rate of compensation must be determined by the expense of owning and maintaining tank cars."

Complaint ¶ 14.

***The Association Complainants' responses and objections.***

CI, TFI, and ACC did not object to any of the interrogatories or to Document Request Nos. 18-22 on relevance grounds or raise any other specific objection, but each stated that it has "no information responsive" to those requests.<sup>47</sup> NAFCA did not object to Document Request Nos. 18-22 on relevance grounds or raise any other specific objection, but stated that it has "no information responsive" to those requests.<sup>48</sup>

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<sup>47</sup> Ex. 7, CI First Responses at 17-21, 28-29; Ex. 8, TFI First Responses at 18-22, 29-30; Ex. 9, ACC First Responses at 18-22, 29-30. As discussed below, all of the Association Complainants subsequently (and incorrectly) argued that information relating to tank car ownership and maintenance costs is irrelevant.

<sup>48</sup> Ex. 6, NAFCA First Responses at 32-33.

NAFCA and AFPM objected to the interrogatories as irrelevant because they are “no longer requesting reparations or damages on behalf of [their] members,” but each ultimately stated that it has “no information responsive” to the interrogatories.<sup>49</sup> AFPM objected on relevance grounds to the document requests, but it also stated that has “no information responsive” to those requests.<sup>50</sup>

With regard to Document Requests 4, 5 and 9, CI did not object to any of the requests and stated it will produce responsive documents within its “possession or control.”<sup>51</sup> NAFCA, TFI, ACC objected to the lack of a date limitation on the requests, but stated that they will produce responsive documents within their “possession, custody or control.”<sup>52</sup> AFPM objected to the requests but stated that it will produce responsive documents.<sup>53</sup>

***The relevance objections have no merit.***

Information regarding tank car ownership and maintenance costs is highly relevant to this proceeding, and Union Pacific is entitled to information from the Association Complainants’ members, not just information in the Association Complainants’ possession. In correspondence regarding this discovery, the Association Complainants have belatedly taken the position that tank car ownership and maintenance costs incurred by members of the Association Complainants

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<sup>49</sup> Ex. 6, NAFCA First Responses at 19-23; Ex. 10, AFPM First Responses at 23-27.

<sup>50</sup> Ex. 10, AFPM First Responses at 38-41.

<sup>51</sup> Ex. 7, CI First Responses at 23-25.

<sup>52</sup> Ex. 6, NAFCA First Responses at 27, 29; Ex. 8, TFI First Responses at 25-26; Ex. 9, ACC First Responses at 25-26.

<sup>53</sup> Ex. 10, AFPM First Responses at 31-34.

are irrelevant.<sup>54</sup> However, the Complaint and Complainants' reply to Union Pacific's motion to dismiss highlight the relevance of tank car ownership and maintenance costs to this proceeding.

Specifically, in Count I, the Complaint alleges that "UP Tariff 6004, Item 55-C imposes a new cost of car ownership upon private car owners" and further, that the imposition of that alleged "new cost" constitutes an "unreasonable practice." Complaint ¶¶ 28, 29. In Complainants' reply to Union Pacific's motion to dismiss, Complainants told the Board that "the evidence will show that the tariff charges and the timing of their adoption are significant in terms of additional revenues to UP and *costs to car owners and shippers*." Complainants' Reply to Motion to Dismiss at 2 (emphasis added). Complainants apparently intend to use cost evidence at least in part to distinguish Union Pacific's tariff charges from the charges the agency authorized in *IHB II*. They told the Board that "[t]he volume of empty tank car movements to repair shops to comply with the new rule [regarding retrofitting tank cars]—and its implications for the *cost of car ownership upon railroads, car owners, and shippers*—was not foreseen by the industry or ICC in 1987, and so could not have been factored into the *IHB II* decision." *Id.* at 8 (emphasis added). They also said they will show "there are overarching factual and policy differences to distinguish *IHB II* from this case." *Id.*

Issues involving tank car ownership and maintenance costs also pervade Count II, which centers on Union Pacific's alleged "refusal to compensate" the Association Complainants' members for use of their tank cars. Complaint ¶ 35. In support of Count II, Complainants allege that "the cost of owning and maintaining tank cars . . . has increased" over the past 30 years. *Id.* ¶ 17. Complainants' reply to Union Pacific's motion to dismiss recognizes that car ownership

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<sup>54</sup> See Ex. 23 at 2.

costs are a potentially critical issue, repeatedly asserting variations of allegations that Union Pacific does not offer “reduced line haul rates that properly compensate the provider of the car for *the costs of car ownership*” and that Union Pacific’s rates do not “permit the provider of the car to recoup some or all of its *tank car ownership costs*.” Complainants’ Reply to Motion to Dismiss at 2, 5 (emphasis added).

Additionally, the Association Complainants’ current position that Union Pacific is not entitled to discovery regarding car ownership costs directly conflicts with their representations to the Board. Specifically, in their reply to Union Pacific’s motion to dismiss, Complainants argued that the Board should not require them to make more definite allegations regarding the specific rates, routes, tank car types, car ownership costs, and car ownership conditions at issue in this case because “the details UP demands of the Complaint *can be elicited through the discovery process*.” *Id.* at 22 (emphasis added).

Complainants’ own discovery requests to Union Pacific also belie the Association Complainants’ current position that car ownership costs are not relevant in this proceeding. For example, they asked Union Pacific for:

- “all documents that discuss, refer to, or relate to any calculation by UP of the extent to which it has reimbursed its customers for the costs of owning and maintaining the tank cars they have supplied to UP”;<sup>55</sup>

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<sup>55</sup> Ex. 31, Complainants’ First Requests, DR 5.

- “all documents relating to, discussing, referring to, mentioning or commenting on costs associated with owning and maintaining railroad tank cars, whether the cars are owned by UP or by its customers or car owners”;<sup>56</sup> and
- “all documents . . . in which UP has quantified the costs of private car ownership.”<sup>57</sup>

In meetings and in correspondence with Union Pacific, the Association Complainants have argued that, under their legal theory of the case, the only relevant car ownership costs in this case are those determined by the mileage allowance formula adopted by the Interstate Commerce Commission in Ex Parte No. 328. However, Union Pacific’s right to discovery regarding relevant issues is not constrained by Complainants’ legal theories. Union Pacific is entitled to discovery to present evidence regarding its own factual arguments and legal theories, for example, arguments and theories about the significance to the rail industry of changes in actual car ownership costs as compared with the formula adopted in Ex Parte No. 328, and in particular, how those changes inform the reasonableness of zero-mileage rates. *Cf.* Decision served Dec. 21, 2015 at 3 (denying motion to dismiss because the question of “whether [Board] precedent should stand given changes in the railroad industry” is “an issue that . . . has not been fully briefed”). Indeed, as shown above, Complainants’ own discovery requests to Union Pacific are unconstrained by the Association Complainant’s current legal theory.

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<sup>56</sup> *Id.*, DR 8.

<sup>57</sup> *Id.*, DR 15.

**G. Documents Relating to Studies of Compensation for Tank Car Ownership Costs or Zero-Mileage Rates as Compared with Rate Terms Providing for Payment of Mileage Allowances (Document Request Nos. 6, 7, and 8)**

Union Pacific's discovery requests also include three requests for documents that relate to studies, analyses, or reports addressing the relationship between mileage allowance levels and tank car ownership costs, or relating to compensation paid by railroads for use of private cars (which would include compensation through mileage allowances or zero-mileage rates).

***The Association Complainants' responses and objections.***

CI did not object to the requests and stated that it will produce responsive documents within its "possession or control."<sup>58</sup> NAFCA, TFI, ACC objected to the alleged lack of a date limitation on the requests, but stated that they will produce responsive documents within their "possession, custody or control."<sup>59</sup> AFPM objected to the requests on the same grounds it cited in objecting to the production of cost information, but stated that it will produce responsive documents.<sup>60</sup>

***The relevance objections have no merit.***

AFPM's relevance objections to this cost-related information are off-base for the reasons discussed above in Section F. Documents that relate to *studies* addressing compensation for tank car ownership costs are highly relevant to this proceeding for the same reasons as more granular information relating to tank car ownership costs is relevant, and Union Pacific is entitled to documents relating to studies in the possession of Association Complainants' members, not just documents in the possession of the Association Complainants. Moreover, Complainants' claim

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<sup>58</sup> Ex. 7, CI First Responses at 24-25.

<sup>59</sup> Ex. 6, NAFCA First Responses at 28-29; Ex. 8, TFI First Responses at 25-26; Ex. 9, ACC First Responses at 25-26.

<sup>60</sup> Ex. 10, AFPM First Responses at 32-33.

in Count II is that Union Pacific fails to compensate members of the Association Complainants for their costs of providing tank cars through the payment of mileage allowances or reduced line-haul rates. *See* Complaint ¶¶ 32-35. If the members of the Association Complainants have documents or studies regarding a relationship between mileage allowance levels or zero-mileage rates and tank car ownership costs, or studies more generally addressing compensation paid by railroads for use of private cars, Union Pacific is entitled to discovery of those documents.

**H. Documents Relating to Reasons for Moving Tank Cars to Repair Facilities (Document Request Nos. 25-28 and 34-35)**

Union Pacific's discovery requests contain several requests for documents that relate to the reasons tank cars move to repair facilities and the selection of the particular repair facilities. The requests seek documents discussing the reasons for selecting repair facilities, negotiations and contracts with repair facilities, communications between lessors and lessees regarding the movement of tank cars to repair facilities, as well as documents discussing movements of tank cars from one repair facility to another and plans for retrofitting tank cars.

*The Association Complainants' responses and objections.*

NAFCA, TFI, ACC and AFPM objected to all the requests except Document Request No. 26 as irrelevant.<sup>61</sup> NAFCA, TFI, ACC and AFPM objected to Document Request No. 26 as overbroad and unduly burdensome.<sup>62</sup> ACC also raised burden objections in response to Document Request 25.<sup>63</sup> CI objected to all of the requests as irrelevant and unduly burdensome.<sup>64</sup>

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<sup>61</sup> Ex. 16, NAFCA Second Responses at 4-5, 8-9; Ex. 18, TFI Second Responses at 3-5, 7-8; Ex. 19, ACC Second Responses at 3-5, 7-8; Ex. 20, AFPM Second Responses at 3-5, 7-8.

<sup>62</sup> Ex. 16, NAFCA Second Responses at 4; Ex. 18, TFI Second Responses at 4; Ex. 19, ACC Second Responses at 4; Ex. 20, AFPM Second Responses at 4.

<sup>63</sup> Ex. 19, ACC Second Responses at 3-4.

<sup>64</sup> Ex. 17, CI Second Responses at 3-4. 6-7.

However, in all cases but one, each Association Complainants ultimately stated that it has “no documents within its possession or control that are responsive to this request.”<sup>65</sup> ACC simply rested on its objections to Document Request No. 25, which requested documents relating to plans or proposals for retrofitting tank cars.<sup>66</sup>

***The relevance objections have no merit.***

The Association Complainants’ relevance objections have no merit. These document requests go to issues at the core of Count I: they seek documents showing why tank cars move to certain repair facilities, which will provide information about industry conditions that led Union Pacific to adopt Item 55-C and the likely impact of Item 55-C in today’s rail marketplace—especially its impact on shippers’ incentives to manage the nation’s tank car fleet efficiently. These are precisely the issues the Board would consider if it were to accept Complainants’ argument that the Board should re-examine its policies permitting separate charges for empty repair moves in light of supposedly changed industry conditions since 1987. *See, e.g.*, Complainants’ Reply to Motion to Dismiss at 13 (“Twenty-eight years have passed since the ICC decided *IHB II*, during which the rail industry has experience significant . . . changes that make it appropriate for the Board to reexamine past policies, including the central issue in *IHB II* of how to equitably allocate the burden of empty repair movements among rail carriers.”).

The Association Complainants’ objections to Union Pacific’s requests for documents regarding plans for retrofitting tank cars is especially meritless. Complainants expressly argued that Item 55-C is unreasonable because it applies to movements for “retrofits” and that “[t]he

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<sup>65</sup> Ex. 16, NAFCA Second Responses at 4-5, 8-9; Ex. 17, CI Second Responses at 3-4, 6-7; Ex. 18, TFI Second Responses at 3-5, 7-8; Ex. 19, ACC Second Responses at 4-5, 7-8; Ex. 20, AFPM Second Responses at 3-5, 7-8.

<sup>66</sup> Ex. 19, ACC Second Responses at 3-4.

volume of empty tank car movements to repair shops to comply with” new rules regarding retrofits “was not foreseen by the industry or the ICC.” *Id.* at 8. Union Pacific is plainly entitled to explore evidence relating to car owners’ and shippers’ plans for retrofitting tank cars to evaluate Complainants’ claims that new regulations regarding retrofitting tank cars create “overarching factual and policy differences to distinguish *IHB-II* from this case.” *Id.*

***The burden objections have no merit.***

As for ACC’s claims that production of documents relating to retrofitting would be burdensome, that boilerplate objection is not entitled to any weight. TFI and CI made similar boilerplate objections, but ultimately stated that they have no responsive documents. If no other Association Complainant has *any* responsive documents, it is highly unlikely that production of documents would be unduly burdensome for ACC. Moreover, the request seeks a very narrow set of documents that ACC should readily be able to identify and produce. To the extent that ACC is objecting on behalf of its members, the same response applies: Union Pacific’s request involves a narrowly defined set of documents that have been placed squarely at issue by the Complainants.

**I. Documents Relating to Communications Between Lessors and Lessees Regarding Mileage Allowances (Document Request No. 29)**

Union Pacific’s discovery requests include a request for documents relating to communications between tank car lessors and lessees regarding mileage allowances.

***The Association Complainants' responses and objections.***

NAFCA, TFI, ACC and AFPM objected to this request as irrelevant.<sup>67</sup> CI objected to the request as irrelevant and unduly burdensome.<sup>68</sup> Each Association Complainants ultimately stated that it has “no documents within its possession or control that are responsive to this request.”<sup>69</sup>

***The relevance and burden objections have no merit.***

The Association Complainants' objections have no merit. Communications between tank car lessors and lessees regarding mileage allowances are highly relevant to Count II, which challenges Union Pacific's use of zero-mileage rates rather than rates that provide for payment of mileage allowances. *See* Complaint ¶¶ 32-35. Such communications may shed light on the reasons why shippers negotiate zero-mileage rates rather than rates that provide for the payment of mileage allowances, and thus whether Union Pacific's use of zero-mileage rates is reasonable. The Association Complainants' relevance objections and CI's additional burden objection are boilerplate objections that ignore the matters placed in issue by the very Complaint they authored.

**IV. CONCLUSION**

The Board should compel the Association Complainants to respond to Union Pacific's discovery requests on behalf of their members. Alternatively, the Board should authorize Union Pacific to subpoena the Association Complainants' members to obtain the information at issue. Finally, the Board should make clear that it will impose appropriate sanctions if the Association

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<sup>67</sup> Ex. 16, NAFCA Second Responses at 5-6; Ex. 18, TFI Second Responses at 5; Ex. 19, ACC Second Responses at 5; Ex. 20, AFPM Second Responses at 5.

<sup>68</sup> Ex. 17, CI Second Responses at 4-5.

<sup>69</sup> Ex. 16, NAFCA Second Responses at 5-6; Ex. 17, CI Second Responses at 4-5; Ex. 18, TFI Second Responses at 5; Ex. 19, ACC Second Responses at 5; Ex. 20, AFPM Second Responses at 5.

Complainants attempt to use information that they refused to produce in discovery as part of their evidentiary submissions.

Respectfully submitted,



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*Attorneys for Union Pacific Railroad Company*

May 17, 2016

## CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2016, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery, on all of the parties of record in NOR 42144, as shown below:

Thomas W. Wilcox, Esq.  
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(By First Class Mail)

I also caused a copy of the foregoing document to be served by hand on Administrative Law Judge John P. Dring, Federal Energy Regulatory Commission Office of Administrative Law Judges, 888 First Street, N.E., Washington DC 20426.



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Michael L. Rosenthal

# **ATTACHMENT A**

**SUMMARY OF DOCUMENTS OR INFORMATION IN POSSESSION OF  
ASSOCIATION COMPLAINANTS**

<b>Category</b>	<b>Requests</b>	<b>Association Responses</b>
Tank Car Leases	Interrogatory Nos. 3-10	No Responsive Information
	Document Request Nos. 14-16, 33	
Tank Car Movements and Work Performed at Repair Facilities	Interrogatory Nos. 14-18	No Responsive Information
Empty Mileage Charges Paid or Received	Interrogatory Nos. 19-21	No Responsive Information
	Document Request No. 23	
Information Relating to Union Pacific's Adoption of Item 55-C	Interrogatory No. 22	Will search association (not member) documents
	Interrogatory No. 23	No Responsive Information
	Document Request No. 17	Will search association (not member) documents
Requests for Payment of Mileage Allowances or Reduced Line-Haul Rates	Interrogatory Nos. 24-27	No Responsive Information (except NAFCA and CI will search association documents)
	Interrogatory No. 34	No Responsive Information
	Document Request Nos. 10-13	Will search association (not member) documents (except AFPM simply objected)
Tank Car Ownership and Maintenance Costs	Interrogatory Nos. 30-33	No Responsive Information
	Document Request Nos. 4, 5, 9	Will search association (not member) documents
	Document Request Nos. 18-22	No Responsive Information
Studies of Compensation for Tank Car Ownership Costs or Rate Comparisons	Document Request Nos. 6-8	Will search association (not member) documents
Reasons for Moving Tank Cars to Repair Facilities	Document Request Nos. 25-28, 34-35	No Responsive Information (except ACC simply objected to Request No. 25)
Communications Between Lessors and Lessees Regarding Mileage Allowances	Document Request No. 29	No Responsive Information

# **EXHIBIT 1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICAN FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; and CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

NOR 42144

**UNION PACIFIC’S FIRST SET OF DISCOVERY REQUESTS  
TO NORTH AMERICAN FREIGHT CAR ASSOCIATION**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that North American Freight Car Association (“NAFCA”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than May 15, 2015.

**DEFINITIONS**

- A. “Car Owner” means the Person to whom a tank car’s reporting mark is assigned.
- B. “Communication” means any transmission or receipt of information by one or more Persons and/or between two or more Persons by means including but not limited to telephone conversations, letters, teletypes, electronic mail, text messages, written memoranda, and in-person conversations.

- C. “Complaint” refers to the complaint filed in this matter on March 31, 2015.
- D. “Document” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.
- E. “Identify” when used with respect to a movements of a rail car means to state the waybill number, the date the movement began, the car number, the origin, the destination, the carriers in the route, any interchange points, and the total miles.
- F. “Identify” when used with respect to a communication means to state the method of communication (*e.g.*, in person, by telephone, by email), the persons participating in the communication and anyone receiving a copy of the communication, and the date of the communication and to state in general terms the content of the communication.
- G. “Identify” when used with respect to a lease agreement means to state the parties to the agreement, the date of the agreement and any amendments, the term of the agreement, the cars subject to the agreement, and the date the lessee took possession of the cars.
- H. “Item 55-C” means Item 55-C in UP Tariff 6004.
- I. “NAFCA Member” means any entity of any kind that is a member of NAFCA, including any subsidiary or affiliate of that entity.
- J. “Person” means a corporation, company, partnership, or natural person.
- K. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- L. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.

M. “You” and “Your” refer to NAFCA and any NAFCA Member, as well as NAFCA’s committees, subcommittees, and any of its employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on its behalf.

### **INSTRUCTIONS**

1. Unless a different time period is specified, these requests cover the period from January 1, 1987 to the time responsive information and documents are served on Union Pacific.

2. For each and every document request, You are required to produce any documents in the possession, custody, or control of NAFCA or a NAFCA Member and to state the source of the documents (i.e., state the name of the NAFCA Member that has possession, custody, or control of the documents).

3. If NAFCA or a NAFCA Member for any reason withholds documents or information responsive to any of these requests, You should state the specific factual and legal basis for doing so and produce documents or information for any part of the request or interrogatory that is not alleged to be objectionable or to call for production of protected information. If NAFCA or a NAFCA Member withholds documents on the basis of a claimed privilege or attorney work product, then for each such document, You should provide the following information: the document’s date, type (e.g., letter, memo, notes), author(s), addressee(s), other recipient(s), general subject matter, and the basis for withholding the document.

4. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

5. These requests are continuing in character so as to require You to supplement in accordance with 49 C.F.R. § 1114.29.

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current NAFCA Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Interrogatory No. 2**

Is NAFCA or any NAFCA Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Interrogatory No. 3**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 4.**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 5**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 6.**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 7**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 8**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 9**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 10**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 11**

Does NAFCA contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If NAFCA contends that the answer depends on the circumstances, state the circumstances that NAFCA contends are relevant.

**Interrogatory No. 12**

Does NAFCA contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If NAFCA contends that the answer depends on the circumstances, state the circumstances that NAFCA contends are relevant.

**Interrogatory No. 13**

Does NAFCA contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If NAFCA contends that the answer depends on the circumstances, state the circumstances that NAFCA contends are relevant.

**Interrogatory No. 14**

Separately for each NAFCA Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Interrogatory No. 15**

Separately for each NAFCA Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Interrogatory No. 16**

Separately for each NAFCA Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Interrogatory No. 17**

Separately for each NAFCA Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities

- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 18**

Separately for each NAFCA Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 19**

Separately for each NAFCA Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Interrogatory No. 20**

Separately for each NAFCA Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Interrogatory No. 21**

Separately for each NAFCA Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Interrogatory No. 22**

Separately for each NAFCA Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. NAFCA
- g. Other NAFCA members
- h. Other Complainants

**Interrogatory No. 23**

Separately for each NAFCA Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Interrogatory No. 24**

Separately for each NAFCA Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 25**

Separately for each NAFCA Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 26**

Separately for each NAFCA Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 27**

Separately for each NAFCA Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 28**

Separately for each NAFCA Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Interrogatory No. 30**

Separately for each NAFCA Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014

- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 31**

Separately for each NAFCA member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014

- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 32**

Separately for each NAFCA Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Interrogatory No. 33**

Separately for each NAFCA Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Interrogatory No. 34**

Separately for each NAFCA Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by NAFCA Members and explain the basis for that amount.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect a NAFCA Member's furnishing tank cars.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect a NAFCA Member's furnishing tank cars.

**Document Request No. 14**

Produce a copy of each lease under which a NAFCA Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 15**

Produce a copy of each lease under which a NAFCA Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

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*Attorneys for Union Pacific Railroad Company*

April 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of April, 2015, I caused a copy of the foregoing document to be served by e-mail or first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 2**



- C. “Complaint” refers to the complaint filed in this matter on March 31, 2015.
- D. “Document” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.
- E. “Identify” when used with respect to a movements of a rail car means to state the waybill number, the date the movement began, the car number, the origin, the destination, the carriers in the route, any interchange points, and the total miles.
- F. “Identify” when used with respect to a communication means to state the method of communication (*e.g.*, in person, by telephone, by email), the persons participating in the communication and anyone receiving a copy of the communication, and the date of the communication and to state in general terms the content of the communication.
- G. “Identify” when used with respect to a lease agreement means to state the parties to the agreement, the date of the agreement and any amendments, the term of the agreement, the cars subject to the agreement, and the date the lessee took possession of the cars.
- H. “Item 55-C” means Item 55-C in UP Tariff 6004.
- I. “CI Member” means any entity of any kind that is a member of CI, including any subsidiary or affiliate of that entity.
- J. “Person” means a corporation, company, partnership, or natural person.
- K. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- L. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.

M. “You” and “Your” refer to CI and any CI Member, as well as CI’s committees, subcommittees, and any of its employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on its behalf.

### **INSTRUCTIONS**

1. Unless a different time period is specified, these requests cover the period from January 1, 1987 to the time responsive information and documents are served on Union Pacific.

2. For each and every document request, You are required to produce any documents in the possession, custody, or control of CI or a CI Member and to state the source of the documents (i.e., state the name of the CI Member that has possession, custody, or control of the documents).

3. If CI or a CI Member for any reason withholds documents or information responsive to any of these requests, You should state the specific factual and legal basis for doing so and produce documents or information for any part of the request or interrogatory that is not alleged to be objectionable or to call for production of protected information. If CI or a CI Member withholds documents on the basis of a claimed privilege or attorney work product, then for each such document, You should provide the following information: the document’s date, type (e.g., letter, memo, notes), author(s), addressee(s), other recipient(s), general subject matter, and the basis for withholding the document.

4. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

5. These requests are continuing in character so as to require You to supplement in accordance with 49 C.F.R. § 1114.29.

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current CI Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Interrogatory No. 2**

Is CI or any CI Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Interrogatory No. 3**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 4.**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 5**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 6.**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 7**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 8**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 9**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 10**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved

by the lessee's cars that are subject to the lease by more than a specified amount or percentage?  
If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 11**

Does CI contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If CI contends that the answer depends on the circumstances, state the circumstances that CI contends are relevant.

**Interrogatory No. 12**

Does CI contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If CI contends that the answer depends on the circumstances, state the circumstances that CI contends are relevant.

**Interrogatory No. 13**

Does CI contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If CI contends that the answer depends on the circumstances, state the circumstances that CI contends are relevant.

**Interrogatory No. 14**

Separately for each CI Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Interrogatory No. 15**

Separately for each CI Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count

I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Interrogatory No. 16**

Separately for each CI Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Interrogatory No. 17**

Separately for each CI Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 18**

Separately for each CI Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific

- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 19**

Separately for each CI Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Interrogatory No. 20**

Separately for each CI Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Interrogatory No. 21**

Separately for each CI Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Interrogatory No. 22**

Separately for each CI Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. CI
- g. Other CI members
- h. Other Complainants

**Interrogatory No. 23**

Separately for each CI Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Interrogatory No. 24**

Separately for each CI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 25**

Separately for each CI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 26**

Separately for each CI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 27**

Separately for each CI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 28**

Separately for each CI Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Interrogatory No. 30**

Separately for each CI Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number

- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 31**

Separately for each CI Member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 32**

Separately for each CI Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Interrogatory No. 33**

Separately for each CI Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Interrogatory No. 34**

Separately for each CI Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by CI Members and explain the basis for that amount.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

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Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

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Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

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Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect a CI Member's furnishing tank cars.

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Produce a copy of each lease under which a CI Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

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With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

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**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

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*Attorneys for Union Pacific Railroad Company*

April 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of April, 2015, I caused a copy of the foregoing document to be served by e-mail or first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 3**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICAN FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

**UNION PACIFIC’S FIRST SET OF DISCOVERY REQUESTS  
TO THE FERTILIZER INSTITUTE**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that The Fertilizer Institute (“TFI”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than May 15, 2015.

**DEFINITIONS**

- A. “Car Owner” means the Person to whom a tank car’s reporting mark is assigned.
- B. “Communication” means any transmission or receipt of information by one or more Persons and/or between two or more Persons by means including but not limited to telephone conversations, letters, teletypes, electronic mail, text messages, written memoranda, and in-person conversations.

- C. “Complaint” refers to the complaint filed in this matter on March 31, 2015.
- D. “Document” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.
- E. “Identify” when used with respect to a movements of a rail car means to state the waybill number, the date the movement began, the car number, the origin, the destination, the carriers in the route, any interchange points, and the total miles.
- F. “Identify” when used with respect to a communication means to state the method of communication (*e.g.*, in person, by telephone, by email), the persons participating in the communication and anyone receiving a copy of the communication, and the date of the communication and to state in general terms the content of the communication.
- G. “Identify” when used with respect to a lease agreement means to state the parties to the agreement, the date of the agreement and any amendments, the term of the agreement, the cars subject to the agreement, and the date the lessee took possession of the cars.
- H. “Item 55-C” means Item 55-C in UP Tariff 6004.
- I. “TFI Member” means any entity of any kind that is a member of TFI, including any subsidiary or affiliate of that entity.
- J. “Person” means a corporation, company, partnership, or natural person.
- K. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- L. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.

