

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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May 25, 2016
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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
CARGILL INCORPORATED,

NOR 42144

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

**UNION PACIFIC'S MOTION TO COMPEL DISCOVERY
OF INFORMATION FROM INDIVIDUAL COMPLAINANTS**

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Union Pacific Railroad Company hereby requests pursuant to 49 C.F.R. § 1114.31(a) that the Board issue an order compelling the Individual Complainants—*i.e.*, Ethanol Products, LLC d/b/a Poet Ethanol Products (“Poet Ethanol”), Poet Nutrition, Inc. (“Poet Nutrition”), and Cargill Incorporated (“Cargill”)—to respond to certain discovery requests contained in Union Pacific’s First and Second Sets of Discovery Requests.

The discovery at issue seeks information highly relevant to the subject matter of this case, in which Complainants challenge Union Pacific’s adoption of charges for certain movements of empty private tank cars to and from repair facilities (Count I) and Union Pacific’s transportation of commodities in private tank cars using zero-mileage rates rather than rates that provide for

payment of mileage allowances (Count II). The Individual Complainants have refused to respond to certain discovery requests, claiming that the requests seek irrelevant information and/or that compliance would be unduly burdensome. However, the Individual Complainants' objections assume the only relevant information is information that fits their legal theories. They ignore Union Pacific's right to explore those theories through discovery and to present its own arguments in defending against claims the Individual Complainants have made.

I. BACKGROUND

In this proceeding, Complainants—five trade associations that represent owners, lessors, and lessees of tank cars, and three individual shippers that use tank cars—allege Union Pacific violated the Interstate Commerce Commission Termination Act by 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).

Complainants filed their original Complaint on March 31, 2015. 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 21-24.¹

¹ 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 claims by the trade association complainants for damages on behalf of their members. *See id.* at 19-21. The trade association complainants dropped any claims for damages on behalf of their members when they filed an Amended Complaint on June 2, 2015.

In their opposition to Union Pacific’s motion for dismissal or clarification, Complainants argued that this 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 that Board precedent for imposing charges on certain empty repair moves, in particular, a case called *IHB II*,² 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. They also argued that the Board should reexamine its past policies in light of changes in industry conditions. *See id.* at 13-14 (“Twenty-eight years have passed since the ICC decided *IHB II*, during 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

² *Gen. Amer. Transp. Corp. v. Ind. Harbor Belt RR Co.*, 3 I.C.C.2d 599 (1987), *aff’d sub nom. Gen. Am. Transp. Corp. v. ICC*, 872 F.2d 1048 (D.C. Cir. 1989).

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 sought reasonable discovery from the Individual Complainants. Union Pacific served a first set of discovery requests on May 8, 2015.³ The Individual Complainants served responses and objections on June 23, 2015.⁴ Poet Ethanol and Poet Nutrition then served joint supplemental responses on March 23, 2016,⁵ and Cargill served supplemental responses on April 14, 2016.⁶ Union Pacific served a second set of discovery requests on March 1, 2016.⁷ Poet Ethanol and Poet Nutrition served their responses and objections on March 23, 2016, and Cargill served its responses and objections on March 30, 2016.⁸

The parties have engaged in a robust meet-and-confer process. They met in person on July 10, 2015, and on February 23, 2016, and held a telephonic conference on February 11, 2016. The parties also exchanged correspondence and held a final in-person meeting on April 28, 2016,

³ See Ex. 1-3.

⁴ See Ex. 4 (“Poet Ethanol First Responses”); Ex. 5 (“Poet Nutrition First Responses”); Ex. 6 (“Cargill First Responses”).

⁵ See Ex. 7 (“Poet Supplemental Responses”).

⁶ See Ex. 8 (“Cargill Supplemental Responses”).

⁷ See Ex. 9-11.

⁸ See Ex. 12 (“Poet Ethanol Second Responses”); Ex. 13 (“Poet Nutrition Second Responses”); Ex. 14 (“Cargill Second Responses”).

during which the parties were able to narrow the scope of their disputes. The discovery requests discussed in this motion are those on which the parties have reached an impasse.

II. 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.” *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). 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 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.”)⁹ 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 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 Complainants. In many cases, Union Pacific’s requests seek the same type of information that Complainants requested from Union Pacific. And, in several cases, only one of the Individual Complainants has continued to resist providing discovery.

⁹ *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”).

The discovery disputes that remain fall into nine categories. We discuss each category below.

A. Movements of Empty Tank Cars to Repair Facilities and Work Performed at Repair Facilities (Interrogatory Nos. 14, 15)

Interrogatory No. 14 asks the Individual Complainants to “[i]dentify each movement of an empty tank car owned or leased by You 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 asks the Individual Complainants to “[i]dentify each movement for which You have been assessed a charge under Item 55-C and for which You are 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.”

The Individual Complainants’ responses and objections

Poet Ethanol and Poet Nutrition have agreed to produce documents in their possession and control that are responsive to Interrogatory Nos. 14 and 15.¹⁰

Cargill initially objected to Interrogatory No. 14 as being unduly burdensome, overbroad, and as calling for information already in Union Pacific’s possession.¹¹ It initially objected to Interrogatory No. 15 as calling for information already in Union Pacific’s possession.¹²

Cargill subsequently stated that it would respond to Interrogatory No. 14 by producing information from 2007 to the present sufficient to show for each tank car the dates on which the car was located at a repair facility and the location of the repair facility.¹³

¹⁰ See Ex. 7, Poet Supplemental Responses at 1-2.

¹¹ See Ex. 6, Cargill First Responses at 12.

¹² See *id.*

¹³ See Ex. 8, Cargill Supplemental Responses at 2.

At the April 28 meet and confer session, with regard to Interrogatory No. 14, Cargill stated that it has some information about cars' movements to repair facilities, but that producing the information would be burdensome because Cargill has no standard, company-wide practice for retaining such information. With regard to Interrogatory No. 15, Cargill stated that it would produce information identifying the charges Cargill is contesting, but no additional information. With regard to both interrogatories, Cargill stated that it has some responsive information about the work performed at repair facilities, but it argued that producing that information would be burdensome because Cargill has no standard, company-wide practice for retaining the information. Cargill also stated that it considered the information to be irrelevant.

Cargill's objections have no merit

Information regarding movements of empty tank cars to repair facilities and the work performed at those facilities is highly relevant to this case. Item 55-C's impact on car owners' and shippers' incentives and abilities to reduce inefficient empty movements to and from shops will likely be an important issue in this proceeding. Accordingly, information about industry patterns of empty movements to shops and the reasons cars move to shops is plainly relevant—for example, it may help shed light on whether car owners and lessees are consolidating repair work to minimize empty movements. *See* Complainants' Reply to Motion to Dismiss at 2 n.1. Indeed, in their own discovery requests, Cargill and other Complainants ask Union Pacific for similar information regarding movements of tank cars to shops.¹⁴

Cargill and other Complainants also made the work performed at repair facilities relevant when they opposed Union Pacific's motion to dismiss on the grounds that Board precedent does

¹⁴ *See, e.g.*, Ex. 15, Complainants First Discovery Requests ("First Requests") at 8 (Interrogatory No. 2).

not justify Item 55-C 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 those arguments, which the Board cited in denying our motion to dismiss. *See* Decision served Dec. 21, 2015 at 3 (“While UP argues that the challenged practices are lawful under Board precedent, Complainants question whether UP is complying with that precedent and whether that precedent is applicable here.”).