M. “You” and “Your” refer to TFI and any TFI Member, as well as TFI’s committees, subcommittees, and any of its employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on its behalf.

### **INSTRUCTIONS**

1. Unless a different time period is specified, these requests cover the period from January 1, 1987 to the time responsive information and documents are served on Union Pacific.

2. For each and every document request, You are required to produce any documents in the possession, custody, or control of TFI or a TFI Member and to state the source of the documents (i.e., state the name of the TFI Member that has possession, custody, or control of the documents).

3. If TFI or a TFI Member for any reason withholds documents or information responsive to any of these requests, You should state the specific factual and legal basis for doing so and produce documents or information for any part of the request or interrogatory that is not alleged to be objectionable or to call for production of protected information. If TFI or a TFI Member withholds documents on the basis of a claimed privilege or attorney work product, then for each such document, You should provide the following information: the document’s date, type (e.g., letter, memo, notes), author(s), addressee(s), other recipient(s), general subject matter, and the basis for withholding the document.

4. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

5. These requests are continuing in character so as to require You to supplement in accordance with 49 C.F.R. § 1114.29.

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current TFI Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Interrogatory No. 2**

Is TFI or any TFI Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Interrogatory No. 3**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 4.**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 5**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 6.**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 7**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 8**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 9**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 10**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved

by the lessee's cars that are subject to the lease by more than a specified amount or percentage?  
If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 11**

Does TFI contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If TFI contends that the answer depends on the circumstances, state the circumstances that TFI contends are relevant.

**Interrogatory No. 12**

Does TFI contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If TFI contends that the answer depends on the circumstances, state the circumstances that TFI contends are relevant.

**Interrogatory No. 13**

Does TFI contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If TFI contends that the answer depends on the circumstances, state the circumstances that TFI contends are relevant.

**Interrogatory No. 14**

Separately for each TFI Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Interrogatory No. 15**

Separately for each TFI Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under

Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Interrogatory No. 16**

Separately for each TFI Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Interrogatory No. 17**

Separately for each TFI Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 18**

Separately for each TFI Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific

- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 19**

Separately for each TFI Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Interrogatory No. 20**

Separately for each TFI Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Interrogatory No. 21**

Separately for each TFI Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Interrogatory No. 22**

Separately for each TFI Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. TFI
- g. Other TFI members
- h. Other Complainants

**Interrogatory No. 23**

Separately for each TFI Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Interrogatory No. 24**

Separately for each TFI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 25**

Separately for each TFI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 26**

Separately for each TFI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 27**

Separately for each TFI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 28**

Separately for each TFI Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Interrogatory No. 30**

Separately for each TFI Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number

- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 31**

Separately for each TFI Member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 32**

Separately for each TFI Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Interrogatory No. 33**

Separately for each TFI Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Interrogatory No. 34**

Separately for each TFI Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by TFI Members and explain the basis for that amount.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect a TFI Member's furnishing tank cars.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect a TFI Member's furnishing tank cars.

**Document Request No. 14**

Produce a copy of each lease under which a TFI Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 15**

Produce a copy of each lease under which a TFI Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

GAYLA L. THAL  
LOUISE A. RINN  
DANIELLE E. BODE  
JEREMY M. BERMAN  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

/s/Michael L. Rosenthal  
MICHAEL L. ROSENTHAL  
CAROLYN F. CORWIN  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, D.C. 20001  
(202) 662-6000

*Attorneys for Union Pacific Railroad Company*

April 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of April, 2015, I caused a copy of the foregoing document to be served by e-mail or first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 4**



- C. “Complaint” refers to the complaint filed in this matter on March 31, 2015.
- D. “Document” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.
- E. “Identify” when used with respect to a movements of a rail car means to state the waybill number, the date the movement began, the car number, the origin, the destination, the carriers in the route, any interchange points, and the total miles.
- F. “Identify” when used with respect to a communication means to state the method of communication (*e.g.*, in person, by telephone, by email), the persons participating in the communication and anyone receiving a copy of the communication, and the date of the communication and to state in general terms the content of the communication.
- G. “Identify” when used with respect to a lease agreement means to state the parties to the agreement, the date of the agreement and any amendments, the term of the agreement, the cars subject to the agreement, and the date the lessee took possession of the cars.
- H. “Item 55-C” means Item 55-C in UP Tariff 6004.
- I. “ACC Member” means any entity of any kind that is a member of ACC, including any subsidiary or affiliate of that entity.
- J. “Person” means a corporation, company, partnership, or natural person.
- K. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- L. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.

M. “You” and “Your” refer to ACC and any ACC Member, as well as ACC’s committees, subcommittees, and any of its employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on its behalf.

### **INSTRUCTIONS**

1. Unless a different time period is specified, these requests cover the period from January 1, 1987 to the time responsive information and documents are served on Union Pacific.

2. For each and every document request, You are required to produce any documents in the possession, custody, or control of ACC or an ACC Member and to state the source of the documents (i.e., state the name of the ACC Member that has possession, custody, or control of the documents).

3. If ACC or an ACC Member for any reason withholds documents or information responsive to any of these requests, You should state the specific factual and legal basis for doing so and produce documents or information for any part of the request or interrogatory that is not alleged to be objectionable or to call for production of protected information. If ACC or an ACC Member withholds documents on the basis of a claimed privilege or attorney work product, then for each such document, You should provide the following information: the document’s date, type (e.g., letter, memo, notes), author(s), addressee(s), other recipient(s), general subject matter, and the basis for withholding the document.

4. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

5. These requests are continuing in character so as to require You to supplement in accordance with 49 C.F.R. § 1114.29.

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current ACC Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Interrogatory No. 2**

Is ACC or any ACC Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Interrogatory No. 3**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 4.**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 5**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 6.**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 7**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 8**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 9**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 10**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved

by the lessee's cars that are subject to the lease by more than a specified amount or percentage?  
If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 11**

Does ACC contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Interrogatory No. 12**

Does ACC contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Interrogatory No. 13**

Does ACC contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Interrogatory No. 14**

Separately for each ACC Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Interrogatory No. 15**

Separately for each ACC Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under

Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Interrogatory No. 16**

Separately for each ACC Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Interrogatory No. 17**

Separately for each ACC Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 18**

Separately for each ACC Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific

- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 19**

Separately for each ACC Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Interrogatory No. 20**

Separately for each ACC Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Interrogatory No. 21**

Separately for each ACC Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Interrogatory No. 22**

Separately for each ACC Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. ACC
- g. Other ACC members
- h. Other Complainants

**Interrogatory No. 23**

Separately for each ACC Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Interrogatory No. 24**

Separately for each ACC Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 25**

Separately for each ACC Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 26**

Separately for each ACC Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 27**

Separately for each ACC Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 28**

Separately for each ACC Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Interrogatory No. 30**

Separately for each ACC Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number

- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 31**

Separately for each ACC member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 32**

Separately for each ACC Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Interrogatory No. 33**

Separately for each ACC Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Interrogatory No. 34**

Separately for each ACC Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by ACC Members and explain the basis for that amount.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an ACC Member's furnishing tank cars.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an ACC Member's furnishing tank cars.

**Document Request No. 14**

Produce a copy of each lease under which an ACC Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 15**

Produce a copy of each lease under which an ACC Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

GAYLA L. THAL  
LOUISE A. RINN  
DANIELLE E. BODE  
JEREMY M. BERMAN  
Union Pacific Railroad Company  
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Omaha, Nebraska 68179  
(402) 544-3309

/s/Michael L. Rosenthal  
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850 Tenth Street, NW  
Washington, D.C. 20001  
(202) 662-6000

*Attorneys for Union Pacific Railroad Company*

April 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of April, 2015, I caused a copy of the foregoing document to be served by e-mail or first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 5**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICAN FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; and CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

NOR 42144

**UNION PACIFIC’S FIRST SET OF DISCOVERY REQUESTS  
TO AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that American Fuel & Petrochemicals Manufacturers (“AFPM”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than May 15, 2015.

**DEFINITIONS**

- A. “Car Owner” means the Person to whom a tank car’s reporting mark is assigned.
- B. “Communication” means any transmission or receipt of information by one or more Persons and/or between two or more Persons by means including but not limited to

telephone conversations, letters, telecopies, electronic mail, text messages, written memoranda, and in-person conversations.

C. “Complaint” refers to the complaint filed in this matter on March 31, 2015.

D. “Document” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.

E. “Identify” when used with respect to a movements of a rail car means to state the waybill number, the date the movement began, the car number, the origin, the destination, the carriers in the route, any interchange points, and the total miles.

F. “Identify” when used with respect to a communication means to state the method of communication (*e.g.*, in person, by telephone, by email), the persons participating in the communication and anyone receiving a copy of the communication, and the date of the communication and to state in general terms the content of the communication.

G. “Identify” when used with respect to a lease agreement means to state the parties to the agreement, the date of the agreement and any amendments, the term of the agreement, the cars subject to the agreement, and the date the lessee took possession of the cars.

H. “Item 55-C” means Item 55-C in UP Tariff 6004.

I. “AFPM Member” means any entity of any kind that is a member of AFPM, including any subsidiary or affiliate of that entity.

J. “Person” means a corporation, company, partnership, or natural person.

K. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.

L. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.

M. “You” and “Your” refer to AFPM and any AFPM Member, as well as AFPM’s committees, subcommittees, and any of its employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on its behalf.

### **INSTRUCTIONS**

1. Unless a different time period is specified, these requests cover the period from January 1, 1987 to the time responsive information and documents are served on Union Pacific.

2. For each and every document request, You are required to produce any documents in the possession, custody, or control of AFPM or an AFPM Member and to state the source of the documents (i.e., state the name of the AFPM Member that has possession, custody, or control of the documents).

3. If AFPM or an AFPM Member for any reason withholds documents or information responsive to any of these requests, You should state the specific factual and legal basis for doing so and produce documents or information for any part of the request or interrogatory that is not alleged to be objectionable or to call for production of protected information. If AFPM or an AFPM Member withholds documents on the basis of a claimed privilege or attorney work product, then for each such document, You should provide the following information: the document’s date, type (e.g., letter, memo, notes), author(s), addressee(s), other recipient(s), general subject matter, and the basis for withholding the document.

4. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

5. These requests are continuing in character so as to require You to supplement in accordance with 49 C.F.R. § 1114.29.

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current AFPM Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Interrogatory No. 2**

Is AFPM or any AFPM Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Interrogatory No. 3**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

### **Interrogatory No. 4**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 5**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 6.**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 7**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 8**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 9**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty

miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage?

If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 10**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Interrogatory No. 11**

Does AFPM contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If AFPM contends that the answer depends on the circumstances, state the circumstances that AFPM contends are relevant.

**Interrogatory No. 12**

Does AFPM contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If AFPM contends that the answer depends on the circumstances, state the circumstances that AFPM contends are relevant.

**Interrogatory No. 13**

Does AFPM contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If AFPM contends that the answer depends on the circumstances, state the circumstances that AFPM contends are relevant.

**Interrogatory No. 14**

Separately for each AFPM Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Interrogatory No. 15**

Separately for each AFPM Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Interrogatory No. 16**

Separately for each AFPM Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Interrogatory No. 17**

Separately for each AFPM Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities

- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 18**

Separately for each AFPM Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Interrogatory No. 19**

Separately for each AFPM Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Interrogatory No. 20**

Separately for each AFPM Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Interrogatory No. 21**

Separately for each AFPM Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Interrogatory No. 22**

Separately for each AFPM Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. AFPM
- g. Other AFPM members
- h. Other Complainants

**Interrogatory No. 23**

Separately for each AFPM Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Interrogatory No. 24**

Separately for each AFPM Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 25**

Separately for each AFPM Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Interrogatory No. 26**

Separately for each AFPM Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 27**

Separately for each AFPM Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Interrogatory No. 28**

Separately for each AFPM Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Interrogatory No. 30**

Separately for each AFPM Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014

- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 31**

Separately for each AFPM member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014

- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Interrogatory No. 32**

Separately for each AFPM Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Interrogatory No. 33**

Separately for each AFPM Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Interrogatory No. 34**

Separately for each AFPM Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by AFPM Members and explain the basis for that amount.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an AFPM Member's furnishing tank cars.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an AFPM Member's furnishing tank cars.

**Document Request No. 14**

Produce a copy of each lease under which an AFPM Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 15**

Produce a copy of each lease under which an AFPM Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

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*Attorneys for Union Pacific Railroad Company*

April 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of April, 2015, I caused a copy of the foregoing document to be served by e-mail or first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 6**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>NORTH AMERICA FREIGHT CAR</b>	)	
<b>ASSOCIATION; AMERICAN FUEL &amp;</b>	)	
<b>PETROCHEMICAL MANUFACTURERS;</b>	)	
<b>THE CHLORINE INSTITUTE; THE</b>	)	
<b>FERTILIZER INSTITUTE; AMERICAN</b>	)	
<b>CHEMISTRY COUNCIL; ETHANOL</b>	)	
<b>PRODUCTS, LLC D/B/A POET ETHANOL</b>	)	<b>Docket No. NOR 42144</b>
<b>PRODUCTS; POET NUTRITION, INC.; and</b>	)	
<b>CARGILL INCORPORATED</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>UNION PACIFIC RAILROAD</b>	)	
<b>COMPANY</b>	)	

**RESPONSES AND OBJECTIONS OF  
NORTH AMERICA FREIGHT CAR ASSOCIATION TO  
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS**

Complainant, the North America Freight Car Association (“NAFCA”), hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests (“Discovery Requests”). NAFCA’s responses to the Discovery Requests are based on information presently known. Because NAFCA continues to investigate the facts and information relating to the issues in this case, NAFCA reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

The following General Objections, Objections to Definitions, and Objections to Instructions are incorporated into the specific response and/or objection to each Interrogatory and Document Request.

## GENERAL OBJECTIONS

The following general objections and statements apply to each of the particular document requests and interrogatories propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. NAFCA objects to Defendant's Requests to the extent they seek to impose upon NAFCA any obligation or responsibility other than those mandated by 49 U.S.C. § 1114.21 *et seq.*

2. NAFCA objects to Defendant's Requests to the extent they purport to impose on NAFCA the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.

3. NAFCA objects to Defendant's Requests to the extent they call for information outside NAFCA's possession, custody or control.

4. NAFCA objects to the production of any information, documents, data or other materials that are not relevant to the subject matter involved in this proceeding or calculated to lead to the discovery of admissible evidence in this proceeding.

5. NAFCA objects to Defendant's Requests to the extent that any request would impose an undue burden on NAFCA in relation to the relevance and probative value of the information sought.

6. NAFCA objects to Defendant's Requests to the extent any request is overbroad, vague or ambiguous.

7. NAFCA objects to Defendant's Requests to the extent they are not limited by date and seek information from outside the relevant time period for this Proceeding.

8. NAFCA objects to Defendant's Requests to the extent they seek information that is already within Defendant's possession, custody, or control or that is more appropriately sought from third parties to whom discovery requests may be directed.

9. NAFCA objects to Defendant's Requests to the extent they may be construed to require NAFCA to search for and disclose or produce information that is a matter of public record or otherwise as accessible to Defendant as to NAFCA.

10. NAFCA objects to Defendant's Requests to the extent they seek discovery more appropriately obtained by means other than requests for the production of documents or interrogatories.

11. NAFCA objects to Defendant's Requests insofar as they seek production or disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute or common law. All Requests have been read to exclude discovery of such privileged information. By responding to any Request, Defendant does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or law as to that Request or as to any other Request or any future Request. Inadvertent production of any such information shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, nor shall inadvertent production waive the right of NAFCA to object to the use of any such information in any proceeding.

12. NAFCA objects to Defendant's Requests to the extent they call for the production or disclosure of trade secrets, proprietary, personal, commercially sensitive, or other confidential information. NAFCA will produce such confidential information that is responsive, non-

privileged, relevant, and not otherwise protected from discovery, if any, only pursuant to the terms of a Protective Order issued in this proceeding, and reserves the right to seek further entrance of protective orders by the Board should the need arise.

13. By responding to any Request, NAFCA does not adopt Defendant's definitions of words and phrases contained in these Requests. NAFCA objects to words and phrases to the extent they are undefined and/or inconsistent with (a) the ordinary and customary meaning of such words and phrases and/or (b) the rules governing the permissible scope of discovery.

14. NAFCA objects to Defendant's Requests to the extent that they use language incorporating or calling for a legal conclusion or making an erroneous statement of law. NAFCA's responses herein shall be as to matters of fact only and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any discovery request or concerning any matter relevant to this Proceeding.

15. Nothing in NAFCA's responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in Defendant's Requests.

16. NAFCA's discovery and investigation into the matters specified is ongoing. These answers and objections are made as of the date stated and include information located or obtained up to that time after reasonable inquiry. NAFCA does not purport to have reviewed and extracted information from every potentially relevant document. Further information responsive to Defendant's Requests may be ascertained or identified at a later time, and NAFCA reserves the right to amend its answers and objections to rely on such information and to assert additional objections as necessary.

17. The information and documents supplied in response to Defendant's Requests are for this Proceeding only and for no other purpose.

18. The applicable foregoing General Objections are incorporated into each of the specific objections and answers that follow. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by NAFCA.

### **OBJECTIONS TO DEFINITIONS**

The following objections to Defendant's Instructions and Definitions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. NAFCA objects to the definition of "Communication" to the extent that it exceeds the scope of discoverable material under, or seeks to impose any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

2. NAFCA objects to the definition of "Document" to the extent that it exceeds the scope of discoverable material under, or seek to impose any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

3. NAFCA objects to the definitions of "Identify" to the extent that they seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. NAFCA objects to the definition of "NAFCA Member" as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in

that it seeks discovery on NAFCA's members and “any subsidiary of affiliate” thereof of who are not party or relevant to these proceedings.

5. NAFCA objects to the definitions of “You” and “Your” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they include NAFCA’s members, outside attorneys, advisers, consultants, and other persons or entities not within NAFCA’s control, as well as NAFCA’s members’ parent companies, subsidiaries, and other persons or entities not party or relevant to these proceedings.

### **OBJECTIONS TO INSTRUCTIONS**

The following objections to Defendant’s Instructions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. NAFCA objects to Instruction No. 1 to the extent that it is overly broad, unduly burdensome, and not reasonably limited in time, as it seeks discovery “from January 1, 1987.” NAFCA will produce responsive information or documents that can be obtained without undue burden or expense and that are located after a reasonable search, as required by 49 C.F.R. § 1114.21 *et seq.*

2. NAFCA objects to Instruction No. 2 to the extent that it requires identification and description of “the source of the documents” and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

3. NAFCA objects to Instruction No. 3 to the extent that it requires identification and description of documents withheld “for any reason” and documents withheld “on the basis of a claimed privilege or attorney work product,” and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. NAFCA objects to Instruction No. 4 to the extent that it requires identification and indexing of “all persons who provided information for each response” and the “response(s) the person provided information for” and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current NAFCA Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Response**

NAFCA objects to this Interrogatory as irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. NAFCA further objects to this Interrogatory as irrelevant and unduly burdensome to the extent it requests the number of tank cars that each of NAFCA's members owns or leases because the number of such cars is irrelevant to the issue of whether UP is providing compensation for its use of those cars as required by statute. Subject to and without waiving its objections, NAFCA will provide a list of its members that own or lease railroad tank cars.

### **Interrogatory No. 2**

Is NAFCA or any NAFCA Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### **Response**

NAFCA objects to Interrogatory No. 2 to the extent it seeks discovery from members of NAFCA who are named Complainants in this proceeding through discovery requests directed at NAFCA. Subject to and without waiving its objections, in accordance with the First Amended Complaint, filed on June 2, 2015, NAFCA is no longer requesting reparations or damages on behalf of its members.

**Interrogatory No. 3**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 4.**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 5**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 6.**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 7**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 8**

Does any NAFCA Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 9**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 10**

Does any NAFCA Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 11**

Does NAFCA contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If NAFCA contends that the answer depends on the circumstances, state the circumstances that NAFCA contends are relevant.

**Response**

NAFCA objects to this Interrogatory as premature because it requests that NAFCA formulate its position prior to completing discovery of UP. Subject to and without waiving its objections, NAFCA states that the answer depends upon which entity owns the reporting marks on the subject tank car, because Freight Tariff RIC 6007-Series specifies that mileage allowances are paid only to the owner of the reporting marks.

**Interrogatory No. 12**

Does NAFCA contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If NAFCA contends that the answer depends on the circumstances, state the circumstances that NAFCA contends are relevant.

**Response**

NAFCA objects to this Interrogatory as premature because it requests that NAFCA formulate its position prior to completing discovery of UP. NAFCA also objects to the phrase “costs associated with the empty miles” as vague and ambiguous because it is unclear whether this refers to UP’s actual cost of service for the empty movement, its tariff rate for the empty movement, or something else.

**Interrogatory No. 13**

Does NAFCA contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If NAFCA contends that the answer depends on the circumstances, state the circumstances that NAFCA contends are relevant.

**Response**

NAFCA objects to this Interrogatory as premature because it requests that NAFCA formulate its position prior to completing discovery of UP.

**Interrogatory No. 14**

Separately for each NAFCA Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 15**

Separately for each NAFCA Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 16**

Separately for each NAFCA Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory

**Interrogatory No. 17**

Separately for each NAFCA Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 18**

Separately for each NAFCA Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 19**

Separately for each NAFCA Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 20**

Separately for each NAFCA Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 21**

Separately for each NAFCA Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 22**

Separately for each NAFCA Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars

- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. NAFCA
- g. Other NAFCA members
- h. Other Complainants

**Response**

Subject to and without waiving its objections, NAFCA will identify communications within its knowledge, possession, or control that are responsive to this Interrogatory.

**Interrogatory No. 23**

Separately for each NAFCA Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Response**

Subject to and without waiving its objections, NAFCA will describe such changes within its knowledge, possession, or control that are responsive to this Interrogatory.

**Interrogatory No. 24**

Separately for each NAFCA Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, NAFCA will identify communications within its knowledge, possession, or control that are responsive to this Interrogatory.

**Interrogatory No. 25**

Separately for each NAFCA Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, NAFCA will identify communications within its knowledge, possession, or control that are responsive to this Interrogatory.

**Interrogatory No. 26**

Separately for each NAFCA Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, NAFCA will identify communications within its knowledge, possession, or control that are responsive to this Interrogatory.

**Interrogatory No. 27**

Separately for each NAFCA Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, NAFCA will identify communications within its knowledge, possession, or control that are responsive to this Interrogatory.

**Interrogatory No. 28**

Separately for each NAFCA Member, identify each movement for which the member seeks damages under Count II, the price document (i.e., contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Response**

NAFCA objects to this Interrogatory as irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members. Subject to and without waiving its objections, NAFCA has no information responsive to this request.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Response**

NAFCA objects to this Interrogatory as irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members. Subject to and without waiving its objections, NAFCA has no information responsive to this request.

**Interrogatory No. 30**

Separately for each NAFCA Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built

- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

NAFCA objects to this Interrogatory as irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members. Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 31**

Separately for each NAFCA member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

## **Response**

NAFCA objects to this Interrogatory as irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members. Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory other than the number of tank cars currently leased by its members.

## **Interrogatory No. 32**

Separately for each NAFCA Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Response**

NAFCA objects to this Interrogatory as irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members. Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory other than the number of tank cars currently owned by its members.

**Interrogatory No. 33**

Separately for each NAFCA Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 34**

Separately for each NAFCA Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory.

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Response**

Subject to and without waiving its objections—which include that this Interrogatory is unduly burdensome—and subject to the protective order entered in this proceeding, NAFCA will supply the cost information within its knowledge, possession or control that is responsive to this Interrogatory.

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such

use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by NAFCA Members and explain the basis for that amount.

**Response**

Subject to and without waiving its objections, NAFCA objects to this Interrogatory as requesting information is not relevant or calculated to lead to the discovery of admissible evidence. It is also irrelevant because NAFCA is no longer requesting reparations or damages on behalf of its members.

## **DOCUMENT REQUESTS**

### **Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

### **Response**

NAFCA incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

### **Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

### **Response**

NAFCA objects to this Document Request as not relevant, overbroad, and unduly burdensome. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

### **Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association NAFCA’s members’ rail tank cars.”

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody, or control that are responsive to this Request.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an NAFCA Member's furnishing tank cars.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody or control that are responsive to this Request.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an NAFCA Member's furnishing tank cars.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce documents within its possession, custody or control that are responsive to this Request.

**Document Request No. 14**

Produce a copy of each lease under which an NAFCA Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 15**

Produce a copy of each lease under which an NAFCA Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Response**

Subject to and without waiving its objections, and subject to the protective order entered in this proceeding, NAFCA will produce non-privileged documents within its possession, custody or control that are responsive to this Request.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

**Response**

Subject to and without waiving its objections, NAFCA has no information responsive to this Request.

Respectfully submitted,

/s/ Thomas W. Wilcox

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*Attorneys for North America Freight Car  
Association*

Dated: June 23, 2015

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 23rd day of June 2015, I have served a copy of the foregoing *Responses and Objections of North America Freight Car Association to Union Pacific's First Set of Discovery Requests* via electronic mail and regular mail to counsel for Defendant at the following address:

Michael Rosenthal  
Carolyn F. Corwin  
Covington & Burling, LLP  
One CityCenter  
850 10th Street, NW  
Washington, DC 20001

And by regular mail to:

Louise A. Rinn  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

/s/ Thomas W. Wilcox  
\_\_\_\_\_  
Thomas W. Wilcox

# EXHIBIT 7

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>NORTH AMERICA FREIGHT CAR</b>	)	
<b>ASSOCIATION; AMERICAN FUEL &amp;</b>	)	
<b>PETROCHEMICALS MANUFACTURERS;</b>	)	
<b>THE CHLORINE INSTITUTE; THE</b>	)	
<b>FERTILIZER INSTITUTE; AMERICAN</b>	)	
<b>CHEMISTRY COUNCIL; ETHANOL</b>	)	
<b>PRODUCTS, LLC D/B/A POET ETHANOL</b>	)	<b>Docket No. NOR 42144</b>
<b>PRODUCTS; POET NUTRITION, INC.; and</b>	)	
<b>CARGILL INCORPORATED</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>UNION PACIFIC RAILROAD</b>	)	
<b>COMPANY</b>	)	

**RESPONSES AND OBJECTIONS OF  
THE CHLORINE INSTITUTE, INC. TO  
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS**

Complainant, the Chlorine Institute, Inc. ("CI"), hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests ("Discovery Requests"). CI's responses to the Discovery Requests are based on information presently known. Because CI continues to investigate the facts and information relating to the issues in this case, CI reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

The following General Objections, Objections to Definitions, and Objections to Instructions are incorporated into the specific response and/or objection to each Interrogatory and Document Request.

## GENERAL OBJECTIONS

The following general objections and statements apply to each of the particular document requests and interrogatories propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. CI objects to Defendant's Requests to the extent they seek to impose upon CI any obligation or responsibility other than those mandated by 49 U.S.C. § 1114.21 *et seq.*
2. CI objects to Defendant's Requests to the extent they purport to impose on CI the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.
3. CI objects to Defendant's Requests to the extent they call for information outside CI's possession, custody or control.
4. CI objects to Defendant's Requests to the extent they are not limited by date and seek information from outside the relevant time period for this Proceeding.
5. CI objects to Defendant's Requests to the extent they seek information that is already within Defendant's possession, custody, or control or that is more appropriately sought from third parties to whom discovery requests may be directed.
6. CI objects to Defendant's Requests to the extent they may be construed to require Complainant to search for and disclose or produce information that is a matter of public record or otherwise as accessible to Defendant as to CI.
7. CI objects to Defendant's Requests to the extent they seek discovery more appropriately obtained by means other than requests for the production of documents or interrogatories.

8. CI objects to Defendant's Requests insofar as they seek production or disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute or common law. All Requests have been read to exclude discovery of such privileged information. By responding to any Request, Defendant does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or law as to that Request or as to any other Request or any future Request. Inadvertent production of any such information shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, nor shall inadvertent production waive the right of Complainant to object to the use of any such information in any proceeding.

9. CI objects to Defendant's Requests to the extent they call for the production or disclosure of trade secrets, proprietary, personal, commercially sensitive, or other confidential information. CI will produce such confidential information that is responsive, non-privileged, relevant, and not otherwise protected from discovery, if any, only pursuant to the parties' Confidentiality Agreement and reserves the right to seek further entrance of protective orders by the Board should the need arise.

10. By responding to any Request, CI does not adopt Defendant's definitions of words and phrases contained in these Requests. CI objects to words and phrases to the extent they are undefined and/or inconsistent with (a) the ordinary and customary meaning of such words and phrases and/or (b) the rules governing the permissible scope of discovery.

11. CI objects to Defendant's Requests to the extent that they use language incorporating or calling for a legal conclusion or making an erroneous statement of law. CI's

responses herein shall be as to matters of fact only and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any discovery request or concerning any matter relevant to this Proceeding.

12. Nothing in CI's responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in Defendant's Requests.

13. CI's discovery and investigation into the matters specified is ongoing. These answers and objections are made as of the date stated and include information located or obtained up to that time after reasonable inquiry. CI does not purport to have reviewed and extracted information from every potentially relevant document. Further information responsive to Defendant's Requests may be ascertained or identified at a later time, and CI reserves the right to amend its answers and objections to rely on such information and to assert additional objections as necessary.

14. The information and documents supplied in response to Defendant's Requests are for this Proceeding only and for no other purpose.

The applicable foregoing General Objections are incorporated into each of the specific objections and answers that follow. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by CI.

#### **OBJECTIONS TO DEFINITIONS**

The following objections to Defendant's Definitions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. CI objects to the definition of “Communication” to the extent that it exceeds the scope of discoverable material under, or seeks to impose any obligation or responsibility in excess of those required under, 49 U.S.C § 1114.21 *et seq.*

2. CI objects to the definition of “Document” to the extent that it exceeds the scope of discoverable material under, or seek to impose any obligation or responsibility in excess of those required under, 49 U.S.C § 1114.21 *et seq.*

3. CI objects to the definitions of “Identify” to the extent that they seek to impose any obligation or responsibility in excess of those required under 49 U.S.C § 1114.21 *et seq.*

4. CI objects to the definition of “CI Member” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks discovery on CI’s members and “any subsidiary or affiliate” thereof, who are not party or relevant to this Proceeding.

5. CI objects to the definitions of “You” and “Your” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they include CI’s members, outside attorneys, advisers, consultants, and other persons or entities not within CI’s control, as well as CI’s members’ parent companies, subsidiaries, and other persons or entities not party or relevant to this Proceeding.

### **OBJECTIONS TO INSTRUCTIONS**

The following objections to Defendant’s Instructions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. CI objects to Instruction No. 1 to the extent that it is overly broad, unduly burdensome, and not reasonably limited in time, as it seeks discovery “from January 1, 1987.”

CI will produce responsive information or documents that can be obtained without undue burden or expense and that are located after a reasonable search, as required by 49 U.S.C § 1114.21 *et seq.*

2. CI objects to Instruction No. 2 to the extent that it requires identification and description of “the source of the documents” and thus seeks to impose any obligation or responsibility in excess of those required under 49 U.S.C § 1114.21 *et seq.*

3. CI objects to Instruction No. 3 to the extent that it requires identification and description of documents withheld “for any reason” and documents withheld “on the basis of a claimed privilege or attorney work product,” and thus seeks to impose any obligation or responsibility in excess of those required under 49 U.S.C. § 1114.21 *et seq.*

4. CI objects to Instruction No. 4 to the extent that it requires identification and indexing of “all persons who provided information for each response” and the “response(s) the person provided information for” and thus seeks to impose any obligation or responsibility in excess of those required under 49 U.S.C. § 1114.21 *et seq.*

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current CI Member and the number of tank cars each member currently

(a) owns or (b) uses pursuant to a lease agreement.

### **Response**

CI objects to this Interrogatory as irrelevant because CI is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. CI further objects to this Interrogatory as irrelevant and unduly burdensome to the extent it requests the number of tank cars that each of CI's members that own or lease because the number of such cars is irrelevant to the issue of whether UP is providing compensation for its use of those cars as required by statute. Subject to and without waiving its objections, CI will provide a list of its members that own or lease tank cars with the understanding that CI only has information with regard to tank cars that are used to transport CI's mission chemicals that include chlorine, caustic soda, caustic potash, hydrogen chloride, anhydrous hydrogen chloride and sodium hypochlorite.

**Interrogatory No. 2**

Is CI or any CI Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

**Response**

In accordance with the First Amended Complaint, filed on June 2, 2015, CI is no longer requesting reparations or damages on behalf of its members.

**Interrogatory No. 3**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 4.**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 5**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 6.**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 7**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars

that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 8**

Does any CI Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 9**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 10**

Does any CI Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 11**

Does CI contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If CI contends that the answer depends on the circumstances, state the circumstances that CI contends are relevant.

**Response**

CI objects to this Interrogatory as premature because it requests that CI formulate its position prior to completing discovery of UP. Subject to and without waiving its objections, CI states that the answer depends upon which entity owns the reporting marks on the subject tank car, because Freight Tariff RIC 6007-Series specifies that mileage allowances are paid only to the owner of the reporting marks.

**Interrogatory No. 12**

Does CI contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs

associated with the empty miles only from the Car Owner? If CI contends that the answer depends on the circumstances, state the circumstances that CI contends are relevant.

**Response**

CI objects to this Interrogatory as premature because it requests that CI formulate its position prior to completing discovery of UP. CI also objects to the phrase “costs associated with the empty miles” as vague and ambiguous because it is unclear whether this refers to UP’s actual cost of service for the empty movement, its tariff rate for the empty movement, or something else.

**Interrogatory No. 13**

Does CI contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If CI contends that the answer depends on the circumstances, state the circumstances that CI contends are relevant.

**Response**

CI objects to this Interrogatory as premature because it requests that CI formulate its position prior to completing discovery of UP.

**Interrogatory No. 14**

Separately for each CI Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 15**

Separately for each CI Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 16**

Separately for each CI Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 17**

Separately for each CI Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific

- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 18**

Separately for each CI Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 19**

Separately for each CI Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-

Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 20**

Separately for each CI Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 21**

Separately for each CI Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 22**

Separately for each CI Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. CI
- g. Other CI members
- h. Other Complainants

**Response**

CI will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 23**

Separately for each CI Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 24**

Separately for each CI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

CI will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 25**

Separately for each CI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

CI will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 26**

Separately for each CI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

CI will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 27**

Separately for each CI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

CI will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 28**

Separately for each CI Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Response**

CI is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Response**

**See response to Interrogatory No. 28.**

**Interrogatory No. 30**

Separately for each CI Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built

- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 31**

Separately for each CI member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 32**

Separately for each CI Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 33**

Separately for each CI Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 34**

Separately for each CI Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Response**

CI has no information responsive to this Interrogatory.

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Response**

CI has no information responsive to this Interrogatory at this time.

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by CI Members and explain the basis for that amount.

**Response**

CI has no information responsive to this Interrogatory at this time.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an CI Member's furnishing tank cars.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an CI Member's furnishing tank cars.

**Response**

CI will produce such documents within its possession or control that are responsive to this Interrogatory.

**Document Request No. 14**

Produce a copy of each lease under which an CI Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

CI has no information responsive to this Request.

**Document Request No. 15**

Produce a copy of each lease under which an CI Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

CI has no information responsive to this Request.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**See Responses to Requests 14 and 15.**

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Response**

**CI will produce all non-privileged documents responsive to this request.**

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

CI has no information responsive to this Request.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Response**

CI has no information responsive to this Request.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Response**

CI has no information responsive to this Request.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Response**

CI has no information responsive to this Request.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

**Response**

CI has no information responsive to this Request.

Respectfully submitted,

/s/ Paul M. Donovan  
Paul M. Donovan  
LaRoe, Winn, Moerman & Donovan  
1250 Connecticut Ave. N.W., Suite 200  
Washington, DC 20036  
(202) 298-8100

*Attorney for the Chlorine Institute, Inc.*

Dated: June 23, 2015

# **EXHIBIT 8**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**NORTH AMERICA FREIGHT CAR  
ASSOCIATION; AMERICAN FUEL &  
PETROCHEMICALS MANUFACTURERS;  
THE CHLORINE INSTITUTE; THE  
FERTILIZER INSTITUTE; AMERICAN  
CHEMISTRY COUNCIL; ETHANOL  
PRODUCTS, LLC D/B/A POET ETHANOL  
PRODUCTS; POET NUTRITION, INC.; and  
CARGILL INCORPORATED**

vs.

**UNION PACIFIC RAILROAD  
COMPANY**

**Docket No. NOR 42144**

**RESPONSES AND OBJECTIONS OF  
THE FERTILIZER INSTITUTE TO  
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS**

Complainant, The Fertilizer Institute ("TFI"), hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests ("Discovery Requests").

**GENERAL OBJECTIONS**

The following general objections and statements apply to each of the particular document requests and interrogatories propounded by Defendant and are hereby incorporated within each specific response set forth below. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by Complainant:

1. TFI objects to Defendant's Requests to the extent they seek to impose upon TFI any obligation or responsibility other than those mandated by 49 C.F.R. § 1114.21 *et seq.*

2. TFI objects to Defendant's Requests for information from members of TFI who are not named Complainants in this proceeding through discovery requests directed at TFI.

3. TFI objects to Defendant's Requests to the extent they purport to impose on TFI the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.

4. TFI objects to Defendant's Requests to the extent they call for information outside TFI's possession, custody or control.

5. TFI objects to Defendant's Requests to the extent they are not limited by date.

6. TFI objects to Defendant's Requests to the extent they seek information that is already within Defendant's possession, custody, or control; equally available to Defendant; or more appropriately sought from third parties to whom discovery requests may be directed.

7. TFI objects to Defendant's Requests to the extent they may be construed to require TFI to search for and disclose or produce information that is a matter of public record or otherwise as accessible to Defendant as to TFI.

8. TFI objects to Defendant's Requests to the extent they seek discovery more appropriately obtained by means other than requests for the production of documents or interrogatories.

9. TFI objects to Defendant's Requests insofar as they seek production or disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute or common law. All Requests have been read to exclude discovery of such privileged

information. By responding to any Request, Defendant does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or law as to that Request or as to any other Request or any future Request. Inadvertent production of any such information shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, nor shall inadvertent production waive the right of TFI to object to the use of any such information in any proceeding.

10. TFI objects to Defendant's Requests to the extent they call for the production or disclosure of trade secrets, proprietary, personal, commercially sensitive, or other confidential information. TFI will produce such confidential information that is responsive, non-privileged, relevant, and not otherwise protected from discovery, if any, only pursuant to the terms of a Protective Order issued by the Board in this proceeding, and reserves the right to seek further entrance of protective orders by the Board should the need arise.

11. By responding to any Request, TFI does not adopt Defendant's definitions of words and phrases contained in these Requests. TFI objects to words and phrases to the extent they are undefined and/or inconsistent with (a) the ordinary and customary meaning of such words and phrases and/or (b) the rules governing the permissible scope of discovery.

12. TFI objects to Defendant's Requests to the extent that they use language incorporating or calling for a legal conclusion or making an erroneous statement of law. TFI's responses herein shall be as to matters of fact only and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any discovery request or concerning any matter relevant to this Proceeding.

13. Nothing in TFI's responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in Defendant's Requests.

14. TFI's discovery and investigation into the matters specified is ongoing. These answers and objections are made as of the date stated and include information located or obtained up to that time after reasonable inquiry. TFI does not purport to have reviewed and extracted information from every potentially relevant document. Further information responsive to Defendant's Requests may be ascertained or identified at a later time, and TFI reserves the right to amend its answers and objections to rely on such information and to assert additional objections as necessary.

15. The information and documents supplied in response to Defendant's Requests are for this Proceeding only and for no other purpose.

16. The applicable foregoing General Objections are incorporated into each of the specific objections and answers that follow. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by TFI.

### **OBJECTIONS TO DEFINITIONS**

The following objections to Defendant's Instructions and Definitions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. TFI objects to the definition of “Communication” to the extent that it exceeds the scope of discoverable material under, or imposes any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

2. TFI objects to the definition of “Document” to the extent that it exceeds the scope of discoverable material under, or imposes any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

3. TFI objects to the definitions of “Identify” to the extent that they impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. TFI objects to the definition of “TFI Member” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks discovery on TFI's members and “any subsidiary or affiliate” thereof who are not parties to this proceeding.

5. TFI objects to the definition of “Repair Facility” to the extent it applies to such facilities other than those on UP's system or has a meaning that is broader than UP Tariff 6004, Item 55-C.

6. TFI objects to the definitions of “You” and “Your” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they include TFI's members, outside attorneys, advisers, consultants, and other persons or entities not within TFI's control, as well as parent companies, subsidiaries, and other persons or entities related to TFI Members who are not parties to this proceeding.

## OBJECTIONS TO INSTRUCTIONS

The following objections to Defendant's Instructions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. TFI objects to Instruction No. 1 to the extent that it is overly broad, unduly burdensome, and not reasonably limited in time, as it seeks discovery "from January 1, 1987." TFI will produce responsive information or documents that can be obtained without undue burden or expense and that are located after a reasonable search, as required by 49 C.F.R. § 1114.21 *et seq.*

2. TFI objects to Instruction No. 2 to the extent that it requires TFI to produce documents in the possession, custody or control of an TFI Member.

3. Complainant objects to Instruction No. 2 to the extent that it requires identification and description of "the source of the documents" and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. TFI objects to Instruction No. 3 to the extent that it requires identification and description of documents withheld "for any reason" and documents withheld "on the basis of a claimed privilege or attorney work product," and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

5. TFI objects to Instruction No. 4 to the extent that it requires identification and indexing of "all persons who provided information for each response" and the "response(s) the person provided information for" and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

## INTERROGATORIES

### Interrogatory No. 1

Identify each current TFI Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### Response

TFI objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because TFI is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. TFI further objects to this Interrogatory as irrelevant and unduly burdensome to the extent it requests the number of tank cars that each TFI Member owns or leases because the number of such cars is irrelevant to the issue of whether UP is providing compensation for its use of those cars as required by statute. Subject to and without waiving its objections, TFI will refer UP to TFI's web site for a list of TFI members:

<http://www.tfi.org/about/membership-list> .

### Interrogatory No. 2

Is TFI or any TFI Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### Response

In accordance with the First Amended Complaint, filed on June 2, 2015, TFI is no longer requesting reparations or damages on behalf of its members.

**Interrogatory No. 3**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 4.**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 5**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 6.**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 7**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 8**

Does any TFI Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 9**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 10**

Does any TFI Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 11**

Does TFI contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee,

or (b) the lessor? If TFI contends that the answer depends on the circumstances, state the circumstances that TFI contends are relevant.

**Response**

TFI objects to this Interrogatory as premature because it requests that TFI formulate its position prior to completing discovery of UP. Subject to and without waiving its objections, TFI states that the answer depends upon which entity owns the reporting marks on the subject tank car, because Freight Tariff RIC 6007-Series specifies that mileage allowances are paid only to the owner of the reporting marks.

**Interrogatory No. 12**

Does TFI contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If TFI contends that the answer depends on the circumstances, state the circumstances that TFI contends are relevant.

**Response**

TFI objects to this Interrogatory as premature because it requests that TFI formulate its position prior to completing discovery of UP. TFI also objects to the phrase “costs associated with the empty miles” as vague and ambiguous because it is unclear whether this refers to UP’s actual cost of service for the empty movement, its tariff rate for the empty movement, or something else.

**Interrogatory No. 13**

Does TFI contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If TFI contends that the answer depends on the circumstances, state the circumstances that TFI contends are relevant.

**Response**

TFI objects to this Interrogatory as premature because it requests that TFI formulate its position prior to completing discovery of UP.

**Interrogatory No. 14**

Separately for each TFI Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 15**

Separately for each TFI Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 16**

Separately for each TFI Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory

**Interrogatory No. 17**

Separately for each TFI Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 18**

Separately for each TFI Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads

- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 19**

Separately for each TFI Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 20**

Separately for each TFI Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 21**

Separately for each TFI Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory .

**Interrogatory No. 22**

Separately for each TFI Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. TFI
- g. Other TFI members
- h. Other Complainants

**Response**

Subject to and without waiving its objections, TFI will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 23**

Separately for each TFI Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 24**

Separately for each TFI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 25**

Separately for each TFI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 26**

Separately for each TFI Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 27**

Separately for each TFI Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 28**

Separately for each TFI Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Response**

TFI objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because TFI is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Response**

See response to Interrogatory No. 28.

**Interrogatory No. 30**

Separately for each TFI Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014

- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 31**

Separately for each TFI member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014

- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 32**

Separately for each TFI Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned

- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 33**

Separately for each TFI Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 34**

Separately for each TFI Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by TFI Members and explain the basis for that amount.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Response**

TFI incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because the Complaint seeks compensation for tank cars in accordance with Ex Parte No. 328, not for any additional amounts. This Request also is overbroad and unduly burdensome because it has no date limitation.

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Response**

Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an TFI Member's furnishing tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an TFI Member's furnishing tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, TFI will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 14**

Produce a copy of each lease under which an TFI Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 15**

Produce a copy of each lease under which an TFI Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Response**

Subject to and without waiving its objections, TFI will produce non-privileged documents in its custody or control that are responsive to this Request.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

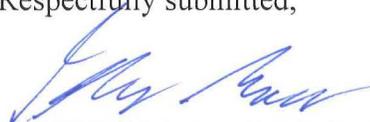
**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

**Response**

Subject to and without waiving its objections, TFI has no information responsive to this Request.

Respectfully submitted,



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*Attorney for The Fertilizer Institute*

Dated: June 23, 2015

# **EXHIBIT 9**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**NORTH AMERICA FREIGHT CAR )  
ASSOCIATION; AMERICAN FUEL & )  
PETROCHEMICALS MANUFACTURERS; )  
THE CHLORINE INSTITUTE; THE )  
FERTILIZER INSTITUTE; AMERICAN )  
CHEMISTRY COUNCIL; ETHANOL )  
PRODUCTS, LLC D/B/A POET ETHANOL )  
PRODUCTS; POET NUTRITION, INC.; and )  
CARGILL INCORPORATED )  
)  
vs. )  
)  
UNION PACIFIC RAILROAD )  
COMPANY )**

**Docket No. NOR 42144**

**RESPONSES AND OBJECTIONS OF THE  
AMERICAN CHEMISTRY COUNCIL TO  
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS**

Complainant, the American Chemistry Council ("ACC"), hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests ("Discovery Requests").

**GENERAL OBJECTIONS**

The following general objections and statements apply to each of the particular document requests and interrogatories propounded by Defendant and are hereby incorporated within each specific response set forth below. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by Complainant:

1. ACC objects to Defendant's Requests to the extent they seek to impose upon ACC any obligation or responsibility other than those mandated by 49 C.F.R. § 1114.21 *et seq.*

2. ACC objects to Defendant's Requests for information from members of ACC who are not named Complainants in this proceeding through discovery requests directed at ACC.

3. ACC objects to Defendant's Requests to the extent they purport to impose on ACC the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.

4. ACC objects to Defendant's Requests to the extent they call for information outside ACC's possession, custody or control.

5. ACC objects to Defendant's Requests to the extent they are not limited by date.

6. ACC objects to Defendant's Requests to the extent they seek information that is already within Defendant's possession, custody, or control; equally available to Defendant; or more appropriately sought from third parties to whom discovery requests may be directed.

7. ACC objects to Defendant's Requests to the extent they may be construed to require ACC to search for and disclose or produce information that is a matter of public record or otherwise as accessible to Defendant as to ACC.

8. ACC objects to Defendant's Requests to the extent they seek discovery more appropriately obtained by means other than requests for the production of documents or interrogatories.

9. ACC objects to Defendant's Requests insofar as they seek production or disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute or

common law. All Requests have been read to exclude discovery of such privileged information. By responding to any Request, Defendant does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or law as to that Request or as to any other Request or any future Request. Inadvertent production of any such information shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, nor shall inadvertent production waive the right of ACC to object to the use of any such information in any proceeding.

10. ACC objects to Defendant's Requests to the extent they call for the production or disclosure of trade secrets, proprietary, personal, commercially sensitive, or other confidential information. ACC will produce such confidential information that is responsive, non-privileged, relevant, and not otherwise protected from discovery, if any, only pursuant to the terms of a Protective Order issued by the Board in this proceeding, and reserves the right to seek further entrance of protective orders by the Board should the need arise.

11. By responding to any Request, ACC does not adopt Defendant's definitions of words and phrases contained in these Requests. ACC objects to words and phrases to the extent they are undefined and/or inconsistent with (a) the ordinary and customary meaning of such words and phrases and/or (b) the rules governing the permissible scope of discovery.

12. ACC objects to Defendant's Requests to the extent that they use language incorporating or calling for a legal conclusion or making an erroneous statement of law. ACC's responses herein shall be as to matters of fact only and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any discovery request or concerning any matter relevant to this Proceeding.

13. Nothing in ACC's responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in Defendant's Requests.

14. ACC's discovery and investigation into the matters specified is ongoing. These answers and objections are made as of the date stated and include information located or obtained up to that time after reasonable inquiry. ACC does not purport to have reviewed and extracted information from every potentially relevant document. Further information responsive to Defendant's Requests may be ascertained or identified at a later time, and ACC reserves the right to amend its answers and objections to rely on such information and to assert additional objections as necessary.

15. The information and documents supplied in response to Defendant's Requests are for this Proceeding only and for no other purpose.

16. The applicable foregoing General Objections are incorporated into each of the specific objections and answers that follow. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by ACC.

### **OBJECTIONS TO DEFINITIONS**

The following objections to Defendant's Instructions and Definitions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. ACC objects to the definition of “Communication” to the extent that it exceeds the scope of discoverable material under, or imposes any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

2. ACC objects to the definition of “Document” to the extent that it exceeds the scope of discoverable material under, or imposes any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

3. ACC objects to the definitions of “Identify” to the extent that they impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. ACC objects to the definition of “ACC Member” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks discovery on ACC's members and “any subsidiary or affiliate” thereof who are not parties to this proceeding.

5. ACC objects to the definition of “Repair Facility” to the extent it applies to such facilities other than those on UP’s system or has a meaning that is broader than UP Tariff 6004, Item 55-C.

6. ACC objects to the definitions of “You” and “Your” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they include ACC’s members, outside attorneys, advisers, consultants, and other persons or entities not within ACC’s control, as well as parent companies, subsidiaries, and other persons or entities related to ACC Members who are not parties to this proceeding.

## OBJECTIONS TO INSTRUCTIONS

The following objections to Defendant's Instructions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. ACC objects to Instruction No. 1 to the extent that it is overly broad, unduly burdensome, and not reasonably limited in time, as it seeks discovery "from January 1, 1987." ACC will produce responsive information or documents that can be obtained without undue burden or expense and that are located after a reasonable search, as required by 49 C.F.R. § 1114.21 *et seq.*

2. ACC objects to Instruction No. 2 to the extent that it requires ACC to produce documents in the possession, custody or control of an ACC Member.

3. Complainant objects to Instruction No. 2 to the extent that it requires identification and description of "the source of the documents" and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. ACC objects to Instruction No. 3 to the extent that it requires identification and description of documents withheld "for any reason" and documents withheld "on the basis of a claimed privilege or attorney work product," and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

5. ACC objects to Instruction No. 4 to the extent that it requires identification and indexing of "all persons who provided information for each response" and the "response(s) the person provided information for" and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

## INTERROGATORIES

### Interrogatory No. 1

Identify each current ACC Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### Response

ACC objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because ACC is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. ACC further objects to this Interrogatory as irrelevant and unduly burdensome to the extent it requests the number of tank cars that each ACC Member owns or leases because the number of such cars is irrelevant to the issue of whether UP is providing compensation for its use of those cars as required by statute. Subject to and without waiving its objections, ACC will provide a list of its members.

### Interrogatory No. 2

Is ACC or any ACC Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

### Response

In accordance with the First Amended Complaint, filed on June 2, 2015, ACC is no longer requesting reparations or damages on behalf of its members.

### Interrogatory No. 3

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 4.**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 5**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 6.**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 7**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 8**

Does any ACC Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 9**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by

the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 10**

Does any ACC Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 11**

Does ACC contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP. Subject to and without waiving its objections,

ACC states that the answer depends upon which entity owns the reporting marks on the subject tank car, because Freight Tariff RIC 6007-Series specifies that mileage allowances are paid only to the owner of the reporting marks.

**Interrogatory No. 12**

Does ACC contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP. ACC also objects to the phrase “costs associated with the empty miles” as vague and ambiguous because it is unclear whether this refers to UP’s actual cost of service for the empty movement, its tariff rate for the empty movement, or something else.

**Interrogatory No. 13**

Does ACC contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If ACC contends that the answer depends on the circumstances, state the circumstances that ACC contends are relevant.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP.

**Interrogatory No. 14**

Separately for each ACC Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 15**

Separately for each ACC Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 16**

Separately for each ACC Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory

**Interrogatory No. 17**

Separately for each ACC Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 18**

Separately for each ACC Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific

- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 19**

Separately for each ACC Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 20**

Separately for each ACC Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 21**

Separately for each ACC Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory .

**Interrogatory No. 22**

Separately for each ACC Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. ACC
- g. Other ACC members
- h. Other Complainants

**Response**

Subject to and without waiving its objections, ACC will identify communications within its knowledge, possession or control that are responsive to this Interrogatory.

**Interrogatory No. 23**

Separately for each ACC Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 24**

Separately for each ACC Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 25**

Separately for each ACC Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 26**

Separately for each ACC Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 27**

Separately for each ACC Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 28**

Separately for each ACC Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Response**

ACC objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because

ACC is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Response**

See response to Interrogatory No. 28.

**Interrogatory No. 30**

Separately for each ACC Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014
- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014

- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 31**

Separately for each ACC member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014

- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 32**

Separately for each ACC Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 33**

Separately for each ACC Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 34**

Separately for each ACC Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law,” state the amount by which You contend Union Pacific’s line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by ACC Members and explain the basis for that amount.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Response**

ACC incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence because the Complaint seeks compensation for tank cars in accordance with Ex Parte No. 328, not for any additional amounts. This Request also is overbroad and unduly burdensome because it has no date limitation.

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Response**

Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 10**

Produce all documents regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an ACC Member's furnishing tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an ACC Member's furnishing tank cars.

**Response**

This Request is overbroad and unduly burdensome because it has no date limitation. Subject to and without waiving its objections, ACC will produce documents within its possession or control that are responsive to this Request and can be found by a reasonable search.