As for Cargill’s burden objections, to the extent they are based on the supposition that Union Pacific already has the requested information, Cargill is incorrect. Interrogatory No. 14 seeks production of information about empty movements on all railroads, not just Union Pacific. And Union Pacific does not have information about the work performed in shops and, therefore, cannot know the reason(s) for the movements. Regardless of whether Cargill retained responsive information regarding all the tank cars it uses (prior to the time it was under a duty to preserve all potentially relevant material in this proceeding), it cannot avoid searching for and producing highly relevant information merely because all of its information is not located in one central repository or because it speculates that some of the information may not exist. Cargill should be required to perform a reasonable search for responsive information and produce the information to Union Pacific.

B. Charges for Movements of Empty Tank Car to Repair Facilities by Other Railroads (Interrogatory No. 16)

Interrogatory No. 16 asks the Individual Complainants to “[i]dentify each movement for which You have 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 the amount of the charge, and whether You paid the charge.”

The Individual Complainants’ responses and objections

Poet Ethanol, Poet Nutrition, and Cargill each objected to this interrogatory on relevance grounds.¹⁵

The Individual Complainants’ objections have no merit

Information regarding movements on which other railroads have imposed charges similar to Item 55-C is highly relevant to this proceeding for at least two reasons. First, the Complaint alleges that Union Pacific’s adoption of Item 55-C is “an unreasonable practice,” Complaint ¶ 29, and the Board looks to industry practice in determining whether a challenged practice is unreasonable. *See, e.g., 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.”).¹⁶

¹⁵ See Ex. 4, Poet Ethanol First Responses at 12; Ex. 5, Poet Nutrition First Responses at 12; Ex. 6, Cargill First Responses at 12.

¹⁶ 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. (continued...))

Second, evidence regarding other railroads' practices and experience with similar charges may provide information about the likely effects of adopting Item 55-C, and thus whether Union Pacific's adoption of Item 55-C was an "unreasonable practice." In addition, if other railroads impose similar charges, that might help explain the car movement data produced in response to Interrogatory No. 14—which may show that shippers and car owners reacted to the charges by shifting empty repair movements to Union Pacific.

Poet Ethanol, Poet Nutrition, and Cargill should be required to perform a reasonable search for responsive information and produce the information to Union Pacific.

C. Tank Car Movements on Union Pacific as Compared to Other Railroads (Interrogatory No. 18)

Interrogatory No. 18 asks the Individual Complainants to identify, with regard to tank cars they furnished to railroads but did not own, the number of loaded miles, empty miles, and empty repair miles that the cars moved on Union Pacific as compared to all railroads.

The Individual Complainants' responses and objections

Poet Ethanol, Poet Nutrition, and Cargill each objected to this interrogatory as being "unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information relating to damages and reparations."¹⁷

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").

¹⁷ Ex. 4, Poet Ethanol First Responses at 13; Ex. 5, Poet Nutrition First Responses at 13; Ex. 6, Cargill First Responses at 13-14.

The Individual Complainants' objections have no merit

At the April 28 meet and confer session, Union Pacific tried to understand better the basis for the objections. In particular, Union Pacific tried to understand why Cargill agreed to produce information in response to Interrogatory No. 17, which seeks exactly the same information, but for cars Cargill owns (as opposed to cars Cargill leases). Cargill is apparently taking the position that information responsive to Interrogatory No. 18 would be more burdensome to produce than information responsive to Interrogatory No. 17. However, as noted below, Poet Ethanol and Poet Nutrition confirmed that they have information responsive to this request, and if those companies were able to locate responsive information, Cargill should be required to perform a reasonable search and produce the information it can locate. None of Cargill's other objections makes any sense, because Union Pacific cannot reliably identify cars Cargill has leased when they move on Union Pacific, we do not have data regarding movements on other railroads, and the requested information has nothing to do with damages or reparations.

At the meet and confer session, the Individual Complainants also belatedly suggested that the requested information is not relevant. Complainants conceded, however, such relevance by arguing in reply to Union Pacific's motion to dismiss that the Board's *IHB II* precedent does not apply because Union Pacific does not make a disproportionate number of repair moves as compared to other railroads. *See Complainants' Reply to Motion to Dismiss* at 9. While Union Pacific does not agree that the Board's precedent allowing railroads to charge for empty movements to and from shops applies only to railroads with a disproportionate share of empty shop moves, it is entitled to discovery regarding Complainants' claims. In addition, information regarding empty repair moves on Union Pacific as compared with empty repair moves on other

railroads may provide information about the likely effects of adopting Item 55-C, as discussed above in Part II.B.

After the meet and confer session, Poet Ethanol and Poet Nutrition confirmed they have information responsive to this request, but they provided no further support for their objections.¹⁸ Poet Ethanol, Poet Nutrition, and Cargill should be required to perform a reasonable search for responsive information and produce the information to Union Pacific.

D. Empty Mileage Charges Billed Pursuant to Freight Tariff RIC 6007-Series (Interrogatory No. 19)

Interrogatory No. 19 asks the Individual Complainants that have assigned car reporting marks to “state the amount billed to You pursuant to Freight Tariff RIC 6007-Series for empty mileage associated with movements of tank cars, separately for each year from 1987 through 2014.”

The Individual Complainants’ responses and objections

Poet Ethanol and Poet Nutrition stated they have no assigned reporting marks, so they have no responsive information.¹⁹ Cargill objected to this interrogatory as “unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information related to damages and reparations.”²⁰

Cargill’s objections have no merit

Cargill’s objections have no merit. Union Pacific does not possess the requested information, and the information has nothing to do with damages or reparations. Nor would

¹⁸ See Ex. 16, Email from Thomas Wilcox to Michael Rosenthal (May 17, 2016).

¹⁹ See Ex. 4, Poet Ethanol First Responses at 13-14; Ex. 5, Poet Nutrition First Responses at 13-14.

²⁰ Ex. 6, Cargill First Responses at 14.

production of the information be burdensome. The request relates to bills Cargill would have received once a year. If Cargill has the information, production should not be burdensome. If Cargill was never billed for mileage equalization under the RIC 6007-Series, that would also be highly relevant, because it would suggest that Cargill faces no marginal incentive to eliminate unnecessary empty movements to shops.

Cargill should be required to perform a reasonable search for responsive information and produce the information to Union Pacific.

E. Movements for Which Individual Complainants Are Seeking Damages Under Count II (Interrogatory No. 28)

Interrogatory No. 28 asks the Individual Complainants to “[i]dentify each movement for which You seek damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether You paid the line-haul transportation charge and whether You were the Car Owner or leased the car from the Car Owner.” This interrogatory also asks for the identity of the person who paid the line-haul transportation charge, if it was not the Individual Complainant.

The Individual Complainants’ responses and objections

Poet Ethanol and Poet Nutrition agreed to produce responsive information.²¹ Cargill initially objected to this interrogatory “as being unduly burdensome and prematurely seeking information relating to damages.”²² Cargill later stated in its supplemental responses that it seeks damages for all loaded tank car movements on Union Pacific “during the applicable reparations period,” that “none of the referenced loaded car movements . . . were [sic] subject to contract

²¹ See Ex. 7, Poet Supplemental Responses at 2.