**Document Request No. 14**

Produce a copy of each lease under which an ACC Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 15**

Produce a copy of each lease under which an ACC Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Response**

Subject to and without waiving its objections, ACC will produce non-privileged documents in its custody or control that are responsive to this Request.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

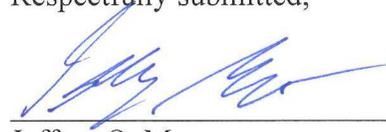
**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

**Response**

Subject to and without waiving its objections, ACC has no information responsive to this Request.

Respectfully submitted,



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*Attorney for the American Chemistry Council*

Dated: June 23, 2015

# **EXHIBIT 10**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>NORTH AMERICA FREIGHT CAR</b>	)	
<b>ASSOCIATION; AMERICAN FUEL &amp;</b>	)	
<b>PETROCHEMICALS MANUFACTURERS;</b>	)	
<b>THE CHLORINE INSTITUTE; THE</b>	)	
<b>FERTILIZER INSTITUTE; AMERICAN</b>	)	
<b>CHEMISTRY COUNCIL; ETHANOL</b>	)	
<b>PRODUCTS, LLC D/B/A POET ETHANOL</b>	)	<b>Docket No. NOR 42144</b>
<b>PRODUCTS; POET NUTRITION, INC.; and</b>	)	
<b>CARGILL INCORPORATED</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>UNION PACIFIC RAILROAD</b>	)	
<b>COMPANY</b>	)	

**RESPONSES AND OBJECTIONS OF  
THE AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS TO  
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS**

Complainant, the American Fuel & Petrochemical Manufacturers (“AFPM”), hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company’s (“UP’s”) First Set of Discovery Requests (“Requests”). AFPM’s responses to the Discovery Requests are based on information presently known. Because AFPM continues to investigate the facts and information relating to the issues in this case, AFPM reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

The following General Objections, Objections to Definitions, and Objections to Instructions are incorporated into the specific responses and/or objections to each Interrogatory and Document Request.

Dated: June 23, 2015.

Respectfully submitted,

By: /s/ Justin A. Savage  
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**Counsel for Complainant American Fuel  
& Petrochemical Manufacturers**

## **GENERAL OBJECTIONS**

The following general objections and statements apply to each of the particular document requests and interrogatories propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. Complainant objects to Defendant's Requests to the extent they seek to impose upon Complainant any obligation or responsibility other than those mandated by 49 C.F.R. § 1114.21 *et seq.*
2. Complainant objects to Defendant's Requests for Information from members of AFPM who are not named Complainants in this proceeding through discovery requests directed at AFPM.
3. Complainant objects to Defendant's Requests to the extent they purport to impose on Complainant the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.
4. Complainant objects to Defendant's Requests to the extent they call for information outside Complainant's possession, custody or control.
5. Complainant objects to Defendant's Requests to the extent they are not limited by date and seek information from outside the relevant time period for this proceeding.
6. Complainant objects to Defendant's Requests to the extent they seek information that is already within Defendant's possession, custody, or control, equally available to Defendant, or that is more appropriately sought from third parties to whom discovery requests may be directed.

7. Complainant objects to Defendant's Requests to the extent they may be construed to require Complainant to search for and disclose or produce information that is a matter of public record or otherwise as accessible to Defendant as to Complainant.

8. Complainant objects to Defendant's Requests to the extent they seek discovery more appropriately obtained by means other than requests for the production of documents or interrogatories.

9. Complainant objects to Defendant's Requests insofar as they seek production or disclosure of information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute or common law. All Requests have been read to exclude discovery of such privileged information. By responding to any Request, Defendant does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or law as to that Request or as to any other Request or any future Request. Inadvertent production of any such information shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such information, nor shall inadvertent production waive the right of Complainant to object to the use of any such information in any proceeding.

10. Complainant objects to Defendant's Requests to the extent they call for the production or disclosure of trade secrets, proprietary, personal, commercially sensitive, or other confidential information. Complainant will produce confidential information that is responsive, non-privileged, relevant, and not otherwise protected from discovery, if any, only pursuant to the terms of a Protective Order issued by the Board in this proceeding and reserves the right to seek further entrance of protective orders by the Board should the need arise.

11. By responding to any Request, Complainant does not adopt Defendant's definitions of words and phrases contained in these Requests. Complainant objects to words and phrases to the extent they are undefined and/or inconsistent with (a) the ordinary and customary meaning of such words and phrases and/or (b) the rules governing the permissible scope of discovery.

12. Complainant objects to Defendant's Requests to the extent that they use language incorporating or calling for a legal conclusion or making an erroneous statement of law. Complainant's responses herein shall be as to matters of fact only and shall not be construed as stating or implying any conclusions of law concerning the matters referenced in any discovery request or concerning any matter relevant to this proceeding.

13. Nothing in Complainant's responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in Defendant's Requests.

14. Complainant's discovery and investigation into the matters specified is ongoing. These answers and objections are made as of the date stated and include information located or obtained up to that time after reasonable inquiry. Complainant does not purport to have reviewed and extracted information from every potentially relevant document. Further information responsive to Defendant's Requests may be ascertained or identified at a later time, and Complainant reserves the right to amend its answers and objections to rely on such information and to assert additional objections as necessary.

15. The information and documents supplied in response to Defendant's Requests are for this proceeding only and for no other purpose.

The applicable foregoing General Objections are incorporated into each of the specific objections and answers that follow. The assertion of the same, similar, or additional objections and specific objections to an individual Request, or the failure to assert any additional objection to an individual Request, shall not be construed as a waiver of any objection by Complainant.

### **OBJECTIONS TO DEFINITIONS**

The following objections to Defendant's Definitions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. Complainant objects to the definition of "Communication" to the extent that it exceeds the scope of discoverable material under, or seeks to impose any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

2. Complainant objects to the definition of "Document" to the extent that it exceeds the scope of discoverable material under, or seek to impose any obligation or responsibility in excess of those required under, 49 C.F.R. § 1114.21 *et seq.*

3. Complainant objects to the definitions of "Identify," as set forth in Definitions E through G, to the extent that they seek to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. Complainant objects to the definition of "AFPM Member" as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks discovery on Complainant's members and "any subsidiary or affiliate" thereof, who are not party or relevant to this proceeding.

5. Complainant objects to the definition of "Repair Facility" to the extent that it exceeds the scope of facilities described by Item 55-C in Union Pacific's Tariff 6004.

6. Complainant objects to the definitions of “You” and “Your” as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they include Complainant’s members, outside attorneys, advisers, consultants, and other persons or entities not within Complainant’s control, as well as Complainant’s members’ parent companies, subsidiaries, and other persons or entities not party or relevant to this proceeding.

### **OBJECTIONS TO INSTRUCTIONS**

The following objections to Defendant’s Instructions, and the following statements, apply to each of the particular Requests propounded by Defendant and are hereby incorporated within each specific response set forth below:

1. Complainant objects to Instruction No. 1 to the extent that it is overly broad, unduly burdensome, and not reasonably limited in time, as it seeks discovery “from January 1, 1987.” Complainant will produce responsive information or documents that can be obtained without undue burden or expense and that are located after a reasonable search, as required by 49 C.F.R. § 1114.21 *et seq.*

2. Complainant objects to Instruction No. 2 to the extent that it requires Complainant to produce documents in the custody, possession or control of an AFPM member.

3. Complainant objects to Instruction No. 2 to the extent that it requires identification and description of “the source of the documents” and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

4. Complainant objects to Instruction No. 3 to the extent that it requires identification and description of documents withheld “for any reason” and documents withheld

“on the basis of a claimed privilege or attorney work product,” and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

5. Complainant objects to Instruction No. 4 to the extent that it requires identification and indexing of “all persons who provided information for each response” and the “response(s) the person provided information for” and thus seeks to impose any obligation or responsibility in excess of those required under 49 C.F.R. § 1114.21 *et seq.*

## **INTERROGATORIES**

### **Interrogatory No. 1**

Identify each current AFPM Member and the number of tank cars each member currently (a) owns or (b) uses pursuant to a lease agreement.

### **Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM further objects to this Interrogatory as irrelevant and unduly burdensome to the extent it requests the number of tank cars that each of AFPM’s members owns or leases because the number of such cars is irrelevant to the issue of whether UP is providing compensation for its use of those cars as required by statute. Subject to and without waiving its objections, AFPM will provide a list of its members, as is publicly available on AFPM’s website.

### **Interrogatory No. 2**

Is AFPM or any AFPM Member seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the member(s) and contract(s).

**Response**

In accordance with the First Amended Complaint, filed on June 2, 2015, AFPM is no longer requesting reparations or damages on behalf of its members.

**Interrogatory No. 3**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 4.**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 5**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the Car Owner will retain some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 6.**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the Car Owner must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 7**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to lease exceed the total loaded miles moved by the lessee's cars

that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 8**

Does any AFPM Member that leases tank cars to another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 9**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the lessee must make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved

by the lessee's cars that are subject to the lease by more than a specified amount or percentage?  
If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 10**

Does any AFPM Member that leases tank cars from another Person have a lease agreement under which the lessee is not required to make a payment to the Car Owner if the total empty miles moved by the lessee's cars that are subject to the lease exceed the total loaded miles moved by the lessee's cars that are subject to the lease by more than a specified amount or percentage? If so, identify the member(s) and the lease agreement(s).

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 11**

Does AFPM contend that when a private tank car is furnished to Union Pacific by a Person that is a lessee of the car, Union Pacific is required to pay a mileage allowance to (a) the lessee, or (b) the lessor? If AFPM contends that the answer depends on the circumstances, state the circumstances that AFPM contends are relevant.

**Response**

AFPM objects to this Interrogatory as premature because it requests that AFPM formulate its position prior to completing discovery of UP. Subject to and without waiving its objections, AFPM states that the answer depends upon which entity owns the reporting marks on the subject tank car, because Freight Tariff RIC 6007-Series specifies that mileage allowances are paid only to the owner of the reporting marks.

**Interrogatory No. 12**

Does AFPM contend that when a Person that is not the Car Owner directs Union Pacific to move an empty private tank car to or from a Repair Facility, Union Pacific can recover the costs associated with the empty miles only from the Car Owner? If AFPM contends that the answer depends on the circumstances, state the circumstances that AFPM contends are relevant.

**Response**

AFPM objects to this Interrogatory as premature because it requests that AFPM formulate its position prior to completing discovery of UP. AFPM also objects to the phrase “costs associated with the empty miles” as vague and ambiguous because it is unclear whether this refers to UP’s actual cost of service for the empty movement, its tariff rate for the empty movement, or other such costs. AFPM further objects to this Interrogatory as irrelevant to the extent that “costs” refers to UP’s actual cost of service for the empty movement. Subject to and without waiving its objections, AFPM contends that the costs associated with empty miles are UP’s responsibility as a matter of law.

**Interrogatory No. 13**

Does AFPM contend that Union Pacific may not provide common carrier transportation in private tank cars under zero-mileage rates? If AFPM contends that the answer depends on the circumstances, state the circumstances that AFPM contends are relevant.

**Response**

AFPM objects to this Interrogatory as premature because it requests that AFPM formulate its position prior to completing discovery of UP.

**Interrogatory No. 14**

Separately for each AFPM Member, identify each movement of an empty tank car owned or leased by the member to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Repair Facility.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Moreover, the work performed at the Repair Facility is also irrelevant.

**Interrogatory No. 15**

Separately for each AFPM Member, identify each movement for which the member has been assessed a charge under Item 55-C and for which the member is seeking reparations under Count I, and identify the amount of the charge, the Repair Facility to or from which the car moved, and the work performed at the Repair Facility.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this

proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 16**

Separately for each AFPM Member, identify each movement for which the member has been assessed a charge by a railroad other than Union Pacific for the movement of a private tank car to a Repair Facility, and identify the railroad that assessed the charge, and amount of the charge, and whether the member paid the charge.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. In addition, transactions with railroads other than UP are irrelevant to the claims in this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 17**

Separately for each AFPM Member that is a Car Owner, and separately by each car reporting mark assigned to the member, and separately for each year from 1987 through 2014, with respect to that member's tank cars, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements

to or from Repair Facilities.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM also objects to this Interrogatory as overbroad and unduly burdensome because it requests information separately by AFPM Member, reporting mark, and year back to 1987. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 18**

Separately for each AFPM Member that leased tank cars from another Person, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but did not own, and separately for each year from 1987 through 2014, state:

- a. The number of loaded miles the cars moved on Union Pacific
- b. The total number of loaded miles the cars moved on all railroads
- c. The number of empty miles the cars moved on Union Pacific
- d. The total number of empty miles the cars moved on all railroads
- e. The number of empty miles on Union Pacific associated with the cars' movements to or from Repair Facilities
- f. The total number of empty miles on all railroads associated with the cars' movements to or from Repair Facilities

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM also objects to this Interrogatory as overbroad and unduly burdensome

because it requests information separately by AFPM Member, reporting mark, and year back to 1987. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 19**

Separately for each AFPM Member, and separately by each car reporting mark assigned to the member, state the amount billed to the member pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM also objects to this Interrogatory as overbroad and unduly burdensome because it requests information separately by AFPM Member, reporting mark, and year back to 1987. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 20**

Separately for each AFPM Member, and separately by each car reporting mark assigned to the member, state the amount the member charged Persons leasing the member's tank cars for cost associated with empty mileage movements by those cars, separately for each such lessee, separately for each year from 1987 through 2014.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this

proceeding. Furthermore, the multitude of commercial arrangements between Car Owners and lessees are irrelevant to the issues in this proceeding, which concern the lawfulness of UP's decision to charge for empty tank car movements to Repair Facilities and whether UP is paying compensation for the use of private rail cars. AFPM also objects to this Interrogatory as overbroad and unduly burdensome because it requests information separately by AFPM members, reporting mark, and year back to 1987. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

### **Interrogatory No. 21**

Separately for each AFPM Member, and separately by each car reporting mark for tank cars the member furnished to Union Pacific or other railroads but that were not owned by the member, state the amount the Car Owner billed the member to cover costs associated with empty mileage movements by those cars, separately for each year from 1987 through 2014, and separately for each lease agreement, if cars were subject to different lease agreements during a calendar year.

### **Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Furthermore, the multitude of commercial arrangements between Car Owners and lessees are irrelevant to the issues in this proceeding, which concern the lawfulness of UP's decision to charge for empty tank car movements to Repair Facilities and whether UP is paying compensation for the use of private rail cars. AFPM also objects to this Interrogatory as overbroad and unduly burdensome because it requests information separately by AFPM

members, reporting mark, and year back to 1987. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 22**

Separately for each AFPM Member, identify all communications regarding Union Pacific's adoption of charges for empty movements of tank cars in Item 55-C with:

- a. Other Persons within the member's company
- b. Persons to whom the member leases tank cars
- c. Persons from whom the member leases tank cars
- d. Repair Facilities
- e. Union Pacific
- f. AFPM
- g. Other AFPM members
- h. Other Complainants

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Moreover, such communications are irrelevant to the lawfulness of UP's decision to charge for empty tank car movements to Repair Facilities and whether UP is paying compensation for the use of private rail cars. Furthermore, AFPM objects to this Interrogatory as overbroad and unduly burdensome because it is not narrowly tailored to the issues in this proceeding and given the number of AFPM members. Subject to its objections, AFPM will identify responsive non-privileged communications within its possession or control that are responsive to this Interrogatory.

**Interrogatory No. 23**

Separately for each AFPM Member, describe all changes in the member's practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Moreover, the practices of AFPM members related to sending tank cars to Repair Facilities are irrelevant to the lawfulness of UP's decision to charge for empty tank car movements to Repair Facilities. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 24**

Separately for each AFPM Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM further objects to the relevance of this Interrogatory because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition-precedent to the railroad's duty to compensate. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 25**

Separately for each AFPM Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM further objects to the relevance of this Interrogatory because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition-precedent to the railroad's duty to compensate. Moreover, whether or not any AFPM member requested a railroad other than UP to establish rates for movements in tank cars that included payment of a mileage allowance is irrelevant to Complainants' claims against UP. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 26**

Separately for each AFPM Member, identify all communications between the member and Union Pacific in which the member asked Union Pacific to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM further objects to the relevance of this Interrogatory because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to

request compensation as a condition-precedent to the railroad's duty to compensate. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 27**

Separately for each AFPM Member, identify all communications between the member and a railroad other than Union Pacific in which the member asked the railroad to establish reduced line-haul rates to reflect the member's furnishing tank cars.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM further objects to the relevance of this Interrogatory because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition-precedent to the railroad's duty to compensate. Moreover, whether or not any AFPM member requested a railroad other than UP to establish reduced line-haul rates in tank cars to reflect the member's furnishing of the tank cars is irrelevant to Complainants' claims against UP. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 28**

Separately for each AFPM Member, identify each movement for which the member seeks damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether the member paid the line-haul transportation charge and whether the member was the Car Owner or leased the car from the Car Owner. If the member did not pay the line-haul transportation charge, identify the Person that paid the charge.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.

**Interrogatory No. 29**

Separately for each car movement identified in response to Interrogatory No. 28, state (a) the amount Union Pacific charged for line-haul transportation of the movement, and (b) the amount the member contends Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate the member for furnishing the car.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding.

**Interrogatory No. 30**

Separately for each AFPM Member that is a Car Owner, with regard to each tank car owned by the member, state:

- a. Car number
- b. Year the car was built
- c. Year the car was acquired
- d. Car's cost as acquired
- e. Costs of any subsequent modifications or additions to the car
- f. Total loaded miles moved, separately for each year from 2005 through 2014
- g. Total empty miles moved, separately for each year from 2005 through 2014

- h. Costs for programmed maintenance of valves, separately for each year from 2005 through 2014
- i. Other maintenance costs, separately for each year from 2005 through 2014
- j. Costs for car cleaning, separately for each year from 2005 through 2014
- k. Repair costs, separately for each year from 2005 through 2014
- l. Storage costs, separately for each year from 2005 through 2014
- m. Taxes paid on the car, separately for each year from 2005 through 2014
- n. Total number of empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- o. Total number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- p. Total payments received from lessees, if any, separately for each year from 2005 through 2014
- q. Payments received from lessees for maintenance and repair costs incurred by the Car Owner, separately for each year from 2005 through 2014
- r. Payments to/credits to lessees for maintenance and repair costs incurred by lessees, separately for each year from 2005 through 2014
- s. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 31**

Separately for each AFPM member that is a lessee of tank cars, for each tank car used by the member pursuant to a lease, state:

- a. Car number
- b. Loaded miles moved, separately for each year from 2005 through 2014
- c. Empty miles moved, separately for each year from 2005 through 2014
- d. Costs for programmed maintenance of valves incurred by the lessee, separately for each year from 2005 through 2014
- e. Other maintenance costs incurred by the lessee, separately for each year from 2005 through 2014
- f. Costs for car cleaning incurred by the lessee, separately for each year from 2005 through 2014
- g. Repair costs incurred by the lessee, separately for each year from 2005 through 2014
- h. Storage costs incurred by the lessee, separately for each year from 2005 through 2014
- i. Number of empty movements to or from repair shops, separately for each year from 2005 through 2014
- j. Number of miles associated with empty movements to or from Repair Facilities, separately for each year from 2005 through 2014
- k. Total payments to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits received from the lessor for maintenance and repair costs as reimbursement for costs incurred by the lessee, separately for each year from 2005 through 2014
- m. Payments made to the lessor for maintenance and repair costs incurred by the lessor, separately for each year from 2005 through 2014
- n. The lease agreement(s) that governed use of the car in each year from 2005 through 2014

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 32**

Separately for each AFPM Member that is a Car Owner, separately for each year from 2005 through 2014, state:

- a. Number of tank cars owned
- b. Total number of rail cars owned
- c. Taxes on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- d. Depreciation on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- e. Insurance on fixed property used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- f. Rentals on track and other property when used for repair, cleaning, maintenance, or storage of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- g. Insurance paid on (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- h. Market value of machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- i. Costs for repair of shop machinery used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- j. Market value of material inventory used for repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- k. Wages and benefits paid to employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- l. Payroll taxes paid in connection with employees engaged in repair, cleaning, or maintenance of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)
- m. Payments for injuries or death during repairs when not covered by insurance for repairs of (i) tank cars, or (ii) all cars (if separate data for tank cars are not available)

- n. Payments to third parties that are not directly allocated to specific cars for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage (or payments to third parties for repair, cleaning, etc. for all cars, if separate data for tank cars are not available)
- o. Any costs of owning and operating tank cars owned by the member that are not addressed in subsections a-n

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 33**

Separately for each AFPM Member that is a lessee of tank cars, and separately for each year from 1987 through 2014, state:

- a. Number of tank cars used under a lease agreement, separately for each lease agreement
- b. Separately for each Car Owner and for each lease agreement, payments to Car Owners that are not directly allocated to specific cars, for tank car (i) repair, (ii) cleaning, (iii) maintenance, or (iv) storage

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 34**

Separately for each AFPM Member, and separately for each year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which the member was paid a mileage allowance, (ii) the total number of miles on which the member was paid allowances, and (iii) the total amount of allowances paid
- b. separately by railroad (i) the number of tank car movements for which the member was not paid a mileage allowance, and (ii) the total number of miles on which the member was not paid allowances

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 35**

With regard to the allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars . . . has increased” over the past 30 years, state on an annual basis:

- a. The costs of owning tank cars over the past 30 years
- b. The cost of maintaining tank cars over the past 30 years

**Response**

Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 36**

With regard to the allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’

members' rail tank cars . . . in lieu of paying mileage allowances, in order to compensate for such use as required by law," state the amount by which You contend Union Pacific's line-haul rates should have been reduced to compensate for the use of rail tank cars furnished by AFPM Members and explain the basis for that amount.

**Response**

AFPM objects to this Interrogatory as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. AFPM also objects to this Interrogatory as premature because it requests that AFPM formulate its position prior to completing discovery of UP. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**DOCUMENT REQUESTS**

**Document Request No. 1**

Produce all documents identified in Your answers to the Interrogatories.

**Response**

AFPM incorporates by reference its specific objections to each Interrogatory. AFPM further objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. Subject to and without waiving its objections, AFPM will produce any responsive documents that are within its custody, possession or control.

**Document Request No. 2**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 17 of the Complaint that “the cost of owning and maintaining tank cars” has increased “over the past 30 years.”

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM also objects to this Request as irrelevant because the Complaint seeks compensation for tank cars in accordance with Ex Parte No. 328, not for any increased cost of ownership.

**Document Request No. 3**

Produce all documents, regardless of date, supporting Your allegation in Paragraph 33 of the Complaint that Union Pacific “does not offer or negotiate reduced line-haul rates on movements using Association Complainants’ members’ rail tank cars.”

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 4**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of owning tank cars.

**Response**

AFPM objects to this Document Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 5**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the cost of maintaining tank cars.

**Response**

AFPM objects to this Document Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of

date limitation. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 6**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the level of any line-haul rate(s) under zero-mileage terms as compared with rate terms providing for payment of mileage allowances.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM further objects to this Request as irrelevant to the extent that it is not limited to tank cars. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 7**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the relationship between mileage allowance levels and tank car ownership costs.

**Response**

AFPM objects to this Document Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or

damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 8**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of compensation paid by railroads for use of private cars.

**Response**

AFPM objects to this Document Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM further objects to this Document Request as irrelevant to the extent that it is not limited to tank cars. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 9**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to any study, analysis, or report of the costs of moving empty cars.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and

those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. In addition, AFPM objects to the phrase “cost of moving empty cars” as vague and ambiguous because it is unclear whether this refers to a railroad’s cost of moving empty cars or a railroad’s charge for the empty movement. Regardless of which definition UP intends, AFPM also objects to this Document Request as irrelevant because the issue in this proceeding is not the cost of moving empty cars, but which entity bears that cost. AFPM further objects to this Document Request as irrelevant to the extent that it is not limited to tank cars. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 10**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM further objects to the relevance of this Request because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition- precedent to the railroad’s duty to compensate.

**Document Request No. 11**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars that include payment of mileage allowances.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM further objects to the relevance of this Request because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition- precedent to the railroad's duty to compensate. In addition, transactions with railroads other than UP are irrelevant to the claims in this proceeding.

**Document Request No. 12**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that Union Pacific establish lower rates for transportation in tank cars to reflect an AFPM Member's furnishing tank cars.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM further objects to the relevance of this Request because the car compensation requirements imposed by

49 U.S.C. § 11122 do not require the car provider to request compensation as a condition- precedent to the railroad's duty to compensate.

**Document Request No. 13**

Produce all documents, regardless of date, that contain, reflect, or otherwise refer or relate to a request that a railroad other than Union Pacific establish rates for transportation in tank cars to reflect an AFPM Member's furnishing tank cars.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members and lack of date limitation. AFPM further objects to the relevance of this Request because the car compensation requirements imposed by 49 U.S.C. § 11122 do not require the car provider to request compensation as a condition- precedent to the railroad's duty to compensate. In addition, transactions with railroads other than UP are irrelevant to the claims in this proceeding.

**Document Request No. 14**

Produce a copy of each lease under which an AFPM Member is the lessee of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

AFPM objects to this Document Request as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Furthermore, the multitude of commercial arrangements between tank car lessors and lessees are irrelevant to the issues in this proceeding, which concern the lawfulness of

UP's decision to charge for empty tank car movements to Repair Facilities and whether UP is paying compensation for the use of private tank cars. AFPM also objects to this Request as overbroad and unduly burdensome given the number of AFPM members and the 28 year date range. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**Document Request No. 15**

Produce a copy of each lease under which an AFPM Member is the lessor of tank cars furnished to Union Pacific in any year from 1987 through 2015.

**Response**

AFPM objects to this Document Request as irrelevant because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding. Furthermore, the multitude of commercial arrangements between tank car lessors and lessees are irrelevant to the issues in this proceeding, which concern the lawfulness of UP's decision to charge for empty tank car movements to Repair Facilities and whether UP is paying compensation for the use of private tank cars. AFPM also objects to this Request as overbroad and unduly burdensome given the number of AFPM members and the 28 year date range. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**Document Request No. 16**

With respect to the leases produced in response to Document Request Nos. 14 and 15, produce documents sufficient to identify which tank cars were subject to each lease.

**Response**

AFPM incorporates by reference its objections and responses to Document Request Nos. 14 and 15.

**Document Request No. 17**

Produce all documents that refer or relate to Item 55-C.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. Subject to and without waiving any of its objections, AFPM will produce responsive documents to the extent they exist and can be found by a reasonable search.

**Document Request No. 18**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of owning tank cars, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. AFPM objects to this Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. Furthermore, the

compensation received by a tank car lessor from its lessees is irrelevant to whether UP has provided the compensation required of it by law. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**Document Request No. 19**

Separately for each year from 1987 through 2014, produce documents sufficient to show Your costs of maintaining tank cars that You own or lease to another Person, as well as the extent to which those costs are reimbursed by lessees of Your tank cars.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. AFPM objects to this Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. Furthermore, the compensation received by a tank car lessor from its lessees is irrelevant to whether UP has provided the compensation required of it by law. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**Document Request No. 20**

Separately for each year from 1987 through 2014, produce document sufficient to show Your costs of maintaining tank cars that that You lease from another Person, as well as the extent to which those costs are reimbursed by the lessor.

### **Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. AFPM objects to this Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. Furthermore, the compensation paid by a tank car lessor to its lessees is irrelevant to whether UP has provided the compensation required of it by law. Subject to and without waiving its objections, AFPM has no information responsive to this request.

### **Document Request No. 21**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of owning the cars.

### **Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. AFPM objects to this Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. Furthermore, the compensation received by a tank car lessor from its lessees is irrelevant to whether UP has

provided the compensation required of it by law. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**Document Request No. 22**

Separately for each year from 1987 through 2014, for tank cars that You lease from another Person, produce documents sufficient to show Your payments to the lessor as reimbursement for the lessor's costs of maintaining the cars.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly burdensome given the number of AFPM members. AFPM objects to this Request as irrelevant because Complainants have not challenged the level of compensation adopted by the ICC in Ex Parte No. 328, but only the failure of UP to provide that compensation. Furthermore, the compensation received by a tank car lessor from its lessees is irrelevant to whether UP has provided the compensation required of it by law. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**Document Request No. 23**

Produce all documents relating to payments made pursuant to the Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars from 1987 through 2014.

**Response**

AFPM objects to this Document Request to the extent it extends to AFPM members because AFPM is no longer requesting reparations or damages on behalf of its members and those members are not parties to this proceeding and because it is overbroad and unduly

burdensome given the number of AFPM members and the request for information back to 1987. In addition, mileage equalization payments by any individual tank car owner are irrelevant to the issues in this proceeding, and to the extent mileage equalization payments may be relevant at all, it is at the system-wide level, which cannot be ascertained through discovery of Complainants or their individual members. Subject to and without waiving its objections, AFPM has no information responsive to this request.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of June, 2015, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on all of the parties of record in NOR 42144.

/s/ Justin A. Savage  
Justin A. Savage

# **EXHIBIT 11**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

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**UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS  
TO NORTH AMERICA FREIGHT CAR ASSOCIATION**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that North America Freight Car Association (“NAFCA”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than March 16, 2016.

**DEFINITIONS AND INSTRUCTIONS**

Union Pacific hereby incorporates by reference into this Second Set of Discovery Requests the Definitions and Instructions included in Union Pacific’s First Set of Discovery Requests, served April 30, 2015.

## **INTERROGATORIES**

### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### **Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

## **DOCUMENT REQUESTS**

### **Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

### **Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the

May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

Respectfully submitted,

/s/ Michael L. Rosenthal

MICHAEL L. ROSENTHAL

KAVITA PILLAI

Covington & Burling LLP

One CityCenter

850 Tenth Street, NW

Washington, D.C. 20001

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LOUISE A. RINN  
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DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

March 1, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2016, I caused a copy of the foregoing document to be served by e-mail and first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 12**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

**UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS  
TO THE CHLORINE INSTITUTE**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that The Chlorine Institute (“CI”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than March 16, 2016.

**DEFINITIONS AND INSTRUCTIONS**

Union Pacific hereby incorporates by reference into this Second Set of Discovery Requests the Definitions and Instructions included in Union Pacific’s First Set of Discovery Requests, served April 30, 2015.

## **INTERROGATORIES**

### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### **Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

## **DOCUMENT REQUESTS**

### **Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

### **Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the

May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

Respectfully submitted,

/s/ Michael L. Rosenthal

MICHAEL L. ROSENTHAL

KAVITA PILLAI

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LOUISE A. RINN  
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DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

March 1, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2016, I caused a copy of the foregoing document to be served by e-mail and first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 13**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

**UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS  
TO THE FERTILIZER INSTITUTE**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that The Fertilizer Institute (“TFI”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than March 16, 2016.

**DEFINITIONS AND INSTRUCTIONS**

Union Pacific hereby incorporates by reference into this Second Set of Discovery Requests the Definitions and Instructions included in Union Pacific’s First Set of Discovery Requests, served April 30, 2015.

## **INTERROGATORIES**

### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### **Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

## **DOCUMENT REQUESTS**

### **Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

### **Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the

May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Document Request No. 33**

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**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

Respectfully submitted,

/s/ Michael L. Rosenthal

MICHAEL L. ROSENTHAL

KAVITA PILLAI

Covington & Burling LLP

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LOUISE A. RINN  
CRAIG V. RICHARDSON  
DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

March 1, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2016, I caused a copy of the foregoing document to be served by e-mail and first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 14**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

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**UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS  
TO AMERICAN CHEMISTRY COUNCIL**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that American Chemistry Council (“ACC”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than March 16, 2016.

**DEFINITIONS AND INSTRUCTIONS**

Union Pacific hereby incorporates by reference into this Second Set of Discovery Requests the Definitions and Instructions included in Union Pacific’s First Set of Discovery Requests, served April 30, 2015.

## **INTERROGATORIES**

### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### **Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

## **DOCUMENT REQUESTS**

### **Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

### **Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the

May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

Respectfully submitted,

/s/ Michael L. Rosenthal

MICHAEL L. ROSENTHAL

KAVITA PILLAI

Covington & Burling LLP

One CityCenter

850 Tenth Street, NW

Washington, D.C. 20001

(202) 662-6000

LOUISE A. RINN  
CRAIG V. RICHARDSON  
DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

March 1, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2016, I caused a copy of the foregoing document to be served by e-mail and first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 15**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

**UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS  
TO AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that American Fuel & Petrochemicals Manufacturers (“AFPM”) produce documents and information responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than March 16, 2016.

**DEFINITIONS AND INSTRUCTIONS**

Union Pacific hereby incorporates by reference into this Second Set of Discovery Requests the Definitions and Instructions included in Union Pacific’s First Set of Discovery Requests, served April 30, 2015.

## **INTERROGATORIES**

### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### **Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

## **DOCUMENT REQUESTS**

### **Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

### **Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the

May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

Respectfully submitted,

/s/ Michael L. Rosenthal

MICHAEL L. ROSENTHAL

KAVITA PILLAI

Covington & Burling LLP

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850 Tenth Street, NW

Washington, D.C. 20001

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LOUISE A. RINN  
CRAIG V. RICHARDSON  
DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

March 1, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March, 2016, I caused a copy of the foregoing document to be served by e-mail and first-class mail, postage prepaid, on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal  
Michael L. Rosenthal

# **EXHIBIT 16**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

---

**RESPONSES AND OBJECTIONS OF  
THE NORTH AMERICA FREIGHT CAR ASSOCIATION TO  
UNION PACIFIC'S SECOND SET OF DISCOVERY REQUESTS**

Complainant the North America Freight Car Association (“NAFCA”) hereby submits its Responses and Objections to Defendant Union Pacific’s Second Set of Discovery Requests (“Second Discovery Requests”). NAFCA’s responses to the Second Discovery Requests are based on information presently known. Because NAFCA continues to investigate the facts and information relating to the issues in this case, NAFCA reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

NAFCA hereby incorporates by reference into these Responses and Objections to Union Pacific's Second Discovery Requests the General Objections, Objections to Definitions, and Objections to Instructions included in NAFCA's Responses to Union Pacific's First Set of Discovery Requests, served on June 23, 2015.

### **INTERROGATORIES**

#### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

#### **Response**

NAFCA objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory, as it does not own or lease any tank cars.

#### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

**Response**

NAFCA objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no information responsive to this Interrogatory, as it does not own or lease any tank cars, and does not request rates from any railroads.

**Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

**Response**

NAFCA objects to this Interrogatory as premature because it requests that NAFCA formulate its position prior to completing discovery of UP. NAFCA also objects to the characterization that NAFCA claims “that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.” The characterization is unclear and not subject to a reasonable answer as posed.

**DOCUMENT REQUESTS**

**Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

**Response**

NAFCA incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving those objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Response**

NAFCA objects to this Document Request as overbroad and unduly burdensome. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request, as it does not lease tank cars to or from any party.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request, as it does not own or lease any tank cars.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request, as it does not lease tank cars from or to any party.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Response**

NAFCA objects to this Document Request as vague and ambiguous to the point that NAFCA does not understand either its purpose or scope in asking for revenues that NAFCA or its members would receive as a result of the May 1, 2015 enhanced tank car standards, given that the referenced rules impose new costs tank car owners and lessees. NAFCA further objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of

admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request, as it does not lease tank cars to any entity.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Response**

NAFCA objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

**Response**

Subject to and without waiving its objections, NAFCA has no documents within its possession or control that are responsive to this request.

Respectfully submitted,



Thomas W. Wilcox, Esq.  
David K. Monroe, Esq.  
Svetlana Lyubchenko, Esq.  
GKG Law, P.C.  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, DC 20007  
(202) 342-5248

*Counsel for North America  
Freight Car Association*

Dated: March 16, 2016

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 16<sup>th</sup> day of March, 2016, I have served a copy of the foregoing via electronic mail and regular mail to counsel for Defendant at the following addresses:

Michael Rosenthal  
Carolyn F. Corwin  
Covington & Burling, LLP  
One CityCenter  
850 10th Street, NW  
Washington, DC 20001

Gayla L. Thal  
Louise A. Rinn (e-mail and regular mail)  
Danielle E. Bode  
Jeremy M. Berman  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

  
\_\_\_\_\_  
Thomas W. Wilcox

# **EXHIBIT 17**



## INTERROGATORIES

### Interrogatory No. 37

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### Response

CI has no information responsive to this Interrogatory.

### Interrogatory No. 38

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### Response

CI has no information responsive to this Interrogatory.

### Interrogatory No. 39

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

### Response

CI objects to this Interrogatory as premature because it requests that CI formulate its position prior to completing discovery of UP. CI also objects to the characterization that CI

claims “that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.” The characterization is unclear and not subject to a reasonable answer as posed.

### **DOCUMENT REQUESTS**

#### **Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

#### **Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

#### **Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

#### **Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

#### **Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration

and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

**Response**

Subject to and without waiving its objections as to relevance and unreasonably burdensomeness, CI has no documents within its possession or control that are responsive to this request.

Respectfully submitted.

/s/ Paul M. Donovan

Paul M Donovan

LaRoe, Winn, Moerman & nDonovan

1250 Connecticut Ave. N.W. Suite 200

Washington, DC 20036

(202) 298-8100

*Attorney for the Chlorine Institute, Inc.*

Dated: March 16, 2016



# **EXHIBIT 18**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

**RESPONSES AND OBJECTIONS OF  
THE FERTILIZER INSTITUTE TO  
UNION PACIFIC'S SECOND SET OF DISCOVERY REQUESTS**

Complainant, The Fertilizer Institute (“TFI”), hereby submits its Responses and Objections to Defendant Union Pacific’s Second Set of Discovery Requests (“Second Discovery Requests”). TFI’s responses to the Second Discovery Requests are based on information presently known. Because TFI continues to investigate the facts and information relating to the issues in this case, TFI reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

TFI hereby incorporates by reference into these Responses to Union Pacific’s Second Set of Discovery Requests the Objections to Definitions and Instructions included in TFI’s Responses to Union Pacific’s First Set of Discovery Requests, served June 15, 2015.

## INTERROGATORIES

### Interrogatory No. 37

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### Response

TFI objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

### Interrogatory No. 38

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### Response

TFI objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no information responsive to this Interrogatory.

**Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

**Response**

TFI objects to this Interrogatory as premature because it requests that TFI formulate its position prior to completing discovery of UP. TFI also objects to the characterization that TFI claims “that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.” The characterization is vague and ambiguous and not subject to a reasonable answer as posed.

**DOCUMENT REQUESTS**

**Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

**Response**

TFI incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving those objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. TFI further objects to this Document Request as overbroad and unduly burdensome to the extent it encompasses the general subject matter of retrofitting tank cars without limitation. Subject to and without waiving those objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Response**

TFI objects to this Document Request as overbroad and unduly burdensome. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Response**

TFI objects to this Document Request as vague and ambiguous to the point that TFI does not understand either its purpose or scope in asking for revenues that TFI or its members would receive as a result of the May 1, 2015 enhanced tank car standards. TFI further object to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without

waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Response**

TFI objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

**Response**

Subject to and without waiving its objections, TFI has no documents within its possession or control that are responsive to this request.

Respectfully submitted.



---

Jeffrey O. Moreno  
Thompson Hine LLP  
1919 M Street, N.W. Suite 700  
Washington, DC 20036  
(202) 263-4107

*Attorney for The Fertilizer Institute*

Dated: March 16, 2016

# **EXHIBIT 19**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

---

**RESPONSES AND OBJECTIONS OF  
THE AMERICAN CHEMISTRY COUNCIL TO  
UNION PACIFIC'S SECOND SET OF DISCOVERY REQUESTS**

Complainant, the American Chemistry Council ("ACC"), hereby submits its Responses and Objections to Defendant Union Pacific's Second Set of Discovery Requests ("Second Discovery Requests"). ACC's responses to the Second Discovery Requests are based on information presently known. Because ACC continues to investigate the facts and information relating to the issues in this case, ACC reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

ACC hereby incorporates by reference into these Responses to Union Pacific's Second Set of Discovery Requests the Objections to Definitions and Instructions included in ACC's Responses to Union Pacific's First Set of Discovery Requests, served June 15, 2015.

## INTERROGATORIES

### Interrogatory No. 37

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### Response

ACC objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

### Interrogatory No. 38

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### Response

ACC objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no information responsive to this Interrogatory.

**Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

**Response**

ACC objects to this Interrogatory as premature because it requests that ACC formulate its position prior to completing discovery of UP. ACC also objects to the characterization that ACC claims “that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.” The characterization is vague and ambiguous and not subject to a reasonable answer as posed.

**DOCUMENT REQUESTS**

**Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

**Response**

ACC incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving those objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. ACC further objects to this Document Request as overbroad and unduly burdensome to the extent it encompasses the general subject matter of retrofitting tank cars without limitation.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Response**

ACC objects to this Document Request as overbroad and unduly burdensome. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Response**

ACC objects to this Document Request as vague and ambiguous to the point that ACC does not understand either its purpose or scope in asking for revenues that ACC or its members would receive as a result of the May 1, 2015 enhanced tank car standards. ACC further object to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without

waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Response**

ACC objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

**Response**

Subject to and without waiving its objections, ACC has no documents within its possession or control that are responsive to this request.

Respectfully submitted.



---

Jeffrey O. Moreno  
Thompson Hine LLP  
1919 M Street, N.W. Suite 700  
Washington, DC 20036  
(202) 263-4107

*Attorney for the American Chemistry Council*

Dated: March 16, 2016

# **EXHIBIT 20**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

---

**RESPONSES AND OBJECTIONS OF  
THE AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS TO  
UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS**

Complainant the American Fuel & Petrochemical Manufacturers (“AFPM”) hereby submits its Responses and Objections to Defendant Union Pacific’s Second Set of Discovery Requests (“Second Discovery Requests”). AFPM’s responses to the Second Discovery Requests are based on information presently known. Because AFPM continues to investigate the facts and information relating to the issues in this case, AFPM reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

AFPM hereby incorporates by reference into these Responses and Objections to Union Pacific's Second Discovery Requests the General Objections, Objections to Definitions, and Objections to Instructions included in AFPM's Responses to Union Pacific's First Set of Discovery Requests, served on June 23, 2015.

## **INTERROGATORIES**

### **Interrogatory No. 37**

Identify the factors You use in deciding which Repair Facility to use for tank cars You own or lease that require empty movement to a Repair Facility.

### **Response**

AFPM objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory, as it does not own or lease any tank cars.

### **Interrogatory No. 38**

Identify the Persons who are responsible for:

- (a) Deciding which Repair Facility will be used for tank cars You own or lease.
- (b) Deciding when to direct tank cars You own or lease to a Repair Facility.
- (c) Negotiating lease terms for tank cars You own or lease.
- (d) Paying or billing for empty mileage payments required with regard to tank cars You own or lease.
- (e) Requesting rates from railroads for transportation of products in tank cars.

### **Response**

AFPM objects to this Interrogatory as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no information responsive to this Interrogatory.

**Interrogatory No. 39**

Identify all facts, Documents, and/or Communications upon which You intend to rely to support Your claim that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.

**Response**

AFPM objects to this Interrogatory as premature because it requests that AFPM formulate its position prior to completing discovery of UP. AFPM also objects to the characterization that AFPM claims “that shippers currently paying Union Pacific zero mileage rates would be better off if Union Pacific were to charge rates that provided for payment of a mileage allowance.” The characterization is vague and ambiguous and not subject to a reasonable answer as posed.

**DOCUMENT REQUESTS**

**Document Request No. 24**

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

**Response**

AFPM incorporates by reference its general and specific objections to each Interrogatory. Subject to and without waiving those objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 25**

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 26**

Produce all Documents that contain, reflect or otherwise refer or relate to Communications with Persons from whom or to whom You lease tank cars regarding the movement of tank cars to a Repair Facility.

**Response**

AFPM objects to this Document Request as overbroad and unduly burdensome. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request, as it does not lease tank cars to or from any party.

**Document Request No. 27**

Produce all Documents that contain, reflect, or otherwise refer or relate to bids from and/or negotiations with a Repair Facility or a company that owns or operates a Repair Facility.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 28**

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request, as it does not own or lease any tank cars.

**Document Request No. 29**

Produce all Documents that contain, reflect, or otherwise refer or relate to Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request, as it does not lease tank cars from or to any party.

**Document Request No. 30**

Produce any contract and/or rate document under which a mileage allowance was paid by a railroad other than Union Pacific.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 31**

Produce all documents that refer or relate to decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 32**

Produce all documents that contain, reflect, or otherwise refer or relate to any analysis or projection of revenues You would receive as a result of rules regarding the rules adopted in the May 1, 2015, Final Rule issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration regarding enhanced tank car standards, including but not limited to analyses or projections developed before the issuance of the Final Rule.

**Response**

AFPM objects to this Document Request as vague and ambiguous to the point that AFPM does not understand either its purpose or scope in asking for revenues that AFPM or its members would receive as a result of the May 1, 2015 enhanced tank car standards, given that the referenced rules impose new costs tank car owners and lessees. AFPM further objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 33**

Produce documents sufficient to show the average lease rate for tank cars, by car type, for tank cars You leased to other Persons in each month from 2001 through the present.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request, as it does not lease tank cars to any entity.

**Document Request No. 34**

Produce all documents discussing, analyzing, or relating to the reasons for selecting Repair Facilities, including without limitation, available capacity (or lack of capacity) at Repair Facilities, backlogs or delays in completing work at Repair Facilities, differences in pricing for parts or services at Repair Facilities, preexisting agreements with Repair Facilities, or ownership or control (including by ownership or control by the tank car owner, lessor, or affiliates thereof) of Repair Facilities.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 35**

Produce all documents discussing, analyzing, or relating to movements of tank cars from one Repair Facility to another Repair Facilities for any purpose, including without limitation, temporary storage, cleaning, inspections, testing, repairs, replacements or retrofits of any tank car.

**Response**

AFPM objects to this Document Request as irrelevant to the subject matter at issue in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

**Document Request No. 36**

Produce all Documents, regardless of date, that pertain to meetings, deliberations, reports or analyses of the Joint Negotiating Committee's negotiation of national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

**Response**

Subject to and without waiving its objections, AFPM has no documents within its possession or control that are responsive to this request.

Respectfully submitted.

Respectfully submitted,

By: /s/ Justin A. Savage  
Justin A. Savage  
Attorney-in-Charge  
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**Counsel for Complainant American Fuel  
& Petrochemical Manufacturers**

Dated: March 22, 2016

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 22nd day of March, 2016, I have served a copy of the foregoing via electronic mail and regular mail to counsel for Defendant at the following addresses:

Michael Rosenthal  
Carolyn F. Corwin  
Covington & Burling, LLP  
One CityCenter  
850 10th Street, NW  
Washington, DC 20001

Gayla L. Thal  
Louise A. Rinn (e-mail and regular mail)  
Danielle E. Bode  
Jeremy M. Berman  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

/s/ Justin A. Savage

# **EXHIBIT 21**



THE FOUNDRY BUILDING

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BRENDAN COLLINS  
STEVEN JOHN FELLMAN  
EDWARD D. GREENBERG  
KATHARINE FOSTER MEYER  
DAVID K. MONROE  
TROY A. ROLF  
DAVID P. STREET  
KEITH G. SWIRSKY  
THOMAS W. WILCOX  
CHRISTOPHER B. YOUNGER

SVETLANA B. LYUBCHENKO

MINNESOTA OFFICE:  
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(T) 952/449-8817 (F) 952/449-0614

WRITER'S DIRECT E-MAIL ADDRESS  
TWILCOX@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER  
202-342-5248

July 30, 2015

Via E-Mail and Regular Mail

Michael Rosenthal  
Covington & Burling, LLP  
One CityCenter  
850 10th Street, NW  
Washington, DC 20001

Re: STB Docket No. NOR 42144, *North America Freight Car Association, et al. v. Union Pacific Railroad Company*

Dear Mike:

At the conclusion of the second "meet and confer" session on July 10, 2015, between counsel for UP and for the Association Complainants, we agreed to exchange letters outlining our clients' respective positions regarding the outstanding discovery disputes. In particular, counsel for the Association Complainants agreed to outline information that they would voluntarily produce on behalf of their members, with the goal of making it unnecessary for UP to seek permission from the Surface Transportation Board to obtain discovery from individual members by subpoenas. With the input and consent of the counsel for the other Association Complainants, this letter summarizes the associations' positions. The discussion of specific issues below addressing production on behalf of individual members is not a waiver of any of the general or specific objections Association Complainants have raised in response to UP's discovery requests.

Michael Rosenthal

July 30, 2015

Page 2

First, the parties have discussed the production of rail car leases held by individual members (for example, Interrogatories 3-10 and Document Requests 14, 16). NAFCA notes that UP will be receiving a number of leases from the individual Complainants, which we believe should provide a representative sample of the type information your discovery requests appear to be seeking. However, if UP still desires the production of leases from NAFCA's other members, NAFCA is willing to discuss with UP the production of a representative sample of the lease templates and drafts that its members who are car lessors negotiate with tank car lessees in the normal course. The other Association Complainants decline to produce any leases on behalf of their member companies.

Second, a number of UP's requests seek information related to requests by Association Complainants' members for line haul rates for tank cars that included payment of a mileage allowance, as well as requests for "reduced line-haul rates to reflect the member's furnishing [of] tank cars." (Interrogatories 24-27 and Document Requests 3, 10-13). The Association Complainants maintain this information is not calculated to lead to the discovery of relevant evidence. However, in order to avoid a dispute on this issue, the Association Complainants propose to poll their members to see if such requests to UP exist, and, if so, that this information be provided subject to applicable confidentiality requirements and the Protective Order entered in this case.

Finally, Complainants have discussed UP's desire to obtain extensive information or data relating to the cost of railcar ownership from the Association Complainants' members and we have concluded that the requests for such information (including but not necessarily limited to Interrogatories 30-33; and Document Requests 2, 4-9, 18-22) do not seek information relevant to the allegations in the Complaint. Count I alleges that UP's adoption of Tariff Item 55-C was unlawful. To the extent this allegation implicates any tank car ownership cost, it is the cost imposed by Item 55-C, which does not require any discovery to ascertain. The discovery of any other costs of car ownership is not relevant to Count I.

Count II alleges that (1) UP is not paying mileage allowances to tank car owners or shippers (a claim that UP essentially admits), and (2) UP is not alternatively meeting its obligation to pay mileage allowances by discounting the rates of shippers. The sole issue thus is whether UP in fact is discounting its rates in lieu of paying the mileage allowances determined by the mileage allowance formula established in EP 328 and contained in Tariff RIC 6007. This agreed-upon formula, adopted by the agency in a formal proceeding, establishes the relevant car ownership costs for compliance with the statute. The car ownership costs incurred by individual Association Complainant members are therefore not relevant in this proceeding.

Please call me or counsel for the other Association Complainants if you have questions, or wish to discuss the contents of this letter.

Sincerely,

  
Thomas W. Wilcox

Michael Rosenthal  
July 30, 2015  
Page 3

Cc: Counsel for Association Complainants

# **EXHIBIT 22**

# COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES  
NEW YORK SAN FRANCISCO SEOUL  
SHANGHAI SILICON VALLEY WASHINGTON

**Michael L. Rosenthal**

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5448  
mrosenthal@cov.com

**Via Email and First-Class Mail**

August 24, 2015

Thomas W. Wilcox  
GKG Law  
1055 Thomas Jefferson Street, NW, Suite 500  
Washington, DC 20007

**Re: STB Docket No. NOR 42144, North America Freight Car  
Association, et al. v. Union Pacific Railroad Company**

Dear Tom:

During our meet and confer session on July 10, 2015, Union Pacific agreed to develop a proposal for narrowing Complainants' Interrogatory No. 1 and to reconsider our objection to producing documents relating to its internal costing system in response to Complainant's Document Request No. 13.

Interrogatory No. 1 asked Union Pacific to identify "all tank car movements beginning in 2010 for which UP has established tariff rates, or proposed a contract rate, that offered a choice between a line-haul rate with full mileage allowance payments or zero mileage allowance." In order to reduce the burdens associated with responding to this exceptionally broad request, while still providing Complainants the opportunity to obtain the information they seek, we propose the following (without waiving any of Union Pacific's objections to the Complainants' discovery request):

*First*, Union Pacific would produce its tariffs covering movements in tank cars beginning in 2010. To do this, Union Pacific would search for and produce those tariffs containing rates for commodities (identified by 5-digit STCC code) that commonly move in tank cars. We would let Complainants develop the list of STCC codes (subject to our confirmation that the commodity actually does move in tank cars).

*Second*, without waiving our objection to producing information regarding movements governed by contracts, Union Pacific would produce contracts with an agreed-upon number of members of the Association Complainants that govern movements in tank cars beginning in 2010. To do this, Union Pacific would search for and produce contracts entered on or after January 1, 2010, that contain rates for the commodities identified as discussed in the prior paragraph. We would produce contracts for up to 50 members identified by the Association Complainants, so long as each Association Complainant has at least five members on the list.

*Third*, without waiving our objection to producing information regarding movements governed by contracts, it would be extremely burdensome to review individual shipper files to

## COVINGTON

Thomas W. Wilcox  
August 24, 2015  
Page 2

identify all tank car movements beginning in 2010 for which Union Pacific proposed a contract rate that offered a choice between full mileage and zero mileage where the final contract did not offer such a choice. However, if any of the Association Complainants' members identify any such movements and produce the associated documents, Union Pacific would search its files for its own documents related to those movements.

*Fourth*, if in the course of responding to other discovery requests, Union Pacific identifies other tank car movements for which it established tariff rates, or proposed a contact rate that offered a choice between full mileage allowance payments or zero mileage allowance, we will identify those movements and produce the associated documents, if the Association Complainants agree to produce documents associated with the rates and communications on behalf of their members.

Document Request No. 13 asked Union Pacific to produce "all documents that Identify, refer or relate to the factors and methods that UP uses to establish line-haul rates for movements in tank cars, including but not limited to all cost factors that UP considers." Union Pacific objected to the request as unduly burdensome, overbroad, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As we understand the request, responding would require searching through records relating to tens of thousands of transactions involving rates and service terms for shipments in tank cars that have occurred over a 25-year period, including records relating to contract movements, which are not subject to regulation. Union Pacific also objected "to the extent this request seeks documents related to Union Pacific's internal costing system." Union Pacific also stated that the documents it will search for and produce in response to Document Request Nos. 2, 6, and 9 may contain information from which responsive information may be derived. Union Pacific does not plan to withhold any documents from its production in response to Document Request Nos. 2, 6, and 9 on the grounds that they are related to Union Pacific's internal costing system, so questions whether such information would be discoverable are purely hypothetical.