²² Ex. 6, Cargill First Responses at 17-18.

rates,” and that “Cargill paid the line haul rate for all of the referenced tank car movements, except for certain loaded movements of tank cars that Cargill subleased to other entities.”²³

Cargill’s objections have no merit

Cargill’s objections have no merit. Union Pacific’s requests are not “premature.” Union Pacific is entitled to know which movements are covered by Cargill’s damages claim, and the procedural schedule in this case provides no other opportunity to propound discovery of this type. In addition, identifying the movements covered by Cargill’s claims is not a simple matter, as certain Cargill movements occur in tank cars Cargill leases from other companies, and those companies may assert that they are entitled to mileage allowance payments as the owners of the tank cars. Moreover, Union Pacific records suggest that even Cargill’s broad description of the movements at issue is flawed. While Cargill claims that none of its loaded tank car movements occurred under contracts, Union Pacific provided Cargill with contrary evidence following the August 28 meet and confer session.²⁴

Union Pacific’s requests also are not burdensome. The interrogatory seeks information Cargill would have to produce to establish an entitlement to damages. If Cargill is unwilling to produce this basic information, it should not be allowed to pursue a claim for damages. The Board should order Cargill to respond in full to this interrogatory.

**F. Information Regarding Tank Car Ownership and Maintenance Costs
(Interrogatory Nos. 30-32, 35; Document Request Nos. 18-20)**

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

²³ Ex. 8, Cargill Supplemental Responses at 3.

²⁴ See Ex. 17, Email from Michael Rosenthal to Thomas Wilcox & David Monroe (Apr. 29, 2016).

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. Specifically:

- *Interrogatory No. 30* asks tank car owners about car-specific ownership and maintenance costs for the cars they own, as well as information about the extent to which the car owners receive or make payments to lessees for maintenance or repair costs.
- *Interrogatory No. 31* asks for similar car-specific information with regard to tank cars used pursuant to a lease.
- *Interrogatory No. 32* asks tank car owners and lessees about certain types of costs relating to car ownership and maintenance costs that are not directly allocated to specific cars (e.g., taxes on property used for car repairs, depreciation on fixed property used for car repair, wages and benefits paid to employees engaged in car repair, etc.).
- *Interrogatory No. 33* asks tank car lessees about payments to car owners relating to car ownership and maintenance costs that are not directly allocated to specific cars.
- *Interrogatory No. 35* asks for information relating to allegations in the Complaint regarding tank car ownership and maintenance costs.
- *Document Request No. 18* asks for documents sufficient to show the costs of owning tank cars and the extent to which the costs are reimbursed by lessees.
- *Document Request No. 19* asks for document sufficient to show the costs of maintaining tank cars as well as the extent to which the costs are reimbursed by lessees.
- *Document Request No. 20* asks for documents sufficient to show the costs of maintaining tank cars that are leased and the extent to which the costs are reimbursed by the lessor.

The Individual Complainants' responses and objections

The Individual Complainants categorically refuse to provide any information regarding tank car ownership and maintenance costs, with very minor exceptions. In their written discovery responses, they assert that the requested information is irrelevant²⁵ and/or that the information would be unduly burdensome to produce.²⁶ They also assert that Union Pacific is prematurely seeking information related to damages.²⁷ (Poet Ethanol and Poet Nutrition state they have no information responsive to requests regarding tank car owners, since neither entity owns tank cars.)²⁸

Cargill later supplemented its responses to Interrogatories 30 and 31 by stating that it would respond to certain subparts, but only those that do not request cost information.²⁹ Poet Ethanol and Poet Nutrition stated in their initial responses to Document Request No. 19 that they would produce responsive documents as to tank cars they sublease and supplemented their

²⁵ See Ex. 4, Poet Ethanol First Responses at 18-19 (response to Interrogatory No. 31); Ex. 5, Poet Nutrition First Responses at 18-19 (response to Interrogatory No. 31); Ex. 6, Cargill First Responses at 18-20 (responses to Interrogatory Nos. 30, 31).

²⁶ See Ex. 4, Poet Ethanol First Responses at 18-21, 29 (responses to Interrogatory Nos. 31-33, 35 and Document Request No. 20); Ex. 5, Poet Nutrition First Responses at 18-21, 29 (responses to Interrogatory Nos. 31-33, 35 and Document Request No. 20); Ex. 6, Cargill First Responses at 18-23, 29-30 (responses to Interrogatory Nos. 30-33, 35 and Document Request Nos. 18-20).

²⁷ See Ex. 4, Poet Ethanol First Responses at 18-21, 29 (responses to Interrogatory Nos. 31-33, 35 and Document Request No. 20); Ex. 5, Poet Nutrition First Responses at 18-21, 29 (responses to Interrogatory Nos. 31-33, 35 and Document Request No. 20); Ex. 6, Cargill First Responses at 18-22, 29-30 (responses to Interrogatory Nos. 30-33 and Document Request Nos. 18-20).

²⁸ See Ex. 4, Poet Ethanol First Responses at 17-18, 20-21, 28 (responses to Interrogatory Nos. 30, 32 and Document Request Nos. 18-19); Ex. 5, Poet Nutrition First Responses at 17-18, 20-21, 28 (responses to Interrogatory Nos. 30, 32 and Document Request Nos. 18-19). However, Poet Ethanol and Poet Nutrition may be operating under the misperception that Interrogatory No. 32 applies to entities that own tank cars. The interrogatory would also apply if Poet Ethanol or Poet Nutrition incurs the costs addressed in the interrogatory.

²⁹ See Ex. 8, Cargill Supplemental Responses at 4-6.

responses by stating they would produce certain information relating to tank cars that they occasionally “trip lease” to third parties.³⁰

The Individual Complainants’ relevant objections have no merit

Information regarding tank car ownership and maintenance costs is highly relevant to this proceeding. To the extent the Individual Complainants contend this information is irrelevant, the Complaint and Complainants’ reply to Union Pacific’s motion to dismiss clearly demonstrate the otherwise. As the authors of both documents formally filed with the Board and signed by their counsel, Complainants ought now to be estopped from changing their story in a vain effort to avoid their discover obligations.

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

³⁰ See Ex. 4, Poet Ethanol First Responses at 28; Ex. 5, Poet Nutrition First Responses at 28; Ex. 7, Poet Supplemental Responses at 3.

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 Individual Complainants 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 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).

In addition, tank car ownership and maintenance costs are directly relevant to the Individual Complainants’ claims for damages. The Individual Complainants appear to be taking the position that, if they prevail on Court II, then for each movement involving transportation under zero-mileage rates, they are automatically entitled to mileage allowance payments to compensate them for their tank car ownership and maintenance costs based on a formula the Interstate Commerce Commission approved in *Investigation of Tank Car Allowance Systems*, 3 I.C.C.2d 196 (1986). However, setting aside just for the sake of argument Union Pacific’s many other valid defenses, complainants in Board proceedings are entitled to recover only for “actual injury.” *Nat’l Insulation Transp. Comm. v. ICC*, 683 F.2d 533, 542 (D.C. Cir. 1982); *see also, e.g., Genstar Chem. Ltd. v. ICC*, 665 F.2d 1304, (D.C. Cir. 1982) (“[The Interstate Commerce Act] provides not for penalties but for compensation for actual harm . . .”). Thus, the Individual

Complainants must prove their actual car ownership and maintenance costs (as well as the extent to which those costs have not been offset by payments from other parties or through lower rates provided by Union Pacific), and Union Pacific is entitled to discovery regarding their car ownership and maintenance costs.