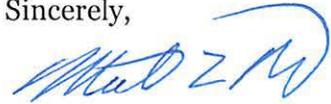
At our July 10 meet and confer session, Complainants promised to address several additional issues relating to their discovery requests. Specifically, Complainants promised to (1) address concerns they apparently have regarding Union Pacific's proposal for producing electronically stored information (as reflected in Union Pacific's General Objection No. 9); (2) consider narrowing Document Request Nos. 2 and 5, which as written request that Union Pacific search for and review 25 years' worth of documents in its shipper files and elsewhere; (3) clarify the information they intended to seek through Document Request No. 6(p); and (4) identify specific Document Requests and/or Interrogatories for which they believe Union Pacific should produce information and documents created after March 31, 2015. We have not yet received a letter addressing any of these issues.

**COVINGTON**

Thomas W. Wilcox  
August 24, 2015  
Page 3

We will be responding separately to your letter of July 30, 2015, regarding Union Pacific's discovery requests to Complainants.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael L. Rosenthal", with a large, stylized flourish at the end.

Michael L. Rosenthal

cc: Counsel for Association Complainants

# **EXHIBIT 23**



THE FOUNDRY BUILDING

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WRITER'S DIRECT E-MAIL ADDRESS  
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WRITER'S DIRECT DIAL NUMBER  
202-342-5248

September 11, 2015

Via E-Mail and Regular Mail

Michael Rosenthal  
Covington & Burling, LLP  
One CityCenter  
850 10th Street, NW  
Washington, DC 20001

Re: STB Docket No. NOR 42144, *North America Freight Car Association, et al. v. Union Pacific Railroad Company*

Dear Mike:

This letter responds to your letter to me of August 24, 2015, in which you responded to the letter of July 29, 2015 I submitted on behalf of the Association Complainants, and also posed a number of questions to Association Complainants about their responses to UP's discovery requests. Complainants appreciate UP's willingness to continue to try and resolve the parties' differences concerning their respective discovery requests. This letter generally responds to UP's questions in the order they are asked.

1. *Are the Association Complainants interested in pursuing an approach that uses a representative sample of lease templates from NAFCA's members that are car lessors that uses a representative sample and stipulations that address the frequency of the use of certain provisions in all tank car leases, to the extent those provisions vary from lease to lease?*

Response - Association Complainants are willing to pursue such an approach, subject to discussions with UP about the sample size and stipulations UP believes are appropriate and sufficient.

2. *Will Association Complainants agree to provide information and documents relating to members' requests to other railroads for rates that include a mileage allowance and requests for reduced line-haul rates to reflect the members' furnishing tank cars?*

Response - Association Complainants continue to disagree with UP that requests to other railroads are relevant and discoverable in this proceeding.

3. *UP's requests for information and documents related to the costs of owning and maintaining tank cars incurred by individual Association Complainant members.*

Response - As to Count I of the Complaint, the only additional costs of car ownership at issue are the additional costs that have been imposed by Item 55-C and the associated tariff charges in Tariff UPRR 4703-Series. This is the "cost evidence" referred to in the Complainants' Reply to UP's Motion to Dismiss Complaint or to Make Complaint More Definite, and in the first full paragraph of page 2 of your August 24 letter. Other costs of car ownership are not relevant to prove or disprove Count I.

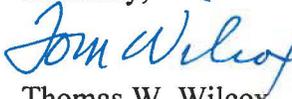
As to Count II of the Complaint, the Complainants allege that UP is not compensating providers of tank cars by either (1) paying mileage allowances calculated pursuant to the formula set forth under EP 328 or (2) discounting rates in lieu of paying allowances, to the extent that UP may fulfill its statutory obligation to compensate tank car providers by charging discounted rates, which Complainants do not concede. Complainants allege that UP is not compensating car providers at all by either method, in violation of the law. In either case, the relevant "costs of car ownership" are not the actual costs of car ownership incurred by Association Complainants' members, or by UP for that matter, but the costs utilized by the EP 328 formula to calculate mileage allowances. As such, actual costs of car ownership, as calculated by complainants or UP, are not relevant.

If the amended complaint or complainants' discovery requests have caused UP to misconstrue Complainants' allegations, Complainants are prepared to further amend their Complaint to make this more clear and to discuss ways to narrow their discovery requests to better reflect the foregoing allegations.

4. *Do Association Complainants intend to address other requests that seek information regarding association members or likely to be in their possession? Specifically, Interrogatory Nos. 14-23 & 34; Document Requests Nos. 4-9, 15, 17, & 23.*

Response - The Association Complainants have already addressed all of these discovery requests in their respective objections and responses to UP's First Set of Discovery Requests. Counsel for Association Complainants do not recall that these requests were discussed at the July 10, 2015 meet and confer session, and so were not aware that UP was expecting a further response or explanation as to these requests. We also note that Document Requests Nos. 4-9 relate to car ownership costs, which have been addressed above, and that Request No. 23 seeks the production of empty mileage data that Association Complainants maintain UP either possesses in the normal course, or it can obtain from Railinc Corporation.

Please do not hesitate to call me or Counsel for any of the other Association Complainants should you have any questions.

Sincerely,  
  
Thomas W. Wilcox

Cc: Counsel for Association Complainants

# **EXHIBIT 24**

# COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES  
NEW YORK SAN FRANCISCO SEOUL  
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mrosenthal@cov.com

**Via Email and First-Class Mail**

December 30, 2015

Thomas W. Wilcox  
GKG Law  
1055 Thomas Jefferson Street, NW, Suite 500  
Washington, DC 20007

**Re: STB Docket No. NOR 42144, North America Freight Car  
Association, et al. v. Union Pacific Railroad Company**

Dear Tom:

This responds to your September 11, 2015, letter regarding discovery requests that Union Pacific served on Complainants. We are responding separately to your September 11 letter regarding discovery requests that Complainants served on Union Pacific.

1. *Sample leases.* We appreciate your willingness to pursue a sampling approach. Since NAFCA members that are car lessors would know about the variations in the mileage allowance and mileage equalization provisions in the leases they use, it would advance our discussion if you could tell us, by lessor, how many different variations there are and the number of cars currently covered by each variation. It may turn out that the relevant terms are reasonably standard, at least for each lessor, which would greatly simplify discovery for everybody.

2. *Requests by Association Complainant members to other railroads for rates that include a mileage allowance or reduced line-haul rates to reflect the members' furnishing of cars.* We ask that you reconsider your decision not to take the same approach to our discovery regarding requests to other railroads as you agreed to take with regard to requests to Union Pacific. The Board's decision served December 21, 2015, allowed Complainants to proceed with their complaint regarding Union Pacific's use of zero mileage rates based on Complainants' arguments that Board precedent "does not address the rail tank car industry" or "applicable industry conditions," or, in the alternative, that "the Board should consider whether [its] precedent should stand given changes in the railroad industry." The Board concluded that "[s]uch arguments are fact specific and, as such, can only be sufficiently addressed after the development of a full record." The Association Complainants relied on the issue of industry practice, they are pursuing this case on behalf of their members, and those members are the most reasonable source for information regarding the industry practice of using zero mileage rates. The Association Complainants cannot pursue the arguments they apparently plan to make and refuse to provide the discovery we seek.

3. *Information and documents related to the costs of owning and maintaining tank cars incurred by individual Association Complainant members.* In our letter of August 24,

## COVINGTON

Thomas W. Wilcox  
December 30, 2015  
Page 2

2015, we explained in detail why our requests were appropriate and why it would be more efficient for all involved to pursue a cooperative approach to producing information regarding car ownership costs. Your September 11 letter failed to address many of the points in our letter. We urge you to reconsider your position in light of Board's decision served December 21, 2015, which concluded that information about "car ownership costs" is "relevant to the proceeding" and is "appropriately obtained in discovery." Indeed, the Board quoted Complainants' argument that "the information and facts sought in UP's request 'are more appropriately elicited through discovery.'"

4. *Other requests for information from Association Complainant members (for example, Interrogatory Nos. 14-23 & 34, and Document Request Nos. 4-9, 17 & 23).* We ask that you reconsider your position that Association Complainants will not produce information from their members in response to these and other similar requests. The information we seek relates to assertions Complainants made and the Board relied upon in allowing this case to proceed. This includes information about members' dealings with other railroads with regard to charges for empty miles (Int. Nos. 16 & 34), empty mileage on other railroads (Int. Nos. 17 & 18), amounts billed or charged for empty miles (Int. Nos. 19 & 20; D.R. No. 23), the impacts of the challenged charges (Int. Nos. 22 & 23; D.R. No. 17), and studies regarding car ownership and maintenance costs and car compensation (D.R. Nos. 4-9). We are seeking this information in large part to address your claims regarding the relevance of Board precedent "in the context of today's rail marketplace" and "changes in the railroad industry." We requested information about repairs performed at shops (Int. Nos. 14 & 15) so we can address arguments about whether Union Pacific "is complying with precedent." As discussed above, the Association Complainants cannot argue about industry practice, compliance with precedent, or changes to the industry that undermine precedent unless they are willing to produce relevant information from their members, which are the most reasonable source of that information

Sincerely,



Michael L. Rosenthal

cc: Counsel for Association Complainants

# **EXHIBIT 25**



THE FOUNDRY BUILDING

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WRITER'S DIRECT DIAL NUMBER  
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February 2, 2016

**VIA E-MAIL and FIRST CLASS MAIL**

Michael L. Rosenthal  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956

Re: STB Docket No. NOR 42144, *North America Freight Car Association, et al. v. Union Pacific Railroad Company*

Dear Mike:

Thank you for your letter of December 30, 2015 responding to my letter of September 11, 2015 regarding the responses of the Association Complainants discovery requests that Union Pacific served on April 30, 2015. The Association Complainants' responses to your letter are provided below:

*1. Sample rail tank car leases.*

NAFCA agrees to proceed with a sampling approach of tank car lease templates used by NAFCA's lessor members with the aim of ascertaining whether there are relatively standard provisions in tank car leases addressing mileage allowances and mileage equalization. However, NAFCA does not agree to take on the additional burdensome effort UP requests of determining how many variations there are, and how many tank cars are covered by each permutation. Moreover, Complainants do not waive their relevance objection and specifically reserve their

right to argue that the terms of lease agreements between car lessors and car lessees are not relevant to any issue in this case, including the issue of whether Union Pacific is providing compensation for the use of such rail cars as required by 49 U.S.C. § 11122.

*2. Requests by Association Complainant members to other railroads for rates that include a mileage allowance or reduced line-haul rates to reflect the members' provision of tank cars.*

We continue to disagree with UP's position that requests for rates directed to other railroads are relevant in this proceeding. We must also disagree with your interpretation of Association Complainants' position and the Board's order as they relate to the above Union Pacific contention. The Complaint deals solely with the lawfulness of: (1) Union Pacific's actions in refusing to compensate tank car lessors or lessees for the use of private tank cars either through allowances or discounted rates, and (2) Union Pacific's Tariff 6004, Item 55-C. No other railroads are parties to this case or even mentioned in the Complaint. With respect to the first issue, the interaction of the Association Complainants' members with other railroads is irrelevant to whether UP's "zero mileage rates" contain a discount that compensates tank car providers. With respect to the second issue, requests by members of the Association Complainants for rates directed to other railroads are not relevant to Complainants' contentions that the particular facts underlying UP's repair movement tariff and changes in the railroad industry call into question the applicability or continued viability of the *IHB II* decision.

*3. Car ownership costs.*

The Association Complainants maintain their position on car ownership costs as stated in my September 11, 2015 letter. The costs of tank car ownership incurred by individual Association Complainant members is irrelevant to our Complaint that UP is not in fact providing discounted "zero-mileage" rates in lieu of mileage allowance payments pursuant to EP 328, and there is nothing in the Board's December 21, 2015 decision to suggest otherwise.

*4. Other requests for information from Association Complainant members.*

As stated in my September 11, 2015 letter, the "catch all" category of issues raised in UP's letter was not discussed in any of our meet and confer sessions. While your December 30, 2015 letter provides a little more in the way of explanation of UP's positions, we find it impossible to reply to the non-specific requests suggested, but not described, under this heading. However, we note that, to the extent the requests in this part of your letter include requests calling for information relating to other railroads or the costs of car ownership, the objections reiterated above apply to these requests as well. Moreover, with respect to Document Request No. 23, which calls for the production of empty mileage data, the Association Complainants believe that UP either already possesses this information or can more easily obtain it from RailInc Corporation.

Mike Rosenthal  
February 2, 2016  
Page 3

Please do not hesitate to call me should you have any questions.

Sincerely,



Thomas Wilcox

cc: Lou Anne Rinn, Esq.  
Counsel for Complainants

# **EXHIBIT 26**

March 8, 2016

*Via E-mail and First Class Mail (mrosenthal@cov.com)*

Michael L. Rosenthal  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001-4956

RE: STB Docket NOR 42144; UP Discovery Requests

Dear Mike:

At the conclusion of our February 23rd discovery conference, the Complainants' counsel agreed to confer in an attempt to develop proposed stipulations and responses to Union Pacific's ("UP") first set of discovery requests that seek information from the individual member companies of the Association Complainants. As we have maintained throughout this proceeding, only Association members named as Complainants are parties to this proceeding and thus subject to discovery. Nor do we concede the relevance of UP's discovery requests. Nevertheless, in an effort to reach some accommodation with UP to address its asserted discovery needs as discussed at our February 23rd meeting, we have developed the proposals in this letter. In addition to these proposals, we note that two individual Association members are Complainants in this proceeding and thus will be responding to some of the UP discovery requests addressed in this letter.

In developing our proposals, we have grouped UP's first discovery requests into nine categories of information. These are the same categories that we discussed during our meeting. In addition, we have assigned each discovery request that seeks information from Association members to one or more of these categories. We address each category separately below.

**1. Tank car ownership costs. (Int. Nos. 30-33; Doc. Req. Nos. 2, 4-5, 7-9, 18-22)**

At our February 23rd discovery conference, we pointed out that the costs UP seeks are readily attainable from a single source, RailInc, which publishes the mileage allowances in Tariff RIC-6007 based upon tank car ownership costs that it collects annually. RailInc is a subsidiary of the Association of American Railroads ("AAR") of which UP is the largest member. The information available from RailInc is far more comprehensive, complete, and readily usable than any information that UP could obtain from discovery requests to hundreds of individual Association member companies.

As we discussed the now three companies that are charged with studying and developing the cost of their fleets pursuant to Section 3(a) of the tank car allowance agreement in EP 328 –

Mike Rosenthal  
March 8, 2016  
Page 2

American Railcar Leasing, GATX, and Union Tank Car Company – are all members of NAFCA. We have confirmed from these companies that (1) their data is submitted directly to Railinc, which prepares a consolidated industry report for purposes of EP 328; and (2) these companies are agreeable to providing the consolidated report data for the years 2001 to 2015 directly to UP under the protective order in the case.

**2. Member requests for full-allowance rates. (Int. Nos. 24-27; Doc. Req. Nos. 3, 6, 10-12)**

UP seeks discovery of Association members to determine whether any have requested full-allowance rates during their negotiations with UP or other railroads. Complainants contend that this information is irrelevant to the issues in this case. UP, however, views its request as the flip side of Complainants' discovery requests to UP as to whether UP offers full-allowance rates to shippers. We propose to address our differences through the following mutual stipulations:

- Complainants would litigate this proceeding on the stipulated presumption that most, if not all, of the Association members have not requested full-allowance rates from UP from at least 2010 to the present.
- UP would litigate this proceeding on the stipulated presumption that it seldom, if ever, has offered full-allowance rates for the transportation of commodities in tank cars from at least 2010 to the present.

**3. Shipment data on moves to repair facilities. (Int. Nos. 14, 16-18, 30-31)**

As with Category 1 above, Complainants have referred UP to RailInc for comprehensive shipment data for all railroads. While acknowledging that RailInc can provide much of the data UP has requested, UP claims that the data is insufficient to determine whether the reported empty miles are to a repair facility. UP, however, has this information with respect to empty tank car movements on its own rail system in the most complete and comprehensive format that exists. While UP also seeks this information as to repair facility shipments on other railroads, we continue to object to the relevance of that information to this proceeding against UP. In any event, the most complete and comprehensive source of that data from other railroads is those railroads themselves. There are far fewer railroads than Association members.

Moreover, we note that UP will receive some data on moves to repair facilities from the individual complainants in the case. We also asked the car lessors mentioned above of the extent to which they have this data, and were told by all three that this data is not kept by them in the ordinary course, and it would take a considerable amount of effort to gather and compile this

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Mike Rosenthal  
March 8, 2016  
Page 3

data, which in any case would not be comprehensive. Consequently, discovery of Association members will not provide complete and comprehensive data to satisfy UP's purported need.

**4. Other (non-UP) railroad practices. (Int. Nos. 16-18, 25, 27, 34; Doc. Req. Nos. 11, 13)**

UP has sought discovery of Association member dealings with other railroads. Generally, this issue is interlaced throughout the other categories in this letter and Complainants' positions as to those other categories require no further discussion in this context.

At our February 23rd conference, however, UP represented that its primary reason for pursuing discovery as to other railroads is to demonstrate that UP's mileage allowance and repair movement practices are standard throughout the rail industry. In other words, UP seeks to claim that its practices are reasonable because everyone else does it too. Complainants consider this argument to be specious in an industry where just four railroads handle 90% of the nation's freight. If anything, this argument calls attention to the much greater potential for collusion and the exercise of market power in the rail industry today.

Nevertheless, since we see no relevance to UP's arguments, Complainants offer to stipulate that the other Class I railroads do not pay mileage allowances on most, if not all, of their tank car traffic and that BNSF and CP also have imposed tariff charges upon tank car movements to repair facilities.

**5. Tank car leases. (Int. Nos. 1, 3-10, 30-31, 33; Doc. Req. Nos. 14-16)**

Complainants previously agreed to produce examples of the various types of tank car leases that are used by NAFCA members who are tank car lessors. UP has indicated that it is interested in more than just the lease terms, but also how pervasively each lease is used. Complainants do not believe that is relevant. Moreover, whatever relevance is far outweighed by the burden of producing every lease. Following up on our February 23rd meeting, we again discussed this issue with the above tank car lessors, who informed us that the production of all of the tank car leases of the individual complainants will provide UP with the information it desires concerning the handling of allowances and mileage equalization payments. We therefore propose (1) that the individual complainants proceed with the production of their leases, (2) that NAFCA undertake to confirm from its car lessor members that the provisions in the produced leases actually are representative of the industry standards for this issue, and (3) upon such confirmation, the Association Complainant's stipulate to that effect.

---

Mike Rosenthal  
March 8, 2016  
Page 4

**6. Mileage equalization billings. (Int. Nos. 19-21; Doc. Req. Nos. 23)**

At our discovery conference, Complainants referred UP to RailInc as the only complete and comprehensive source of information on mileage equalization billings, because RailInc is the entity that actually generates mileage equalization invoices and receives payment. Complainants have no alternative to offer for this category.

**7. Loaded and empty tank car miles. (Int. Nos. 17-18, 30-31)**

Again, this information is readily available in its most complete and comprehensive form for both UP and all other railroads from RailInc.

**8. Changes in member practices related to sending tank cars to repair facilities since UP began charging for repair moves. (Int. No. 23)**

This category covers a single UP discovery request concerning member practices associated with repair facility movements. UP has indicated that it wants this information to determine whether Association members have changed the repair facilities they use in response to UP's charges. The individual complainants will be responding to these requests. We do not believe any further discovery is required for UP to argue the behavioral influences of higher charges.

**9. Communications regarding Item 55-C. (Int. Nos. 22; Doc. Req. Nos. 17)**

There is no alternative that Complainants can offer because the general catch-all nature of this category is unrelated to any single UP objective that is amenable to stipulations or more focused responses. We nevertheless are willing to reconsider a more narrowly focused request.

\* \* \*

We have developed the foregoing proposals based upon our February 23rd meeting. We hope that UP will find them acceptable and look forward to your response.

---

Mike Rosenthal  
March 8, 2016  
Page 5

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Moreno". The signature is written in a cursive style with a large initial "J" and "M".

Jeff Moreno

cc: Thomas W Wilcox  
Paul M. Donovan  
Justin A. Savage  
Louise A. Rinn

# **EXHIBIT 27**

# COVINGTON

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**Via Email and First-Class Mail**

March 17, 2016

Jeffrey O. Moreno, Esq.  
Thompson Hine LLP  
1919 M Street, NW, Suite 700  
Washington, DC 20036

**Re: STB Docket No. NOR 42144, North America Freight Car  
Association, et al. v. Union Pacific Railroad Company**

Dear Jeff:

This responds to your March 8 letter regarding Association Complainants' proposals for responding to Union Pacific's first set of discovery requests that seek information from Association members.

Your proposals fall far short of providing the discovery to which Union Pacific is entitled. Particularly given the claims Association Complainants raise in this case, we believe Association Complainants are required to produce information and documents on behalf of their members. Even if that were not the case, we would be allowed to obtain discovery of Association members directly, through subpoenas. Obtaining discovery through subpoenas would be burdensome for us, but the information we seek is highly relevant to the subject matter of this proceeding and to our defenses. Board precedent makes clear that "associations cannot shield their members from reasonably tailored discovery of relevant information" through subpoenas when the associations "do not possess the complete range of information that may be necessary for the development of a full record." *Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 6 (STB served June 25, 2012); *see also Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions*, FD 35557, slip op. at 2-3 (STB served Feb. 27, 2012) (association members "cannot avoid legitimate discovery," and the Board will "not allow the constraints" of a "procedural schedule to preclude legitimate third-party discovery").

However, we appreciate that Association Complainants have embraced our suggestion at the February 23rd discovery conference that the parties may be able to resolve some of their discovery disputes through the use of stipulations. In the same spirit, we respond to your proposals and offer several counterproposals.

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**1. Tank car ownership and maintenance costs. (Int. Nos. 30-33; Doc. Req. Nos. 2, 4-5, 7-9, 18-22)**

Contrary to your claim, the information Union Pacific requested regarding tank car ownership and maintenance costs is not “readily attainable” from Railinc. Railinc does receive some information regarding tank car ownership costs from three NAFCA members pursuant to Section 3(a) of the tank car allowance agreement in EP 328. However, Railinc does *not* receive any information from the hundreds of other Association members that own or lease tank cars. Moreover, the three NAFCA members do not provide Railinc with information regarding the costs covered by Section 3(b) of the agreement, which are also covered by our discovery requests.

Railinc also does not have the Association members’ documents covered by Document Request Nos. 2, 4-5, 7-9, or the Association members’ information covered by Interrogatory No. 33 and Document Request Nos. 18-22 regarding payments and reimbursements for ownership and maintenance costs. Furthermore, Railinc does not have the information we request in Interrogatory No. 30 regarding the number of empty movements to repair facilities and the miles associated with those movements.

Even when Railinc does receive information from tank car owners, Union Pacific does not have access to the information in Railinc’s possession. In particular, we do not have access to the information the three NAFCA members provide Railinc pursuant to EP 328 – Railinc treats the information as confidential. Moreover, our understanding is that the information Railinc receives is not raw data, but rather data that have already been aggregated by each NAFCA member.

To address our right to discovery of relevant information relating to tank car ownership and maintenance costs, we propose the following:

a. Association Complainants will produce all data submitted to Railinc for purposes of EP 328, and all underlying data (*e.g.*, databases, spreadsheets, reports, analyses) that were used to compile all the data that were ultimately submitted to Railinc, for the years 2001 through 2015. (This would include data relating to Section 4 of the tank car allowance agreement.)

b. Association Complainants will produce on behalf of the companies that submitted data to Railinc for purposes of EP 328 from 2001 through 2015 all documents relating to any studies, reports, or analyses of costs addressed in Section 3 of the tank car allowance agreement, all documents responsive to Document Request Nos. 2, 4-5, 7-9, and 18-22, and all information responsive to Interrogatory No. 33.

c. Complainants will stipulate that the tank car ownership costs and maintenance costs of individual tank car owners and lessees (and other users of tank cars) can vary significantly from the ownership and maintenance costs calculated pursuant to the tank car allowance agreement approved in EP 328.

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d. Complainants will agree not to submit any argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information or documents that are responsive to the Interrogatories and Document Requests identified above, but that are not produced in discovery or pursuant to paragraphs a & b above.

**2. Member requests for full-allowance rates or reduced line-haul rates.  
(Ints. Nos. 24-27, 34; Doc. Req. Nos. 3, 6, 10-13)**

We do not agree with your characterization of our requests in this category or your view that information regarding other railroads is irrelevant, but we agree that the information we requested could potentially be addressed through stipulations. The stipulations you proposed are insufficient and inaccurate, so we propose the following:

a. Complainants will stipulate that, from at least 2010 to the present, most, if not all Association members have never requested that Union Pacific establish rates for movements in tank cars that provide for payment of a mileage allowance.

b. Complainants will stipulate that there is no evidence that Union Pacific has ever refused a request to establish rates for movements in tank cars that provide for payment of a mileage allowance.

c. Union Pacific will stipulate that, from at least 2010 to the present, tank car owners or lessees (or other users of tank cars) have only rarely requested that Union Pacific establish rates for movements in tank cars that provide for payment of a mileage allowance.

d. Complainants will stipulate that, from at least 2010 to the present, most, if not all Association members have never expressly requested that Union Pacific establish reduced line-haul rates for movements in tank cars to reflect the members' furnishing of cars.

e. Complainants will stipulate that, from at least 2010 to the present, most, if not all Association members have never requested railroads other than Union Pacific establish rates for movements in tank cars that provide for payment of a mileage allowance, and that most, if not all, movements in tank cars on railroads other than Union Pacific have occurred under zero-mileage rates.

f. Complainants will stipulate that, in the experience of Association members, if there are any differences between Union Pacific and other railroads regarding the proportion of movements for which Association members were paid mileage allowances, the total number of miles on which they were paid mileage allowances, and the total amount of allowances they were paid, the only differences are that (i) they were paid mileage allowances on more movements on Union Pacific than on other railroads; (ii) the total number of miles on which they were paid was greater on Union Pacific than on other railroads; and (iii) the total amount they were paid was higher on Union Pacific than on other railroads.

g. Complainants will agree not to submit any argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information or

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documents that are responsive to the Interrogatories or Document Requests identified above, but that are not produced in discovery.

**3. Movements of loaded and empty tank cars, including empty movements to repair facilities and work performed at repair facilities. (Int. Nos. 14-18, 30-31)**

Your proposal to produce no information regarding movements of tank cars and the work performed at repair facilities is not acceptable. As your own discovery requests confirm, information regarding tank car movements on Union Pacific is relevant to this case. Information regarding movements on other railroads is also relevant, as demonstrated by your arguments to the Board that Union Pacific is situated differently from railroads that are allowed to charge for empty repair moves. In addition, information regarding the work performed at repair facilities is relevant to your claims that Item 55-C is being applied to repair activities that are not covered by precedent and would apply to an unanticipated number of “retrofits.” Information regarding the work performed at repair facilities is also relevant to potential arguments about Item 55-C’s impact on reducing or eliminating excess empty miles.

In addition, you are incorrect when you say we acknowledged that most of the information we requested can be provided by Railinc. To the best of our knowledge, Railinc does not have data regarding the number of empty repair moves or the mileage associated with empty repair moves. Nor does Railinc have information about the purpose of shop visits. Moreover, Union Pacific has no right to access whatever information Railinc might be collecting from other railroads or from tank car owners and lessees (or other users of tank cars).

While we appreciate your statement that certain car lessors have denied keeping the information we have requested “in the ordinary course,” we find it difficult to believe they have no records regarding movements of their cars to repair facilities and the work performed at those facilities – if for no other reason than to produce the information required by the tank car allowance agreement. Moreover, we would expect that tank car owners and lessees keep records of movements to repair facilities to audit charges for those moves imposed by Union Pacific and other railroads with similar charges.