Moreover, the Individual 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." Complainants' Reply to Motion to Dismiss at 22.

Finally, Complainants' own discovery requests to Union Pacific also belie their 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";³¹
- "all documents relating to, discussing, referring to, mentioning or commenting on costs associated with owning and maintaining railroad tank

³¹ Ex. 15, Complainants' First Requests at 9 (Document Request No. 5).

cars, whether the cars are owned by UP or by its customers or car owners”,³²

and

- “all documents . . . in which UP has quantified the costs of private car ownership.”³³

As discussed above, car ownership costs are potentially relevant to a wide variety of issues raised in the Complaint and in Complainants’ reply to Union Pacific’s motion to dismiss. Although the Complainants may now prefer to argue that the only relevant car ownership costs are those determined by the formula approved in *Investigation of Tank Car Allowance Systems*, Union Pacific’s right to discovery is not constrained by Complainants’ shifting legal theories.

The Individual Complainants’ other objections have no merit

As noted above, the Individual Complainants have asserted that cost-related discovery is premature. However, the procedural schedule does not provide any other opportunity to seek discovery relating to damages. Moreover, none of the Individual Complainants has explained why providing the requested cost information would be unduly burdensome—particularly in light of its clear relevance to their damages claims, as well as the many assertions about car ownership costs contained in the Complaint and in Complainants’ reply to Union Pacific’s motion to dismiss.

³² *Id.* at 12 (Document Request No. 8).

³³ *Id.* at 13 (Document Request No. 15).

G. Documents Relating to Reasons for Moving Tank Cars to Repair Facilities (Document Request Nos. 25-26 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 particular repair facilities.

Specifically:

- *Document Request No. 25* seeks documents that “refer or relate to plans or proposals for retrofitting tank cars.”
- *Document Request No. 26* seeks documents that “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. 34* seeks documents relating to “the reason for selecting Repair Facilities.”
- *Document Request No. 35* seeks documents relating to “movements of tank cars from one Repair Facility to another Repair Facility.”

The Individual Complainants' responses and objections

With regard to Document Request No. 25, Poet Ethanol and Poet Nutrition stated they had no responsive documents.³⁴ Cargill asserted relevance and burden objections.³⁵

With regard to Document Request No. 26, Poet Ethanol and Poet Nutrition each agreed to produce responsive documents, but only those documents that “relate to the movement of its tank cars transported by UP to Repair Facilities.”³⁶ Cargill agreed to produce responsive documents without that limitation.³⁷

³⁴ See Ex. 12, Poet Ethanol Second Responses at 4; Ex. 13, Poet Nutrition Second Responses at 4.

³⁵ See Ex. 14 Cargill Second Responses at 4.

³⁶ Ex. 12, Poet Ethanol Second Responses at 5; Ex. 13, Poet Nutrition Second Responses at 5.

³⁷ See Ex. 14, Cargill Second Responses at 4-5.

With regard to Document Request Nos. 34 and 35, Poet Ethanol and Poet Nutrition each agreed to produce responsive documents, but again only those documents that relate to the movement of their tank cars “transported by UP.”³⁸ Cargill asserted relevance and burden objections.³⁹

The Individual Complainants’ relevance objections have no merit

Cargill’s relevance objection to Document Request No. 25 is meritless. Complainants expressly 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.” Complainants’ Reply to Motion to Dismiss 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.*

Cargill’s relevance objections to Document Request Nos. 34 and 35 are equally meritless. These requests go to issues at the core of Count I: they seek documents showing why tank cars move to certain repair facilities, which can be expected to provide information about industry conditions that led to adoption of Item 55-C and the likely impact of Item 55-C in today’s rail marketplace. These are precisely the issues that 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.

³⁸ Ex. 12, Poet Ethanol Second Responses at 8-10; Ex. 13, Poet Nutrition Second Responses at 8-10.

³⁹ See Ex. 14, Cargill Second Responses at 8-9.

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 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.”).

Moreover, Poet Ethanol and Poet Nutrition are wrong to claim the information requested in Document Request Nos. 26, 34, and 35 is irrelevant to the extent it involves tank cars moving to repair facilities not located on Union Pacific. As discussed above and in Parts II.B and II.C, information regarding empty repair movements on other railroads is highly relevant to this case, especially since Complainants made industry-wide conditions an issue by asking the Board to revisit *IHB II*.

The Individual Complainants’ burden objections have no merit

Cargill provided no support for its claim that producing documents relating to plans or proposals to retrofit tank cars would be burdensome. Document Request No. 25 is a focused request seeking a narrow category of documents that Complainants made relevant by their own claims. Cargill should be required to perform a reasonable search for responsive information and produce the information to Union Pacific.

Similarly, Cargill provided no support for its burden claims with regard to Document Request Nos. 34 and 35. To the extent Cargill’s concerns related to the time period encompassed by Union Pacific’s original request, Union Pacific told Cargill at the April 28 meet and confer session that it would limit the time period to the same period Cargill proposed in responding to Document Request No. 26—*i.e.*, January 1, 2013 to the present. These requests seek information

highly relevant to this case, and Cargill should be required to perform a reasonable a reasonable search for responsive information and produce the information to Union Pacific.

Finally, to the extent Poet Ethanol and Poet Nutrition are objecting on burden grounds to producing information about movements to repair facilities not located on Union Pacific, the Board should reject such objections. If Poet Ethanol and Poet Nutrition can locate documents regarding movements of tank cars to repair facilities located on Union Pacific, which apparently they can, it would doubtless require more work, not less, to withhold documents relating to movements to facilities not on Union Pacific. Accordingly, the Board should reject Poet Ethanol's and Poet Nutrition's attempts to withhold responsive, highly relevant documents on burden grounds.

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

Document Request No. 29 seeks documents relating to “Communications to or from Persons from whom or to whom You lease tank cars regarding mileage allowances.”

The Individual Complainants' responses and objections

Poet Ethanol and Poet Nutrition agreed to produce responsive documents in response to this request.⁴⁰ Cargill, however, asserted relevance and burden objections and pointed to its prior agreement to produce leases and subleases.⁴¹

Cargill's objections have no merit

Cargill's 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

⁴⁰ See Ex. 12, Poet Ethanol Second Responses at 6; Ex 13, Poet Nutrition Second Responses at 6.

⁴¹ See Ex. 14, Cargill Second Responses at 6.

use of zero-mileage rates rather than rates that provide for payment of mileage allowances. *See* Complaint ¶¶ 32-35. Such communications should 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. Cargill’s production of leases and subleases, even if those documents address the ability of lessees to negotiate zero-mileage rates, would not provide the same type of information as communications between lessors and lessees—which might, for example, help explain the reasons for particular lease terms.

Cargill argued during the April 28 meet-and-confer session that this request is unduly burdensome because there are no “obvious communications” and thus responding to the request would require searching emails of individuals in the transportation department during a particular date range. Searching emails of individuals likely to have responsive information during a relevant time period is a routine and customary aspect of discovery. That such communications are not immediately at hand or obvious does not render a search for them unduly burdensome.

Cargill should be required to perform a reasonable a reasonable search for responsive information and produce the information to Union Pacific.

I. Documents Relating to Requests for Zero-Mileage Rates (Document Request No. 31)

Document Request No. 31 seeks documents relating to “decisions by You to request zero-mileage rates rather than rates that include payment of a mileage allowance.”

Individual Complainants' responses and objections

Poet Ethanol and Poet Nutrition stated they have no responsive documents.⁴² Cargill asserted relevance and burden objections and stated that it would produce responsive documents, but only for the period from January 1, 2013 to the present.⁴³

During the April 28 meet and confer session, when Union Pacific indicated that the proposed date limitation was not acceptable with regard to this request, Cargill's counsel stated that he would check the company's document retention policy to see how far back in time the company could go to search for and produce responsive documents. However, Cargill has not provided any further information in response to this request.

Cargill's objections and proposed date limitation have no merit

Cargill's relevance and burden objections have no merit. This request seeks documents regarding the Complainants' own decisions to request zero-mileage rates rather than rates that include payment of a mileage allowance, which is directly relevant to Count II. Part of Union Pacific's argument that its use of zero-mileage rates is reasonable likely will be that Cargill and other shippers have requested zero-mileage rates, rather than rates that include the payment of a mileage allowance, when they requested rates from Union Pacific. Cargill may offer various explanations for its past behavior. Cargill's own documents could shed light on the validity of any such explanations. Moreover, because zero-mileage rates have been in use for a very long time, Cargill's proposed date limitation would inappropriately deprive Union Pacific of the right

⁴² See Ex. 12, Poet Ethanol Second Responses at 7; Ex. 13, Poet Nutrition Second Responses at 7.

⁴³ See Ex. 14, Cargill Second Responses at 7.

to discovery into the basis for Cargill's decisions to request zero-mileage rates during the period when zero-mileage rates were becoming the standard.

Union Pacific initially requested documents dating back to 1987. Because Union Pacific is responding to certain of Complainants' discovery requests by producing information regarding mileage allowance payments dating back to 2001, Union Pacific is willing to modify its request to cover documents dating back to 2001. Cargill should be required to perform a reasonable a reasonable search for responsive information and produce the information to Union Pacific.

III. CONCLUSION

The Board should compel the Individual Complainants to respond to the discovery requests discussed above. Complainants brought this Complaint against Union Pacific and argued vigorously that the existence of factual questions necessitates extensive discovery. To deny Union Pacific reasonable discovery would be contrary to the Board's rules and would violate principles of basic fairness and due process.

Respectfully submitted,



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May 25, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 25th 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:

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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.



Michael L. Rosenthal

EXHIBIT 1

- 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 movement 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. “Person” means a corporation, company, partnership, or natural person.
- J. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- K. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.
- L. “You” and “Your” refer to Poet Ethanol Products, as well as any of Poet Ethanol Products’ employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on Poet Ethanol Products’ 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 Your possession, custody, or control.
3. If You for any reason withhold 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 You withhold 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 or information.
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 the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 13

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

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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

Identify each movement for which You have 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 You paid the charge.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 1987 through 2014, with respect to Your 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 by each car reporting mark for tank cars You 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 by each car reporting mark assigned to You, state the amount billed to You 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 by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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 by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You 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

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 Poet Ethanol Products
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Other Complainants

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 28

Identify each movement for which You seek damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether You paid the line-haul transportation charge and whether You were the Car Owner or leased the

car from the Car Owner. If You 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 You contend Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate You for furnishing the car.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014
- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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 year from 2005 through 2014, state for Poet Ethanol Products:

- 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 You owned that are not addressed in subsections a-n

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Poet Ethanol Products:

- 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 year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which You were paid a mileage allowance, (ii) the total number of miles on which You were paid allowances, and (iii) the total amount of allowances paid to You
- b. separately by railroad (i) the number of tank car movements for which You were not paid a mileage allowance, and (ii) the total number of miles on which You were 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 cost 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 You furnished 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 Your 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 Your furnishing tank cars.

Document Request No. 14

Produce a copy of each lease under which You are 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 You are 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 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

May 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2015, I caused a copy of the foregoing document to be served by e-mail on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal
Michael L. Rosenthal

EXHIBIT 2

**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 FIRST SET OF DISCOVERY REQUESTS
TO POET NUTRITION, INC**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that POET Nutrition, Inc. (“Poet Nutrition”) 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 June 11, 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 movement 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. “Person” means a corporation, company, partnership, or natural person.
- J. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- K. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.
- L. “You” and “Your” refer to Poet Nutrition, as well as any of Poet Nutrition’s employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on Poet Nutrition’s 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 Your possession, custody, or control.
3. If You for any reason withhold 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 You withhold 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 or information.
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 the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 13

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

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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

Identify each movement for which You have 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 You paid the charge.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 1987 through 2014, with respect to Your 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 by each car reporting mark for tank cars You 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 by each car reporting mark assigned to You, state the amount billed to You 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 by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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 by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You 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

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 Poet Nutrition
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Other Complainants

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 28

Identify each movement for which You seek damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether You paid the line-haul transportation charge and whether You were the Car Owner or leased the

car from the Car Owner. If You 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 You contend Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate You for furnishing the car.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014
- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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 year from 2005 through 2014, state for Poet Nutrition:

- 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 You owned that are not addressed in subsections a-n

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Poet Nutrition:

- 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 year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which You were paid a mileage allowance, (ii) the total number of miles on which You were paid allowances, and (iii) the total amount of allowances paid to You
- b. separately by railroad (i) the number of tank car movements for which You were not paid a mileage allowance, and (ii) the total number of miles on which You were 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 cost 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 You furnished 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 Your 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 Your furnishing tank cars.

Document Request No. 14

Produce a copy of each lease under which You are 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 You are 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 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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May 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2015, I caused a copy of the foregoing document to be served by e-mail on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal
Michael L. Rosenthal

EXHIBIT 3

- 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 movement 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. “Person” means a corporation, company, partnership, or natural person.
- J. “Repair Facility” means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.
- K. “Union Pacific” means Union Pacific Railroad Company and its predecessor railroads.
- L. “You” and “Your” refer to Cargill, as well as any of Cargill’s employees, agents, officers, directors, advisors, independent contractors, expert consultants, and all other Persons acting or who have acted on Cargill’s 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 Your possession, custody, or control.
3. If You for any reason withhold 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 You withhold 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 or information.
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 the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Interrogatory No. 13

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

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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

Identify each movement for which You have 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 You paid the charge.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 1987 through 2014, with respect to Your 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 by each car reporting mark for tank cars You 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 by each car reporting mark assigned to You, state the amount billed to You 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 by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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 by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You 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

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 Cargill
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Other Complainants

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Interrogatory No. 28

Identify each movement for which You seek damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether You paid the line-haul transportation charge and whether You were the Car Owner or leased the

car from the Car Owner. If You 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 You contend Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate You for furnishing the car.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014
- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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 year from 2005 through 2014, state for Cargill:

- 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 You owned that are not addressed in subsections a-n

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Cargill:

- 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 year from 1987 through 2014, state:

- a. separately by railroad (i) the number of tank cars movements for which You were paid a mileage allowance, (ii) the total number of miles on which You were paid allowances, and (iii) the total amount of allowances paid to You
- b. separately by railroad (i) the number of tank car movements for which You were not paid a mileage allowance, and (ii) the total number of miles on which You were 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 cost 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 You furnished 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 Your 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 Your furnishing tank cars.