However, assuming the data are not readily available from Complainants or Association members, we propose the following to address our right to discovery on these issues:

- a. Complainants will stipulate that, relative to other railroads, Union Pacific has been handing a share of empty repair moves of tank cars that exceeds its share of loaded moves of tank cars and its share of empty moves of tank cars, in terms of both the number of moves and the mileage involved.
- b. Complainants will stipulate that only a very small fraction of empty repair moves of tank cars on Union Pacific are related to, or are expected to be related to, retrofits.
- c. Complainants will stipulate that tank car owners and lessees (and other users of tank cars) often choose to direct Union Pacific and other railroads to move empty cars to more

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distant repair facilities even though the same services could have been performed by facilities closer to the points the cars became empty.

d. Complainants will stipulate that tank car owners and lessees (and other users of tank cars) sometimes choose to direct Union Pacific and other railroads to move empty cars from one repair facility to another to have different services performed, thus incurring additional empty miles, even though all of the services could have been performed at a single facility.

e. Complainants and Association members will authorize Railinc to produce to Union Pacific, under the protective order in this case, any and all information they provide to Railinc relating to movements of tank cars to and from repair facilities, and relating to the services performed at those facilities. (Union Pacific reserves the right to revisit this issue if Railinc declines to produce the information or if Railinc proposes to charge Union Pacific to produce the information.)

f. Complainants will agree not to submit any argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information from Association members that is responsive to the Interrogatories identified above, but that is not produced in discovery.

#### **4. Other (non-Union Pacific) railroad practices. (Int. Nos. 16-18, 25, 27, 34; Doc. Req. Nos. 11, 13)**

We have already addressed the discovery requests in this category in the counter-proposals presented above.

#### **5. Tank car leases. (Int. Nos. 1, 3-10, Doc. Req. Nos. 14-16)**

Your proposal to respond to our requests relating to tank car leases is not acceptable for two reasons. First, we should not have to accept your word that the terms in the leases of the three Individual Complainants in this case, who primarily ship ethanol and other agricultural products, but not chemicals that account for most tank car shipments, "are representative of industry standards." To the extent there are meaningful variations in lease terms regarding the division of responsibility for directing empty movements to repair facilities, charges and payments for empty movements, rights to negotiate zero-mileage rates, and rights to mileage allowance payments, we are entitled to discovery regarding those variations, their frequency, and their pattern/correlation with other variables, including underlying monthly lease rates. This type of information is plainly relevant to understanding the likely impact of Item 55-C and zero-mileage rates, as well as current conditions in the tank car market and whether and how industry conditions have changed since 1987.

Second, as we made clear at the February 23rd discovery conference, we are interested not only in the generic terms found in leases, but also in the rates paid under lease agreements and how those rates have varied over time. Again, this type of information is plainly relevant to understanding current conditions in the tank car market and whether and how conditions have changed since 1987. We might be able to address that issue through a sampling approach, which

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is why we have been willing to consider a sampling approach, but “samples” consisting only of the three Individual Complainants’ leases plainly will not provide the information we are seeking.

Because Association Complainants are better positioned than we are to discuss this issue with the leasing companies represented by NAFCA, we ask that you reconsider your position and develop a more realistic proposal.

### **6. Mileage equalization billings and empty movement costs. (Int. Nos. 19-21; Doc. Req. No. 23)**

Your proposal to produce no information regarding mileage equalization billings and empty mileage payments is not acceptable. Association members should have all the requested information in their ready possession, and the fact that some information may be available from Railinc does not allow them to pass off their discovery obligations on a non-party who, unlike the Association members, could derive no possible benefit from this case. However, we will explore whether Railinc can provide the information we request in Interrogatory No. 19. If Railinc cannot provide that information, we will renew our request.

With regard to Interrogatory Nos. 20 and 21, Railinc would not have the information we request. The information we request relates to the amounts car owners charge lessees for costs associated with empty movements, not the amount that Railinc bills the car owners for mileage equalization. We do not know whether or how tank car owners pass along the costs associated with empty movements to their lessees, but the information is plainly relevant to the issue of relative incentives to minimize empty miles created by the mileage equalization system and Union Pacific’s Item 55-C. However, to minimize the burdens involved, we are willing to limit our requests so they need only be answered by car owners that lease cars, rather than by the larger group of lessees. We are willing to apply a similar limitation to Document Request No. 23.

### **7. Loaded and empty tank car miles. (Int. Nos. 17-18, 30-31).**

We have already addressed the discovery requests in this category in the counter-proposals presented above in point 3.

### **8. Changes in member practices in sending tank cars to repair facilities in response to Union Pacific’s adoption of Item 55-C. (Int. No. 23)**

We understand your position to be that our discovery request seeks information that is relevant, but that Item 55-C’s effects on the practices of tank car owners and lessees in sending cars to repair facilities are obvious, so there is no need to obtain supporting information from Association members. If that is the case, we propose the following to address our right to discovery on this issue:

a. Complainants will stipulate that prior to Union Pacific’s adoption of Item 55-C, Association members did not consider the costs they imposed on Union Pacific and other users of Union Pacific’s network when directing empty cars to and from repair facilities.

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b. Complainants will stipulate that Union Pacific's adoption of Item 55-C has caused and will cause Association members to consider the costs they impose on Union Pacific and other users of Union Pacific's network when directing empty cars to and from repair facilities.

c. Complainants will stipulate that Union Pacific's adoption of Item 55-C has caused and will cause Association members to reduce empty repair miles through better planning and coordination of repair moves, use of repair facilities at locations closer to the points where the cars become empty or will receive their next load, and use of repair facilities at locations closer to the most direct route between the points where they become empty and the points they will receive their next load.

d. Complainants will agree not to submit any argument or evidence in this case, including testimony of expert and fact witnesses, that Item 55-C has caused or will cause car owners or lessees (or other users of tank cars) to engage in inefficient or unsafe car repair practices or raise the costs of shipping in tank cars (other than costs to pay charges imposed under Item 55-C).

e. Complainants will agree not to submit any argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information from Association members that is responsive to Interrogatory No. 23, but that is not produced in discovery.

### **9. Communications regarding Item 55-C. (Int. No. 22; Doc. Req. No. 17)**

We understand your position to be that our discovery request seeks information that is relevant, but you have no proposal for obtaining the requested information and documents from Association members. If that is the case, we propose the following to address our right to discovery on this issue:

a. Complainants will stipulate that prior to Union Pacific's adoption of Item 55-C, Association members did not consider the costs they imposed on Union Pacific and other users of Union Pacific's network when directing empty cars to and from repair facilities.

b. Complainants will stipulate that Union Pacific's adoption of Item 55-C has caused and will cause Association members to consider the costs they impose on Union Pacific and other users of Union Pacific's network when directing empty cars to and from repair facilities.

c. Complainants will stipulate that Union Pacific's adoption of Item 55-C has caused and will cause Association members to reduce empty repair miles through better planning and coordination of repair moves, and selection of repair facilities at locations closer to the points where the cars become empty or will receive their next load.

d. Complainants will agree not to submit any argument or evidence in this case, including testimony of expert and fact witnesses, that Item 55-C has caused or will cause car owners or lessees (or other users of tank cars) to engage in inefficient or unsafe car repair practices or raise the costs of shipping in tank cars (other than costs to pay charges imposed under Item 55-C).

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e. Complainants will agree not to submit any argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information or documents from Association members that is responsive to the interrogatory and document request identified above, but that is not produced in discovery.

Sincerely,



Michael L. Rosenthal

cc: Thomas W. Wilcox, Esq.  
Paul M. Donovan, Esq.  
Justin A. Savage, Esq.  
Louise A. Rinn, Esq.

# **EXHIBIT 28**

April 13, 2016

*Via E-mail and First Class Mail (mrosenthal@cov.com)*

Michael L. Rosenthal  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001-4956

RE: STB Docket NOR 42144; Discovery and Stipulation Proposals

Dear Mike:

Thank you for your letter of March 17, 2016, regarding the above captioned matter. While Association Complainants appreciate your desire to enter into stipulations to avoid unnecessary and burdensome discovery and discovery disputes, we cannot agree to the premises underlying your proposed stipulations or to the stipulations themselves. Obviously, the discovery requests that Union Pacific has made against Association Complainants' members are requests against non-parties and therefore not permitted under the Board's Rules of Practice. Indeed, if the Complaint had been filed solely by the Individual Complainants, we cannot conceive of how UP plausibly could justify the discovery it seeks from Association Complainant members. Notwithstanding this deficiency, we will respond to your suggested stipulations by the categories that you set forth in your letter and propose alternative stipulations where appropriate.

**1 Tank car ownership and maintenance costs. (Int. Nos. 30-33, Doc. Req. Nos. 2, 4,-5, 7-9, 18-22)**

As of the end of the year 2014, there were approximately 312,000 privately owned rail tank cars operating in North America and subject to the Ex Parte 328, Board-approved Joint Agreement on mileage allowances and mileage equalization. The clear majority of these cars were owned by the three car companies to which you refer, and ownership and maintenance costs were collected by RailInc pursuant to the terms of Section 3(a) of the Ex Parte 328 Joint Agreement. Thus, Association Complainants' March 8th offer to provide the consolidated report data that the companies designated by the Ex Parte 328 Joint Agreement submitted to RailInc for the years 2001 to 2015 will capture the vast majority of potentially relevant tank car cost data.

UP's attempt to obtain a greater level of detail seeks overbroad, burdensome, and irrelevant information. Absent reopening the Ex Parte 328 proceeding, which is beyond

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the scope of this case, the relevant tank car costs are those costs as measured in the Joint Agreement. Complainants have offered to produce all of those costs.

We understand that UP intends to argue that individualized cost data is relevant to the calculation of damages, but we do not agree. The measure of damages for Count I is the amount paid under the tariff; the measure of damages under Count II is the amount of mileage allowances as calculated under Ex Parte 328 that UP did not pay. Thus, the specific tank car ownership costs of any particular car provider have no bearing on damages in this proceeding. In any event, the Association Complainants have not requested damages in this proceeding, and thus UP has no basis for requesting discovery of the individual tank car costs incurred by their members.

In response to your proposals, we nevertheless are willing to offer the following:

- a. We previously agreed to provide UP with the data submitted to RailInc in your Proposal 1.a, but not with the underlying data. We are not willing to also produce the underlying data for the reasons addressed above.
- b. We are not willing to provide additional data in response to your Proposal 1.b., except to the extent we already have offered responses.
- c. In lieu of your Proposal 1.c., Complainants offer to stipulate that Ex Parte 328 calculates average tank car ownership and maintenance costs that may vary from the actual costs incurred by individual tank car owners and lessees (and other users of tank cars).

**2. Member requests for full-allowance or reduced line-haul rates. (Int. Nos. 24-27, 34; Doc. Req. Nos. 3,6, 10-13)**

Our March 8th letter offered two neutrally-phrased reciprocal stipulations. Your proposals replaced those two stipulations with multiple stipulations phrased in a clearly-biased manner. Taking your approach, we are prepared to stipulate that, once it became clear to shippers generally, including Association Complainants' member companies, that Union Pacific and other railroads were no longer willing to negotiate the payment of mileage allowances, the assessment of formulaic fuel surcharges, reduced rates, contract service standards, or other competitively driven concessions, they gave up trying to recover mileage allowances or extract other concessions from the Union Pacific and other

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railroads. Of course, our phrasing is likely no more acceptable to UP than your phrasing is to us. We remain willing to enter into mutual, neutrally-worded stipulations as follows:

a. Complainants will stipulate that, from at least 2010 to the present, most, if not all, Association Complainant members seldom, if ever, have requested that Union Pacific establish rates for movements in tank cars that provide for payment of a mileage allowance.

b. Union Pacific will stipulate that, from at least 2010 to the present, Union Pacific seldom, if ever, has established rates for movements in tank cars that provide for payment of a mileage allowance.

c. Association Complainants will stipulate that, from at least 2010 to the present, most, if not all Association members seldom, if ever, have requested that railroads other than Union Pacific establish rates for movements in tank cars that provided for payment of a mileage allowance.

d. Association Complainants will stipulate that, from at least 2010 to the present, most, if not all Association members seldom, if ever, expressly requested that Union Pacific establish reduced line-haul rates for movements in tank cars to reflect the members' furnishing of the cars to Union Pacific.

e. Union Pacific will stipulate that, from at least 2010 to the present, Union Pacific seldom, if ever, expressly informed shippers that the rates it established for movements in tank cars were discounted to reflect Union Pacific's obligation to compensate a shipper for furnishing tank cars to Union Pacific.

**3. Movements of loaded and empty tank cars, including empty movements to repair facilities and work performed at repair facilities. (Int. Nos. 14-18, 30-31)**

We continue to be puzzled by Union Pacific's claimed need for this information. The principal relevance of empty repair movements pertains to whether Union Pacific suffers a disproportionate burden of such moves relative to its participation in loaded tank car revenue movements to justify charging for empty repair movements under *IHB-II*. Union Pacific possesses that information in the most complete and comprehensive form available, which is why Complainants have requested that information in their discovery of Union Pacific. Union Pacific's discovery of Association Complainant members could not possibly provide a comparable degree of information. To the extent that Union Pacific seeks discovery of the same information concerning other railroads, those railroads are the most complete and comprehensive source of that information. To the extent that Union Pacific

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desires this information to demonstrate that its charges influence shipper behavior, Complainants are willing to stipulate that the cost of empty movements may influence tank car owners' and lessees' (and other users of tank cars) choice of repair facilities.

**4. Other**

As discussed above.

**5. Tank car leases (Int. Nos. 1, 3-10, Doc. Req. Nos. 14-16)**

Railroads, including Union Pacific, own virtually no tank cars they use for providing service to customers, so they are not involved in the tank car market in any way except for their duty to compensate tank car providers for using their tank cars. The compensation to be paid by Union Pacific and other railroads is fixed by the Ex Parte 328 Joint Agreement. Since the Union Pacific's compensation for the use of tank cars is fixed by Ex Parte 328, which considers the value of all tank cars, and since Union Pacific does not participate in the tank car market, there is no justification for Union Pacific to vary its compensation payments based upon the leases or other business arrangements between tank car lessors and tank car lessees. Association Complainants therefore continue to question the relevance and need for the production of tank car leases from association members, which would be extremely burdensome. Nevertheless, we have attempted to fashion a way to voluntarily accommodate Union Pacific's requests for examples of the language in tank car leases dealing with mileage allowances, equalization, empty movements, and similar language.

In your March 17 letter, Union Pacific rejected our proposal of March 8, 2016 regarding the production of examples of tank car leases. This rejection was primarily based on a suspicion that there might be "meaningful variations in lease terms [for ethanol and other agricultural commodities, and for chemical shippers] regarding the division of responsibility for directing empty movements to repair facilities, charges and payments for empty movements, rights to negotiate zero-mileage rates, and rights to advance payments." We have conducted further discussions with the car lessor members of NAFCA on this aspect of the March 17 letter, and have been informed that Union Pacific's concerns that tank car lease terms addressing these topics vary by commodity are unfounded. We therefore believe that, with a slight modification, our March 8 proposal would provide a satisfactory response to UP's requests. Specifically, our position is that (1) the individual complainants proceed with the production of their leases; (2) NAFCA and its counsel confirm with the lessor of each lease that the produced leases are representative of the industry standards for the division of responsibility for directing empty movements to repair facilities, charges and payments for empty movements, rights to negotiate

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zero-mileage rates, and rights to advance payments; and (3) the Association Complainants stipulate to that effect.

Your March 17 letter also stated that UP was interested in discovering information on the rates paid under lease agreements and how those rates have varied over time dating back to 1987. You claim this information is relevant to understanding current conditions and how conditions have changed since 1987. You stated that issue (lease rate information) might be addressed through a sampling approach, but provided no suggestions or specifics. To reiterate, Association Complainants fail to see how the lease rates negotiated between lessors and lessees have any relevance to Union Pacific's statutory obligation to compensate tank car providers for the use of their cars. To the extent such information is even marginally relevant, the burden of collecting the information Union Pacific seems to be seeking, even under a sampling procedure, far outweighs the relevance of this information. Association Complainants therefore decline to produce lease rate information beyond what will be included in the leases produced by the individual complainants.

**6. Mileage equalization billings and empty movement costs (Int. Nos. 19-21; Doc. Req. No. 23)**

Actual mileage equalization billings are of little to no relevance in this case. Moreover, the information requested by Interrogatory No. 19 and Doc. Req. No. 23 clearly is available from RailInc and is the most comprehensive and complete source because RailInc issues all mileage equalization invoices. Interrogatory Nos. 20-21 deal entirely with the relationships between car owners and car lessees, which are of no relevance to the issue of whether Union Pacific is compensating anyone for the use of their tank cars. Union Pacific's tank car compensation obligations are fixed by the Ex Parte 328 Joint Agreement, and Union Pacific cannot avoid those compensation obligations by pointing to business relationships among tank car owners and tank car lessees. This is the classic discredited argument seeking to avoid damages by showing that the damaged party was able to pass on some of those damages to a downstream customer.

The only other purpose for which you claim to need this information is to ascertain the relative incentives to minimize empty miles created by mileage equalization versus Item 55-C. Those incentives are built into the mileage equalization provisions of the Ex Parte 328 Joint Agreement. A tank car provider who chronically selects more distant repair facilities or otherwise incurs excessive empty mileage must pay the negotiated equalization rate for all empty miles above the 106% threshold that the Joint Agreement has determined is reasonable. If UP believes that the Joint Agreement does not provide sufficient incentives for efficient selection of repair facilities, it should seek to reopen Ex

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Parte 328 to change the 106% threshold and/or the formula for calculating the equalization rate. Furthermore, as addressed in Item 3 above, Complainants are prepared to stipulate that the cost of empty movements may influence tank car owners' and lessees' (and other users of tank cars) choice of repair facilities. UP does not need actual mileage equalization billings to make this point, and it is quite obvious that Item 55-C assesses a far greater charge upon empty movements than the mileage equalization charge published in RIC 6007.

**7. Loaded and empty tank car miles.**

Already discussed.

**8. Changes in member practices in sending cars to repair facilities in response to Union Pacific's adoption of Item 55-C. (Int. No. 23)**

As stated above, the mileage equalization provisions of the Ex Parte 328 Joint Agreement provide sufficient incentives for shippers to minimize empty miles on tank cars. However, Complainants are prepared to stipulate that economic common sense dictates that any person faced with dramatically higher charges from a supplier of services will seek to avoid those charges if possible. Union Pacific's empty mileage charges are greatly in excess of those that would apply under the Ex Parte 328 Joint Agreement and if those higher charges could be avoided, the members of the Complainant Associations would most probably seek to avoid them.

**9. Communications regarding Item 55-C (Int. No. 22; Doc. Req. 17)**

See response to number 8 above.

\* \* \*

Complainants submit this letter with the hope that we can arrive at a final mutual compromise on the scope of discovery and related stipulations. Given the procedural status of this case and the extensive communications preceding this letter, we are not prepared to continue a lengthy dialogue, as we believe we have conceded as much as we are prepared to offer. Therefore, if UP's response does not accept this proposal in whole or substantial part, we advise you to proceed with requesting any subpoenas that UP deems necessary, and Association Complainants will respond accordingly.

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Sincerely

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno". The signature is written in a cursive style with a large initial "J" and "M".

Jeffrey O. Moreno

cc: Thomas W Wilcox  
Paul M. Donovan  
Justin A. Savage  
Louise A. Rinn

# **EXHIBIT 29**

# COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES  
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**Michael L. Rosenthal**

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One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5448  
mrosenthal@cov.com

**Via Email and First-Class Mail**

April 21, 2016

Jeffrey O. Moreno, Esq.  
Thompson Hine LLP  
1919 M Street, NW, Suite 700  
Washington, DC 20036

**Re: STB Docket No. NOR 42144, North America Freight Car  
Association, et al. v. Union Pacific Railroad Company**

Dear Jeff:

This responds to your April 13 response to our March 17 proposals for addressing Union Pacific's first set of discovery requests to the Association Complainants, to the extent those discovery requests seek information from members of the Association Complainants.

We disagree with your view of how the Board would likely resolve discovery disputes in this case, but we would prefer to avoid filing a motion to compel and to limit the number and scope of subpoenas, if at all possible. We believe opportunities exist to compromise and settle some of our differences in order to reduce the range of discovery disputes, while recognizing that we may not be able to resolve all of them.

In general, the compromise proposals we present below are designed to eliminate the need for Union Pacific to file a motion to compel discovery from the Association Complainants, and to eliminate the need to subpoena most Association Complainant members – though we anticipate we will have to serve subpoenas on the car companies that submit information to Railinc pursuant to Ex Parte 328. However, we remain open to proposals that eliminate the need for subpoenas entirely.

An overarching element of all our proposals involves an issue that we raised repeatedly in our March 17 letter but that your April 13 letter did not address directly; namely, the need for a stipulation that Complainants will not submit argument or evidence that relies on or refers to information or documents that are responsive to Union Pacific's discovery requests, but that the Association Complainants have refused to produce on behalf of their members. We believe the Board would not allow Complainants to use information that they refused to produce, but we want to resolve this issue before we will agree not to pursue discovery.

Our more detailed responses and proposals are set out below, using the same categories as in the March 17 and April 13 letters.

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**1. Tank car ownership and maintenance costs. (Int. Nos. 30-33; Doc. Req. Nos. 2, 4-5, 7-9, 18-22)**

Our requests for information regarding tank car ownership and maintenance costs are relevant to many issues raised by the Complaint and Complainants' Reply to Union Pacific's Motion to Dismiss other than the issue of damages. To take just one example, the Complaint contains allegations about how those costs have increased over time as one way to justify an alleged entitlement to mileage allowance payments. Moreover, your relevance objections are inconsistent with the discovery requests that Complainants served on Union Pacific. Finally, while Complainants may be planning to abandon some or all of their arguments and legal theories involving car ownership and maintenance costs, our right to discovery is not confined by the arguments or legal theories that Complainants may choose to present to the Board. We are entitled to discovery to support our arguments that the challenged practices are not unreasonable and to support our arguments regarding damages or the lack thereof.

Our March 17 letter offered an extremely reasonable compromise that both narrowed the scope of our requests and dramatically limited the number of parties that would be required to produce information. If our compromise remains unacceptable, we will pursue the information we need through a motion to compel and/or subpoenas.

**2. Member requests for full-allowance rates or reduced line-haul rates. (Ints. Nos. 24-27, 34; Doc. Req. Nos. 3, 6, 10-13)**

Although you complain that our proposed stipulations were not "neutrally phrased," we believe we can bridge the gaps between our proposals and your counter-proposals.

First, we are willing to accept your proposed stipulations (a), (c), and (d).

Second, we ask that you enter into a stipulation addressing railroads other than Union Pacific that parallels your proposed stipulation (d). We do not think this should be a problem, because you were willing to address other railroads in your proposed stipulation (c), and you seem to confirm the underlying facts in your introductory paragraph to this section.

Third, we ask that you stipulate that from at least 2010 to the present, most, if not all, movements in tank cars on railroads other than Union Pacific have occurred under zero-mileage rates. Your proposed stipulation (c) does not preclude the possibility that other railroads are establishing rates that provide for the payment of a mileage allowance without any specific request.

Fourth, we are not opposed in principle to a stipulation along the lines of your proposed stipulation (b), but since 2010, Union Pacific has established rates for movements in tank cars that provide for payment of a mileage allowance – and we have discussed proposals to provide Complainants information about such movements, and we are still awaiting your response to those proposals – so it would be more correct to say "seldom" rather than "seldom, if ever."

Fifth, we are not opposed in principle to a stipulation along the lines of your proposed stipulation (e), though we propose different, more accurate wording. We are willing to stipulate

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that, from at least 2010 to the present, Union Pacific seldom expressly informed shippers that the zero-mileage rates it established for movements in tank cars were lower than they otherwise would be if it established rates that provided for the payment of a mileage allowance.

Sixth, we are willing to simplify our proposed stipulation (f) so that Complainants would stipulate that, in the experience of Association members, there is essentially no difference between Union Pacific and other railroads regarding the proportion of movements for which Association members were paid mileage allowances. We do not think this point is controversial, and you seem to confirm the underlying facts in your introductory paragraph to this section.

Seventh, we ask you to reconsider our proposed stipulations (b) and (g). Our proposed stipulation (b) –that there is no evidence Union Pacific has ever refused a request to establish rates for movements in tank cars that provide for payment of a mileage allowance – is a specific example of the overarching issue we discussed above, which is also addressed more generally in our proposed stipulation (g): if we agree not to pursue discovery against Association members we need your assurance that Complainants will not subsequently introduce evidence we would have obtained through discovery.

### **3. Movements of loaded and empty tank cars, including empty movements to repair facilities and work performed at repair facilities. (Int. Nos. 14-18, 30-31)**

We cannot accept your position that Complainants are free to claim that Union Pacific does not suffer a disproportionate burden with regard to empty repair moves but then refuse to provide discovery about empty repair moves on other railroads. It is no answer to say we should subpoena parties that have no connection to this case when the Association members have the information we seek. (And we do not even know whether other railroads have the information we seek.)

In addition, your response to our proposals does not address our request for information about the work performed at repair facilities – information we do not have, but which is highly relevant to the issues in this case, as explained in our March 17 letter.

As an alternative to Complainants' agreement to our proposed stipulations (a), (b), (c), and (d), we would be willing to accept production of responsive information from only the car companies that submit information to Railinc pursuant to Ex Parte 328.

However, we ask that Complainants agree to our proposed stipulation (e), especially in light of Complainants' prior suggestions that Union Pacific obtain information from Railinc, and our proposed stipulation (f), since it would be unfair for Complainants to rely on information from Association members after refusing to produce that information in discovery.

### **4. Other (non-Union Pacific) railroad practices. (Int. Nos. 16-18, 25, 27, 34; Doc. Req. Nos. 11, 13)**

The discovery requests in this category are addressed by the proposals presented above.

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### **5. Tank car leases. (Int. Nos. 1, 3-10, Doc. Req. Nos. 14-16)**

Your counter-proposal for responding to our requests relating to tank car leases is not acceptable for two reasons. First, we are not convinced that the leases of the three complaining shippers would be representative of the universe of leases used by various car leasing companies during the relevant time period. And the discovery rules are designed so that we are not required to rely on Complainants to determine what counts as sufficiently “representative of the industry standards.” Second, your proposal does not address our need for information about lease rates. And as discussed above, Union Pacific’s right to discovery is not confined by the Complainants’ legal theories – we are entitled to discovery of evidence supporting arguments that the challenged practices are not unreasonable.

Although we are disappointed that the Association Complainants apparently made no effort to work with their car company members or their other members to develop a workable compromise, we have one to offer: Union Pacific will submit a list of 35 shippers, and the car companies that submit information to Railinc pursuant to Ex Parte 328 will produce all lease agreements (including all riders, addendums, and attachments) between them and those shippers for the period from 2001 to the present.

Of course, we also expect Complainants to agree not to submit any argument or evidence in this case that relies on or refers to information from Association members that is responsive to the discovery requests identified above but that is not produced in response to this compromise approach.

### **6. Mileage equalization billings and empty movement costs. (Int. Nos. 19-21; Doc. Req. No. 23)**

We might agree not to pursue these requests, depending on the resolution of other issues.

### **7. Loaded and empty tank car miles. (Int. Nos. 17-18, 30-31).**

We have already addressed the discovery requests in this category in the proposals presented above in point 3.

### **8. Changes in member practices in sending tank cars to repair facilities in response to Union Pacific’s adoption of Item 55-C. (Int. No. 23)**

We appreciate your willingness to stipulate to what you describe as “economic common sense,” but our proposed stipulations were designed to make those “common sense” points more concrete – which we believe we could accomplish through information obtained in discovery.

However, in an effort to minimize the number of disputes, we would be willing to accept production of responsive information from only the car companies that submit information to Railinc pursuant to Ex Parte 328, as long as Complainants also agree not to submit any argument or evidence in this case that relies on or refers to information from Association

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members that is responsive to Interrogatory No. 23, but that is not produced as a result of this compromise approach.

**9. Communications regarding Item 55-C. (Int. No. 22; Doc. Req. No. 17)**

In an effort to minimize the number of disputes, we propose to address these discovery requests in the same manner as discussed in point 8 above – that is, production of responsive information from car companies and Complainants’ agreement not to rely on responsive information that is not produced as a result of this compromise approach.

\* \* \*

Our proposals reflect our attempt to resolve the discovery issues discussed above through compromise. We have tried to eliminate the need for motions to compel and/or subpoenas while ensuring that we obtain the information to which we are entitled. If that will not be possible, it would be best to know sooner rather than later. Of course, we are willing to discuss any of the above issues in person, if you believe that would prove more efficient.

As a final point, we still have not received a response to my March 17 email regarding the draft protocol for the production of electronically stored information and documents that the parties have been exchanging. I do not think any substantial disagreements remain, and we should be able to wrap this up.

Sincerely,



Michael L. Rosenthal

cc: Thomas W. Wilcox, Esq.  
Paul M. Donovan, Esq.  
Justin A. Savage, Esq.  
Louise A. Rinn, Esq.

# **EXHIBIT 30**

May 2, 2016

*Via E-mail and First Class Mail (mrosenthal@cov.com)*

Michael L. Rosenthal  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001-4956

RE: STB Docket NOR 42144; Discovery and Stipulation Proposals

Dear Mike:

I write on behalf of the Association Complainants in response to your April 21, 2016 letter, which is the most recent communication in our on-going dialogue concerning discovery of Association Complainant members. As I stated at the conclusion of my April 13, 2016 letter, that letter represented the extent to which the Association Complainants are able to go to address UP's discovery requests pertaining to Association members. The only progress that we perceive from your April 21 letter pertains to Item #2. With respect to all of the other items, we are advising UP that it should take whatever next steps it deems appropriate.

In the hope of still reaching some agreement as to the Item #2 discovery requests, we offer some variations upon your counter-proposals. Our numbered responses below correspond to your paragraphs "First" through "Seventh."

1. We appear to have agreement upon stipulations (a), (c) and (d) in my April 13 letter.
2. Although we do not agree that this is relevant, we are willing to enter into a stipulation addressing railroads other than UP that parallels proposed stipulation (d) in my April 13 letter.
3. Although we do not agree that this is relevant, we are willing to enter into a stipulation that most movements in tank cars on railroads other than UP have occurred under rates that did not include the payment of mileage allowances.
4. We are amenable to modifying our proposed stipulation (b) along the lines that you have proposed; however, we believe more specificity is needed. To our knowledge, UP only pays allowances on clay shipments in tank cars, but not on other commodities. If clay is the sole or primary exception, we would like the stipulation to spell that out. You also state that UP is awaiting our response to your proposals

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to provide Complainants with information about tank car movements on which UP pays allowances. We are unaware of any proposal to which we have not yet responded, as we are under the impression that this information will be included in the traffic data that UP has agreed to produce. Therefore, it would be helpful if you clarified this statement.

5. We propose a different variation upon our proposed stipulation (e) from that contained in your letter. Specifically, UP will stipulate that, from at least 2010 to the present, Union Pacific seldom, if ever, expressly informed shippers that the rates it established for movements in tank cars were reduced in lieu of paying mileage allowances.
6. We are willing to agree to UP's revised proposed stipulation (f).
7. At your request, we have reconsidered our objections to UP's proposed stipulations (b) and (g).
  - We cannot agree to (b) because the predicate to (b) is stipulation (a). If we are to stipulate in (a) that Association members have seldom, if ever, requested payment of a mileage allowance, there would be little or no occasion for UP to refuse such a request. Therefore, we are unwilling by stipulation to create the impression that UP either has, or would have, granted such a request if such a request had been made.
  - We are willing to agree to a variation upon stipulation (g) represented by the underlined text:

Complainants will agree not to submit any Opening argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information or documents from Association members that are responsive to the Interrogatories or Document Requests identified above, but that are not produced by Complainants in discovery.

Since Complainants have no intention of relying upon information from their members to address the subject matter of Item #2 in their case-in-chief, we have no qualms about making this stipulation in the context of our opening evidence. We are not willing, however, to make a blind stipulation that would restrict our ability to develop rebuttal evidence in response to currently unknown reply evidence.

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While we regret that we have not been able to reach agreement on the majority of discovery disputes, we hope that we can reach an accommodation at least as to Item #2. The Association Complainants simply are not in position to agree to UP's other proposals on behalf of their members. Nor do they believe it is appropriate or necessary in this case to pursue such burdensome discovery of third parties on matters that are of little or no relevance to the principal issues. Therefore, if UP intends to subpoena the Association members for this information, we advise UP to do so promptly in accordance with the procedural schedule.

Sincerely,



Jeffrey O. Moreno

cc: Thomas W Wilcox  
Paul M. Donovan  
Justin A. Savage  
Louise A. Rinn

# **EXHIBIT 31**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**NORTH AMERICA FREIGHT CAR )  
ASSOCIATION; AMERICAN FUEL & )  
PETROCHEMICALS MANUFACTURERS; )  
THE CHLORINE INSTITUTE; THE )  
FERTILIZER INSTITUTE; AMERICAN )  
CHEMISTRY COUNCIL; ETHANOL )  
PRODUCTS, LLC D/B/A POET ETHANOL )  
PRODUCTS; POET NUTRITION, INC.; and )  
CARGILL INCORPORATED )  
)  
)  
**vs.** )  
)  
**UNION PACIFIC RAILROAD )  
COMPANY** )**

**DOCKET NO. NOR 42144**

**COMPLAINANTS' FIRST DISCOVERY REQUESTS**

Complainants the North America Freight Car Association ("NAFCA"), the American Fuel & Petrochemicals Manufacturers ("AFPM"), The Chlorine Institute, Inc. ("CI"), The Fertilizer Institute ("TFI"), the American Chemistry Council ("ACC"), Ethanol Products, LLC d/b/a POET Ethanol Products ("Poet Ethanol Products"), POET Nutrition, Inc., ("Poet Nutrition"), and Cargill Incorporated ("Cargill"), (together "Complainants") hereby serve their First Discovery Requests upon Defendant Union Pacific Railroad ("UP") pursuant to 49 C.F.R. Part 1114. Responses and responsive documents, as well as any objections, must be delivered by May 15, 2015, or another date or dates mutually agreed to by the parties, to counsel for the Complainants NAFCA, Cargill, Poet Ethanol Products and Poet Nutrition, Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street, NW, Suite 500, Washington, DC 20007, and if reasonably

possible, copies of all production are to be also delivered to counsel of record for the other complainants.

### **INSTRUCTIONS**

1. These discovery requests ("Requests") call for all non-privileged information which is in the possession, custody, or control of Defendant and its consultants, outside experts and counsel.

2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request should clearly indicate the subdivision, part, or portion of the Request to which it is directed.

3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.

4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," or "including" shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to call for all responsive information without limitation.

5. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all documents that might otherwise be construed to be outside the scope of the Request.

6. If Defendant believes that any request or definition or instruction applicable thereto is ambiguous, it should set forth the language that it believes is ambiguous and the interpretation that it is using in responding to the Request.

7. If any document covered by a Request is withheld for whatever reason, including any privilege, Defendant shall furnish a written privilege log identifying all withheld documents in the following manner:

- a. the specific Request to which the document is responsive;
- b. the date of the document;
- c. the name of each author or preparer;
- d. the name of each person who received the document and the name of such person's employer at the time the person received the document;
- e. a brief description of the subject matter of the document and any withheld attachments or appendices;
- f. the specific factual and legal basis for withholding; and
- g. the number of pages withheld.

8. Each document produced shall be an authentic original document or a true duplicate of an authentic original document.

9. These Requests cover the period from January 1, 1987 to the date you serve your response, unless otherwise indicated.

10. All Requests are continuing and amended or supplemental responses shall be provided if and when responsive new information and documents are discovered by Defendant, its consultants, outside experts and/or counsel.

11. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

12. Where the Request seeks data in a computer-readable format, machine-readable format, or in its native format, this data is defined as an electronic file which contains structured, relational data, and is managed within a commercially available and relational database system

(for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API (Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations, thereby making the data accessible independent of the host system.

13. If the source table is stored within a non-relational system, such as a 'flat file', or a custom system (not commercially available), provide the data in standard sequential or delimited text files. The text files will be MS-DOS or MS-Windows compatible text formats.

14. For each computer file supplied provide:

- a. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textural representation of the database relational model for each system to include all named tables of data within the system's relational model, and for every table provide a list of fields, primary keys, foreign keys, list relational links to other tables and fields, and filters, if any, associated to the relational links. Include all related tables, and all fields within each included table. List the fields which define a unique record (row) for each table, or state if the table does not require unique row differentiators or primary keys. For code tables, provide the code, and associated data elements in a discreet list (no duplicates);
- b. A description of how the records in the file produced were selected;
- c. The original table names (no aliases), original field names, to match the provided systems' data structures within each computer program (in native software and text file) and intermediate file used in deriving the files produced if the files produced are flat files. If the files produced are commercially available relational database files, provide the method used and code (if code was created) used to export the data to this relational format, including the operating system and version under which the final text files or relational tables were produced; and
- d. A relational diagram defining relationships between tables, with all fields, listing primary keys, foreign keys, with each table or file provided as listed in the relational diagram. Also provide all table indexes, and index files, which define the index to be clustered or non-clustered.

15. For each field in each computer database file provide a complete, standard data structure, including:
- a. The name of the field including its source table name, and if different from the LOB (line of business) or off-line analytical system field name, provide all field name incarnations so that there is a linkage between the provided fieldname and the original source fieldname and source table, and source application/system. Also provide the "Synonymous Name," that being a single word or multiple words that differ from the fieldname, but represents the same data element using alternative or more descriptive terminology. Also provide the "Context", that being a designation or description of the application environment in which the data item (or field) is applied or from which it is originally derived (its origin);
  - b. The starting and ending positions of the field if the file is a non-delimited flat file, or if the file is delimited, verify that the delimiter is inserted at the end of each field and the delimiter is not contained, as data, within any data cell (provide row terminators and line feed codes), otherwise, if the provided data set is a relational database "table", export the table structure into a separate ANSI SQL 92 code or text file;
  - c. A detailed definition of the field and whether this field is the record's (or row's) unique identifier, or it is one of many fields which create a unique row (list them);
  - d. A detailed description of the data in the field, including an explanation of what they are used for and also provide all related index files in SQL code format or text files, if any;
  - e. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed) and whether this field is Unicode, or contains any constraints, or requirements to be Non-Null, or non-blank;
  - f. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each and provide the approved domain (range of values if indeterminate) or list of values permitted if determinate. Also provide minimum and maximum values, including whether the values are Null, hidden, or specific ASCII or ISO codes. Include the character encoding or software vendor's code page, for each table if any;
  - g. An indication of whether the data in the field are packed or compressed;
  - h. If the data in the field are packed or compressed, the type of packing or compression:

- 1) Zoned with low-order sign;
  - 2) Binary with LSB first;
  - 3) Binary with MSB first;
  - 4) Packed with high-order sign;
  - 5) Packed with low-order sign;
  - 6) Packed with no sign; and
  - 7) Other (specify and provide detailed instructions for unpacking);
- i. If the data files and tables originate on a non-Microsoft Windows operating system, state the original operating system and convert to Microsoft Windows format; and
  - j. For data or other electronic information submissions where the source system does not have a 32-bit operating system, verify that all data and files are computer-readable on a 32-bit operating system.

### DEFINITIONS

“Allowance Agreement” means the national agreement between railroads and tank car shippers, approved on September 23, 1986 by the Interstate Commerce Commission in Ex Parte No. 328, *Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196 (1986).

“Document” means all writings in any form whatsoever, including but not limited to letters, electronic mail, memoranda, reports, agendas, hand-written materials and meeting notes. The term “documents” also includes all drafts of all writings in any form whatsoever.

“Identity” or “Identify” means:

- a. when used with respect to a natural person, to state the person’s full name, present or last known business address, the person’s present or last known business telephone number, the person’s present or last known place of employment, position or business affiliation, and the person’s present and former relationship to UP.
- b. when used with respect to a person other than a natural person, to state the entity’s full business or organizational name, the address of entity’s prin-

principal place of business, the entity's State of incorporation or formation, and the identity of person(s) who acted on behalf of the entity with respect to the subject matter of the requested document, information or thing.

- c. when used with respect to a document, either to produce the document itself or to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc., or other means of identifying it), the date of the document, the person(s) who authored and/or signed the document, the person(s) to whom the document was addressed, sent, and/or received, the general subject matter of the document, and the present location and present custodian of the document (if any such document was but is no longer in the possession, custody or control of UP, state what disposition was made of it and explain the circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date of such disposition).
- d. when used with respect to a non-written communication, to state the identity of every natural person making or receiving the communication, such person's respective principal(s) or employer(s) at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.
- e. when used with respect to an act, occurrence, decision, statement, review, inspection, negotiation, communication or other conduct (collectively, "act"), to state what transpired at or the events constituting the act, the subject matter of the act, the outcome, and the place and date thereof, and to identify the person(s) present and the person(s) involved.

"Mileage Allowance Payment" means compensation paid to shippers or car owners by UP pursuant to the Allowance Agreement.

"Mileage Equalization Payment" means compensation received by UP from a shipper or car owner pursuant to Freight Tariff RIC 6007-Series and in accordance with the mileage equalization provisions of the Allowance Agreement.

"Possession, custody or control" means any document or other information that is within the possession or control of a defendant or any of its employees, agents, or affiliates or subsidiaries and their employees.

"Refer or relate" means to have any direct or implied reference or relationship to any subject matters to which such phrase is applied.

“Repair Facility” or “Repair Facilities” means any facility that cleans, lines, relines, maintains, modifies, repairs or retrofits tank cars, as the term is defined in Tariff UP 6004, Item 55-C.

“Tariff UP 6004, Item 55-C” means UP’s recently adopted Tariff UP 6004, Item 55-C, effective January 1, 2015.

“You or your” means Defendant or any of its outside consultants, experts and counsel. The terms “you,” “your,” and any other nouns or pronouns shall be gender inclusive.

“Zero-mileage rate” means a rail transportation rate that purportedly compensates a rail shipper or car owner for the use of its private railroad tank car in lieu of compensating the rail shipper or car owner by directly making a Mileage Allowance Payment.

“Zero-mileage allowance clause” means a provision in UP’s contracts and/or tariffs pursuant to which UP states it is not required to make Mileage Allowance Payments to rail shippers or car owners who supply UP with private railroad tank cars to transport their commodities.

### **INTERROGATORIES**

1. Identify all tank car movements beginning in 2010 for which UP has established tariff rates, or proposed a contract rate, that offered a choice between a line-haul rate with full mileage allowance payments or zero mileage allowance. Identify the customer, the commodity transported, the origins and destinations of the movements, and the choice of rates that UP offered.

2. Identify all tank car Repair Facilities served by UP or a Class III railroad that connects with UP. For each facility, identify all movements of tank cars supplied to UP by its customers to and from the shop from 2010 to the present.

3. Identify all persons who participated in UP's decision to charge for empty tank car movements to Repair Facilities and describe the title and the role of each person identified.

4. Identify any and all transportation arrangements for tank car railroad transportation by UP where the shipper paid or pays a rate for the transportation, and UP compensated, or currently compensates, the shipper for the use of the cars it supplies to UP through a Mileage Allowance Payment.

### **DOCUMENT REQUESTS**

1. Produce all documents that were referred to or relied upon to provide the answers to Interrogatories 1-4.

2. Produce all documents relating to, discussing, referring to, mentioning or commenting on UP's internal deliberations on whether to compensate shippers and/or private tank car owners for the use of their tank cars through Mileage Allowance Payments or through Zero-mileage rates.

3. Produce all documents that Identify, calculate, refer or relate to the total amount of Mileage Equalization Payments UP has received from the transportation of tank cars, by year, for each year from 1987 to the present.

4. Produce all documents that Identify, compile, calculate, refer to, or relate to, any Mileage Allowance Payments UP has made to car owners, or to rail shippers, by year, by car type and/commodity, for each year from 1987 to the present.

5. Produce all documents that discuss, refer to, or relate to any calculation by UP of the extent to which it has reimbursed its customers for the costs of owning and maintaining the tank cars they have supplied to UP for the transportation of their commodities.

6. For each tank car shipment record, please provide the information described below for UP's entire system for each year or partial year 1987 to the present in a computer readable database or electronic spreadsheet, including all field descriptions, data definitions and data dictionaries required to utilize the data. The database should include, at a minimum, the following data:

- a. The name of the consignee, shipper, payee, and customer;
- b. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- c. Origin station and State;
- d. Destination station and State;
- e. For shipments that originated on UP's system(s), the date the shipment was originated;
- f. For shipments UP received in interchange, the on-junction location station and state;
- g. For shipments UP received in interchange, the date the shipment was interchanged;
- h. For shipments given in interchange, off-junction location station and state;
- i. For shipments given in interchange, the date the shipment was interchanged;
- j. For shipments terminated on UP's system, the date the shipment was terminated;
- k. Number of rail cars;
- l. Tons (Net);
- m. Total freight revenues from origin to destination, or UP's share of the total freight revenues in the event that UP was not the sole carrier for a particular movement.

- n. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues;
- o. Total mileage allowance payments paid by UP to the tank car owner;
- p. Total mileage allowance payments received by UP from the tank car owner;
- q. The contract, agreement, tariff, or other pricing authority that the shipment is billed under including the amendment and item numbers;
- r. Unique Waybill number and date;
- s. Total loaded miles on UP's system;
- t. Total empty miles on UP's system;
- u. AAR car-type code;
- v. Tank car initial and number; and
- w. Annual tank car allowance rate from UMLER.

7. For each empty tank car shipment record, please provide the information described below for UP's entire system for each year or partial year 2010 to the present in a computer readable database or electronic spreadsheet, including all field descriptions, data definitions and data dictionaries required to utilize the data. The database should include, at a minimum, the following data:

- a. The name of the consignee, shipper, payee, and customer;
- b. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- c. Origin station and State;
- d. Destination station and State;
- e. For shipments that originated on UP's system(s), the date the shipment was originated;

- f. For shipments UP received in interchange, the on-junction location station and state;
- g. For shipments UP received in interchange, the date the shipment was interchanged;
- h. For shipments given in interchange, off-junction location station and state;
- i. For shipments given in interchange, the date the shipment was interchanged;
- j. For shipments terminated on UP's system, the date the shipment was terminated;
- k. Number of rail cars included on the waybill to/from Repair Facility;
- l. Tons per car (Net);
- m. Total empty mileage payments under Tariff 6004-C (if moved after January 1, 2015);
- n. Unique Waybill number and date;
- o. Total empty miles on UP's system to/from Repair Facility; and
- p. AAR car-type code.

8. Produce all documents relating to, discussing, referring to, mentioning or commenting on costs associated with owning and maintaining railroad tank cars, whether the cars are owned by UP or by its customers or car owners.

9. Produce all documents that refer or relate to, and/or quantify, discounts or reductions to line-haul rates that UP contends that it has provided to any shipper in exchange for an agreement to waive Mileage Allowance Payments on tank cars.

10. Produce all documents that refer or relate to UP's decision to begin charging for empty tank car movements to/from Repair Facilities as set forth in Tariff 6004, Item 55.

11. Produce all studies or analyses that were performed by or for UP as part of the process of deciding to charge for empty tank car movements to and from Repair Facilities.

12. Provide all documents that Identify, calculate, refer or relate to the level of rate reductions UP has offered shippers in lieu of compensating them by making Mileage Allowance Payments on tank cars.

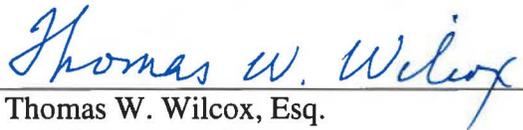
13. Produce all documents that Identify, refer or relate to the factors and methods that UP uses to establish line-haul rates for movements in tank cars, including but not limited to all cost factors that UP considers.

14. Produce all documents, including but not limited to studies, memos, analyses, and reports addressing the degree to which Zero-mileage rates charged by UP compensate private car owners for the use of their tank cars.

15. Produce all documents, including but not limited to studies, memos, analyses, and reports in which UP has quantified the costs of private car ownership for which UP maintains it is reimbursing its customers through Zero-mileage rates.

16. Produce all documents, including but not limited to studies, memos, analyses, and reports, where UP has estimated the revenues it will receive from the charges for empty tank car movements established in UPRR Tariff 4703.

Respectfully submitted,



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# **EXHIBIT 32**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**NORTH AMERICA FREIGHT CAR )  
ASSOCIATION; AMERICAN FUEL & )  
PETROCHEMICALS MANUFACTURERS; )  
THE CHLORINE INSTITUTE; THE )  
FERTILIZER INSTITUTE; AMERICAN )  
CHEMISTRY COUNCIL; ETHANOL )  
PRODUCTS, LLC D/B/A POET ETHANOL )  
PRODUCTS; POET NUTRITION, INC.; and )  
CARGILL INCORPORATED )  
)  
)  
vs. )  
)  
UNION PACIFIC RAILROAD )  
COMPANY )**

**DOCKET NO. NOR 42144**

**COMPLAINANTS' SECOND DISCOVERY REQUESTS**

Complainants the North America Freight Car Association ("NAFCA"), the American Fuel & Petrochemicals Manufacturers ("AFPM"), The Chlorine Institute, Inc. ("CI"), The Fertilizer Institute ("TFI"), the American Chemistry Council ("ACC"), Ethanol Products, LLC d/b/a POET Ethanol Products ("Poet Ethanol Products"), POET Nutrition, Inc., ("Poet Nutrition"), and Cargill Incorporated ("Cargill"), (together "Complainants") hereby serve these Second Discovery Requests on Defendant Union Pacific Railroad Company. Responses and responsive documents, as well as any objections, must be delivered by February 23, 2016, or

another date or dates mutually agreed to by the parties, to counsel for the Complainants NAFCA, Cargill, Poet Ethanol Products and Poet Nutrition, Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street, NW, Suite 500, Washington, DC 20007, and if reasonably possible, copies of all production are to be also delivered to counsel of record for the other complainants.

### **INSTRUCTIONS AND DEFINITIONS**

Complainants hereby incorporate by reference into these Second Discovery Requests the Definitions and Instructions included in Complainants' First Discovery Requests, served on April 30, 2015, except that the definition of "You or your" is amended to mean Defendant and predecessors to Defendant also known as "Union Pacific Railroad Company" from 1987 to the present, or any of Defendant's outside consultants, experts and counsel. The terms "you," "your," and any other nouns or pronouns shall be gender inclusive.

### **INTERROGATORIES**

5. For each of the years 1987 and 2015, identify by name and location (including the serving rail carrier(s)) all tank car Repair Facilities served by a Class III railroad that interchanged with You.
7. For each of the years 1987 and 2015, identify by name and location all Repair Facilities served directly by You.
8. For the year 1987, identify the number of empty tank car movements by You (a) for interchange with a Class III railroad for transportation to a Repair Facility located on a railroad other than You; and (b) to Repair Facilities located on Your system and served directly by You,

where the movement to the Repair Facility would have been subject to charges pursuant to Tariff 6004, Item 55-C.

9. Identify all persons who participated in: (a) Your decision to charge for certain empty tank car movements to or from Repair Facilities, (b) the drafting of Tariff 6004, Item 55-C and Tariff 4703, Items 1100-1200, (c) determining the rates applicable to empty tank car movements to/from Repair Facilities under Tariff 6004, Item 55-C and Tariff 4703, Items 1100-1200 (both for 2015 and 2016). For each person identified, describe their title and their role in the relevant activity.

10. Identify all persons who participated in any analysis or projections of the revenues You will receive from the charges assessed pursuant to Tariff 6004, Item 55-C and Tariff 4703 Items 1100-1200 (both at 2015 and 2016 rate levels). For each person identified, describe their title and their role in the relevant activity.

11 Please explain how You determined each of the rates set forth in Tariff 4703, Items 1100-1200 (for 2015 and 2016) and what calculations and analysis, if any, You undertook to determine whether and how much of the revenues received by You pursuant to this Tariff would be paid to car owners through Mileage Allowance Payments and/or Zero Mileage Rates.

12. Provide an accounting of the revenues received from tank car providers through mileage equalization charges by You in 1987 and from 2001 to the present.

13. From 2010 to the present, identify (a) any and all arrangements (e.g., tariff or contract) for railroad transportation by You of commodities in tank cars in which You compensated, or currently compensate, the tank car provider for the use of private tank cars through a Mileage Allowance Payment; and for each arrangement, (b) the customer; (c) the commodity and (d) the applicable line-haul rate.

14. From 2010 to the present, identify (a) any and all arrangements (e.g. tariff or contract) for railroad transportation by You of commodities in tank cars in which You compensated, or currently compensates, the tank car provider for the use of private tank cars through a Zero-Mileage Rate; (b) the applicable Zero-Mileage Rate; (c) the rate that UP otherwise would have charged if You paid an allowance, including the source (e.g., tariff, contract offer); and for each arrangement, (d) the customer; and (e) the commodity.

15. Provide the following information for movements by You for calendar year 1987 and each calendar year from 2001 through 2015:

(a) Total number of empty tank car shipments to and from Repair Facilities.

(b) Total number of empty tank car miles to and from Repair Facilities.

16. Identify all facts, documents, and analyses upon which You intend to rely to support Your claim that the Zero-Mileage Rates charged by You for tank car shipments are or were less than the rates You otherwise would have charged.

17. State whether You have assessed or will assess the charges for empty tank car movements made applicable by Tariff 6004, Item 55-C against the tank car owner or lessee in those circumstances where they are different entities and explain why. If Your response depends on any factual determination, identify the facts upon which it depends and explain how those facts influence Your response.

18. Please explain if and how Your charges for the movement of empty cars subject to Repair Facilities subject to Item 55-C are or will be reflected in the level of the mileage allowance charges determined pursuant to Ex Parte No. 328.

## DOCUMENT REQUESTS

17. Please provide all documents that were referred to or relied upon to provide the answers to Interrogatories 5-19.
18. Please provide a map of Your system in 1987 and any other documents necessary to depict visually, describe and/or set forth the total miles of track comprising Your rail system in 1987, by track segments.
19. Please provide all documents dated from January 1, 2010 to the present that contain, refer, or relate to the projected revenues You anticipated receiving from implementing Tariff 6004, Item 55-C and Tariff 4703 Items 1100-1200, including but not limited to projected revenues for the movement of empty tank cars for retrofit as a result of final regulations adopted in Docket No. PHMSA-2012-0082 (HM-251), *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains- Notice of Proposed Rulemaking*.
19. Produce all documents, regardless of date, that pertain to meetings, deliberations, reports, or analyses of the Joint Negotiating Committee which negotiated the national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.
20. Produce all documents and data pertaining to Your decision to increase the charges for empty tank car movements to and from Repair Facilities, effective January 1, 2016.

Respectfully submitted,



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