Document Request No. 14

Produce a copy of each lease under which You are 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 You are 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 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

May 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2015, I caused a copy of the foregoing document to be served by e-mail on all of the parties of record in NOR 42144:

/s/ Michael L. Rosenthal
Michael L. Rosenthal

EXHIBIT 4

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR)	
ASSOCIATION; AMERICAN FUEL &)	
PETROCHEMICAL 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,)	Docket No. NOR 42144
)	
Complainants,)	
)	
v.)	
)	
UNION PACIFIC RAILROAD COMPANY,)	
)	
Defendant.)	
)	

**RESPONSES AND OBJECTIONS OF ETHANOL PRODUCTS, LLC
D/B/A POET ETHANOL PRODUCTS
TO
UNION PACIFIC'S FIRST SET OF 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:

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 U.S.C. § 1114.21 *et seq.*

2. 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.

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

4. Complainant 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. Complainant objects to Defendant's Requests to the extent that any request would impose an undue burden on Complainant in relation to the relevance and probative value of the information sought, require the production of information that is publicly available, or require production of information.

6. Complainant objects to Defendant's Requests to the extent they seek information dated back to 1987, and are otherwise not limited by date.

7. 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.

8. 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.

9. 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.

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

11. 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.

12. 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 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.

13. 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.

14. 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.

15. 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.

16. 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.

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 Complainant.

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. 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 U.S.C § 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 U.S.C § 1114.21 *et seq.*

3. Complainant 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 U.S.C § 1114.21 *et seq.*

4. Complainant objects to the definition of "Repair Facility to the extent it applies to such facilities other than those on UP's system.

5. 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 outside attorneys, advisers, consultants, and other persons or entities not within Complainant's control, as well as Complainant's 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. 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 U.S.C § 1114.21 *et seq.*

2. 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 U.S.C. § 1114.21 *et seq.*

3. 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 U.S.C. § 1114.21 *et seq.*

INTERROGATORIES

Interrogatory No. 1

Identify the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Response

Complainant does not own any tank cars. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce information that identifies the tank cars it currently leases.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion and prematurely inquires about Complainant's damages. Subject to its objections, and subject to the protective order entered in this case, Complainant's response is "no.," since UP's Item 56-C is contained in a tariff.

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Response

Complainant does not lease tank cars to other parties in the normal course.

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Response

See Response to Interrogatory No. 3.

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing, tank car lease agreements which will speak for themselves.

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Response

See response to Interrogatory No. 3.

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Response

See response to Interrogatory No. 3.

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 13

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

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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

Complainant objects to this Interrogatory as being unduly burdensome, overbroad, and also calling for information in the possession and control of Defendant.

Interrogatory No. 15

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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

Complainant objects to this interrogatory on the grounds that the requested information is within the possession, custody and control of Defendant, and thus equally available to Defendant.

Interrogatory No. 16

Identify each movement for which You have 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 You paid the charge.

Response

Complainant objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 1987 through 2014, with respect to Your 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

Complainant has not been assigned any reporting marks.

Interrogatory No. 18

Separately by each car reporting mark for tank cars You 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

Complainant objects to this Interrogatory as being unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information related to damages and reparations.

Interrogatory No. 19

Separately by each car reporting mark assigned to You, state the amount billed to You 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

Complainant has not been assigned any reporting marks.

Interrogatory No. 20

Separately by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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

Complainant has not been assigned any reporting marks.

Interrogatory No. 21

Separately by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You 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

Complainant has not been assigned any reporting marks. To the extent this Interrogatory asks Complainant to provide the information for all cars it has leased between 1987 and 2014, it is unduly burdensome, overbroad, and harassing. Subject to its objections, and pursuant to the protective order in this case, Complainant will respond to this Interrogatory by producing documents in its possession and control containing the requested information.

Interrogatory No. 22

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 Poet Ethanol Products
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Other Complainants

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Response

Complainant objects to this Interrogatory as being overly broad and vague in seeking a description of all changes in Complainant's practices that have resulted from Defendant's implementation of Item 55-C. Subject to its objections, and subject to the protective order entered in this case, Complainant states that one change Complainant has made is to attempt to precede each movement to a Repair Facility with a loaded revenue move by Defendant.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Response

Subject to Complainant's objections, it has not identified any such communications.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Response

Subject to Complainant's objections, it has not identified any such communications.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Response

Subject to Complainant's objections, it has not identified any such communications.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Response

Complainant objects to this Interrogatory as seeking the discovery of information that is not relevant to the issues in this proceeding. Subject to this and Complainant's objections, it has not identified any such communications.

Interrogatory No. 28

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

Response

Complainant objects to this request as being unduly burdensome and prematurely seeking information related to damages.

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 You contend Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate You for furnishing the car.

Response

Complainant objects to this request as being unduly burdensome, asking for a legal conclusion and prematurely seeking information related to damages.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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

Complainant does not own any tank cars.

Interrogatory No. 31

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014
- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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

Complainant objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding. Complainant also objects to this request as being unduly burdensome and prematurely seeking information related to damages.

Interrogatory No. 32

Separately for each year from 2005 through 2014, state for Poet Ethanol Products:

- 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 You owned that are not addressed in subsections a-n

Response

Complainant objects to this request as being unduly burdensome, overbroad, and prematurely seeking information related to damages. Subject to its objections, and subject to the protective order entered in this case, Complainant states that it does not own any tank cars.

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Poet Ethanol Products:

- 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

Complainant objects to this request as being unduly burdensome, overbroad, and prematurely seeking information related to damages.

Interrogatory No. 34

Separately for each year from 1987 through 2014, state:

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

Response

In response to (a)(i), (ii), and (iii), Complainant responds that the answer is zero. In response to (b)(i) Complainant responds that the answer is all of its movements. In response to (b)(i) Complainant responds that the answer is all of its tank car movements by Defendant. Complainant objects to subpart (b)(ii) as being unduly burdensome, overbroad, and requesting information that is in the possession and control of Defendant.

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

Response

Complainant objects to this Interrogatory as being unduly burdensome, and would require Complainant to undertake a special study.

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 You furnished and explain the basis for that amount.

Response

Complainant objects to this interrogatory as prematurely seeking information relating to damages. Subject to its objections, and subject to the protective order entered in this case, Complainant states that Union Pacific's line haul rates should have been reduced by at least the amount of mileage allowances payable pursuant to EP 328.

RESPONSES TO DOCUMENT REQUESTS

Each and every response to Defendant's Document Request below is subject to the General Objections, Objections to Definitions and specific objections to Interrogatories set forth above

Document Request No. 1

Produce all documents identified in Your answers to the Interrogatories.

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce documents as discussed in its responses to Defendant's 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."

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant does not have documents 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

Subject to its objections, and subject to the protective order entered in this case, Complainant does not have documents 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 Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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 Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

Document Request No. 14

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

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents.

Document Request No. 15

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

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Complainant will produce documents containing this information, which will most likely consist of lease and sublease riders.

Document Request No. 17

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

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Complainant does not own any 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.

Response

Complainant does not own any tank cars. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents as to tank cars it subleases, to the extent any exist.

Document Request No. 20

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

Response

Complainant objects to this request as unduly burdensome and overbroad, prematurely seeking information related to damages.

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

Complainant objects to this document request as unduly burdensome and overbroad. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents for the relevant time period, to the extent any exist.

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

Complainant objects to this document request as unduly burdensome and overbroad. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents for the relevant time period, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents for the relevant time period, to the extent any exist.

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 Ethanol Products, LLC d/b/a Poet Ethanol Products 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 5

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**RESPONSES AND OBJECTIONS OF POET NUTRITION, INC. TO UNION PACIFIC'S
FIRST SET OF 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:

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 U.S.C. § 1114.21 *et seq.*

2. 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.

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

4. Complainant 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. Complainant objects to Defendant's Requests to the extent that any request would impose an undue burden on Complainant in relation to the relevance and probative value of the information sought, require the production of information that is publicly available, or require production of information.

6. Complainant objects to Defendant's Requests to the extent they seek information dated back to 1987, and are otherwise not limited by date.

7. 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.

8. 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.

9. 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.

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

11. 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.

12. 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 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.

13. 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.

14. 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.

15. 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.

16. 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.

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 Complainant.

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. 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 U.S.C § 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 U.S.C § 1114.21 *et seq.*

3. Complainant 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 U.S.C § 1114.21 *et seq.*

4. Complainant objects to the definition of "Repair Facility to the extent it applies to such facilities other than those on UP's system.

5. 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 outside attorneys, advisers, consultants, and other persons or entities not within Complainant's control, as well as Complainant's 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. 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 U.S.C § 1114.21 *et seq.*

2. 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 U.S.C. § 1114.21 *et seq.*

3. 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 U.S.C. § 1114.21 *et seq.*

INTERROGATORIES

Interrogatory No. 1

Identify the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Response

Complainant does not own any tank cars. Subject to its objections and subject to the protective order entered in this proceeding, Complainant will produce information that identifies the tank cars it currently leases.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion and prematurely inquires about Complainant's damages. Subject to its objections, and subject to the protective order entered in this case, Complainant's response is "no," since UP's Item 56-C is contained in a tariff.

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Response

Complainant does not lease tank cars to other parties in the normal course.

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Response

See response to Interrogatory No. 3.

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Response

See response to Interrogatory No. 3.

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Response

See response to Interrogatory No. 3.

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 13

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

Response

Complainant objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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

Complainant objects to this Interrogatory as being unduly burdensome, overbroad, and also calling for information in the possession and control of Defendant.

Interrogatory No. 15

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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

Complainant objects to this interrogatory on the grounds that the requested information is within the possession, custody and control of Defendant, and thus equally available to Defendant.

Interrogatory No. 16

Identify each movement for which You have 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 You paid the charge.

Response

Complainant objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 1987 through 2014, with respect to Your 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

Complainant has not been assigned any reporting marks.

Interrogatory No. 18

Separately by each car reporting mark for tank cars You 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

Complainant objects to this Interrogatory as being unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information related to damages and reparations.

Interrogatory No. 19

Separately by each car reporting mark assigned to You, state the amount billed to You 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

Complainant has not been assigned any reporting marks.

Interrogatory No. 20

Separately by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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

Complainant has not been assigned any reporting marks.

Interrogatory No. 21

Separately by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You 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

Complainant has not been assigned any reporting marks. Subject to its objections, and pursuant to the protective order entered in this case, Complainant will respond to this Interrogatory by producing documents in its possession and control containing the requested information.

Interrogatory No. 22

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 Poet Nutrition

- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Other Complainants

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Response

Complainant objects to this Interrogatory as being overly broad and vague in seeking a description of all changes in Complainant's practices that have resulted from Defendant's implementation of Item 55-C. Subject to its objections, Complainant states there have been no changes.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Response

Subject to Complainant's objections, it has not identified any such communications.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Response

Subject to Complainant's objections, it has not identified any such communications.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Response

Subject to Complainant's objections, it has not identified any such communications.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Response

Complainant objects to this Interrogatory as seeking the discovery of information that is not relevant to the issues in this proceeding. Subject to this and Complainant's objections, it has not identified any such communications.

Interrogatory No. 28

Identify each movement for which You seek damages under Count II, the price document (*i.e.*, contract, tariff, exempt quotation) under which the movement occurred, and state whether You paid the line-haul transportation charge and whether You were the Car Owner or leased the

car from the Car Owner. If You did not pay the line-haul transportation charge, identify the Person that paid the charge.

Response

Complainant objects to this request as being unduly burdensome and prematurely seeking information related to damages.

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 You contend Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate You for furnishing the car.

Response

Complainant objects to this request as being unduly burdensome, asking for a legal conclusion, and prematurely seeking information related to damages.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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

Complainant does not own any tank cars.

Interrogatory No. 31

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014

- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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

Complainant objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding. Complainant also objects to this request as being unduly burdensome and prematurely seeking information related to damages.

Interrogatory No. 32

Separately for each year from 2005 through 2014, state for Poet Nutrition:

- 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 You owned that are not addressed in subsections a-n

Response

Complainant objects to this request as being unduly burdensome, overbroad, and prematurely seeking information related to damages. Subject to its objections, and subject to the protective order entered in this case, Complainant states that it does not own any tank cars.

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Poet Nutrition:

- 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

Complainant objects to this request as being unduly burdensome, overbroad, and prematurely seeking information related to damages.

Interrogatory No. 34

Separately for each year from 1987 through 2014, state:

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

Response

In response to (a)(i), (ii), and (iii), Complainant responds that the answer is zero. In response to (b) (i) Complainant responds that the answer is all of its movements. In response to (b) (i) Complainant responds that the answer is all of its tank car movements by Defendant.

Complainant objects to subpart (b)(ii) as being unduly burdensome, overbroad, and requesting information that is in the possession and control of Defendant.

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

Response

Complainant objects to this Interrogatory as being unduly burdensome, and would require Complainant to undertake a special study.

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 You furnished 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 Complainant objects to this interrogatory as prematurely seeking information relating to damages.

RESPONSES TO DOCUMENT REQUESTS

Each and every response to Defendant's Document Request below is subject to the General Objections, Objections to Definitions and specific objections to Interrogatories set forth above

Document Request No. 1

Produce all documents identified in Your answers to the Interrogatories.

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce documents as discussed in its responses to Defendant's 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.”

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Complainant does not have documents 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

Subject to its objections, and subject to the protective order entered in this case, Complainant does not have documents 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 Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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 Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

Document Request No. 14

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

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents.

Document Request No. 15

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

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Complainant will produce documents containing this information.

Document Request No. 17

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

Response

Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents, to the extent any exist.

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

Complainant does not own any 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.

Response

Complainant does not own any tank cars. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents as to tank cars it subleases, to the extent any exist.

Document Request No. 20

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

Response

Complainant objects to this request as unduly burdensome and overbroad, prematurely seeking information related to damages.

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

Complainant objects to this document request as unduly burdensome and overbroad. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents for the relevant time period, to the extent any exist.

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

Complainant objects to this document request as unduly burdensome and overbroad. Subject to its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents for the relevant time period, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Complainant will produce responsive documents for the relevant time period, to the extent any exist.

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 Poet Nutrition, Inc. 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 6

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. Cargill objects to Defendant's Requests to the extent they seek to impose upon Cargill any obligation or responsibility other than those mandated by 49 U.S.C. § 1114.21 *et seq.*
2. Cargill objects to Defendant's Requests to the extent they purport to impose on Cargill the burden to collect, produce, or disclose information that cannot be found in the course of a reasonable search.
3. Cargill objects to Defendant's Requests to the extent they call for information outside Cargill's possession, custody, or control.
4. Cargill 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. Cargill objects to Defendant's Requests to the extent that any request would impose an undue burden on Cargill in relation to the relevance and probative value of the information sought, require the production of information that is publicly available, or require production of information.

6. Cargill objects to Defendant's Requests to the extent they seek information dated back to 1987, and are otherwise not limited by date.

7. Cargill 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.

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

9. Cargill 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.

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

11. Cargill 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 Cargill to object to the use of any such information in any proceeding.

12. Cargill 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. Cargill 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.

13. By responding to any Request, Cargill does not adopt Defendant's definitions of words and phrases contained in these Requests. Cargill 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. Cargill 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. Cargill'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 Cargill'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. Cargill'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. Cargill 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 Cargill 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 Cargill.

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. Cargill 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. Cargill 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. Cargill 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 U.S.C § 1114.21 *et seq.*

4. Cargill objects to the definition of "Repair Facility to the extent it applies to such facilities other than those on UP's system.

5. Cargill 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 Cargill’s outside attorneys, advisers, consultants, and other persons or entities not within Cargill’s control, as well as Cargill’s 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. Cargill 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.” Cargill 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. Cargill 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.*

3. Cargill 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 the number of tank cars that You currently (a) own or (b) use pursuant to a lease agreement.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce information that identifies the tank cars it currently owns and leases.

Interrogatory No. 2

Are You seeking reparations or damages for transportation provided under contracts under Count I of the Complaint? If so, identify the contract(s).

Response

Cargill objects to this Interrogatory because it calls for a legal conclusion and prematurely inquires about Cargill's damages.

Interrogatory No. 3

Do You lease tank cars to another Person pursuant to a lease agreement under which You will retain some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 4

Do You lease tank cars to another Person pursuant to a lease agreement under which You must pass along to the lessee some or all of any mileage allowances paid on those cars? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 5

Do You lease tank cars from another Person pursuant to 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 Car Owner(s) and the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing, tank car lease agreements which will speak for themselves.

Interrogatory No. 6

Do You lease tank cars from another Person pursuant to a lease agreement under which the Car Owner must pass along to You some or all of any mileage allowances paid on those cars? If so, identify the Car Owner(s) and the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 7

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee must make a payment to You 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 lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 8

Do You lease tank cars to another Person pursuant to a lease agreement under which the lessee is not required to make a payment to You 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 lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 9

Do You lease tank cars from another Person pursuant to a lease agreement under which You must make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 10

Do You lease tank cars from another Person pursuant to a lease agreement under which You are not required to make a payment to the Car Owner if the total empty miles moved by Your cars that are subject to the lease exceed the total loaded miles moved by Your cars that are subject to the lease by more than a specified amount or percentage? If so, identify the lease agreement(s).

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing tank car lease agreements which will speak for themselves.

Interrogatory No. 11

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Response

Cargill objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 12

Do You 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 You contend that the answer depends on the circumstances, state the circumstances that You contend are relevant.

Response

Cargill objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 13

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

Response

Cargill objects to this Interrogatory because it calls for a legal conclusion.

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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

Cargill objects to this Interrogatory as being unduly burdensome, overbroad, and also calling for information in the possession and control of Defendant.

Interrogatory No. 15

Identify each movement for which You have been assessed a charge under Item 55-C and for which You are 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

Cargill objects to this interrogatory on the grounds that the requested information is within the possession, custody and control of Defendant, and thus equally available to Defendant.

Interrogatory No. 16

Identify each movement for which You have 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 You paid the charge.

Response

Cargill objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding.

Interrogatory No. 17

Separately by each car reporting mark assigned to You, and separately for each year from 1987 through 2014, with respect to Your 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

To the extent this Interrogatory asks Cargill to provide the information for all cars it leased between 1987 and 2014, it is unduly burdensome, overbroad, and harassing. Subject to this and Cargill's objections, and pursuant to the protective order in this case, Cargill will respond to this Interrogatory by producing documents in its possession and control containing the requested information.

Interrogatory No. 18

Separately by each car reporting mark for tank cars You 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

Cargill objects to this Interrogatory as being unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information related to damages and reparations.

Interrogatory No. 19

Separately by each car reporting mark assigned to You, state the amount billed to You 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

Cargill objects to this Interrogatory as being unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information related to damages and reparations.

Interrogatory No. 20

Separately by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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

Cargill also objects to this Interrogatory as being unduly burdensome, overbroad, harassing, calling for information that is in the possession and control of Defendant, and prematurely seeking information related to damages and reparations.

Interrogatory No. 21

Separately by each car reporting mark for tank cars You furnished to Union Pacific or other railroads but that were not owned by You, state the amount the Car Owner billed You 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 its Cargill's objections, and pursuant to the protective order in this case, Cargill will respond to this Interrogatory by producing documents in its possession and control containing the requested information.

Interrogatory No. 22

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 Cargill
- b. Persons to whom You lease tank cars
- c. Persons from whom You lease tank cars
- d. Repair Facilities
- e. Union Pacific
- f. Other Complainants

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 23

Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.

Response

Cargill objects to this Interrogatory as being overly broad and vague in seeking a description of all changes in Cargill's practices that have resulted from Defendant's implementation of Item 55-C.

Interrogatory No. 24

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish rates for movements in tank cars that included payment of a mileage allowance.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 25

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 26

Identify all communications between You and Union Pacific in which You asked Union Pacific to establish reduced line-haul rates to reflect Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 27

Identify all communications between You and a railroad other than Union Pacific in which You asked the railroad to establish reduced line-haul rates to reflect Your furnishing tank cars.

Response

Cargill objects to this Interrogatory as seeking the discovery of information that is not relevant to the issues in this proceeding. Subject to this, the protective order entered in this case, and Cargill's objections, Cargill will respond to this Interrogatory by producing responsive non-privileged documents in its possession and control.

Interrogatory No. 28

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

Response

Cargill objects to this request as being unduly burdensome and prematurely seeking information related to damages.

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 You contend Union Pacific should have charged for line-haul transportation of the movement under zero-mileage rates to compensate You for furnishing the car.

Response

Cargill objects to this request as being unduly burdensome, asking for a legal conclusion and prematurely seeking information related to damages.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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

Cargill objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding. Cargill also objects to this request as being unduly burdensome and prematurely seeking information related to damages.

Interrogatory No. 31

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014
- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014

- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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

Cargill objects to this Interrogatory as requesting information that is not relevant to the allegations in the Complaint, not calculated to lead to the discovery of admissible evidence, and beyond the scope of this proceeding. Cargill also objects to this request as being unduly burdensome and prematurely seeking information related to damages.

Interrogatory No. 32

Separately for each year from 2005 through 2014, state for Cargill:

- 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 You owned that are not addressed in subsections a-n

Response

Cargill objects to this request as being unduly burdensome, overbroad, and prematurely seeking information related to damages.

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Cargill:

- 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

Cargill objects to this request as being unduly burdensome, overbroad, and prematurely seeking information related to damages.

Interrogatory No. 34

Separately for each year from 1987 through 2014, state:

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

Response

In response to (a)(i), (ii), and (iii), Cargill responds that the answer is zero. In response to (b)(i) Cargill responds that the answer is all of its tank car movements by Defendant. Cargill objects to subpart (b)(ii) as being unduly burdensome, overbroad, and requesting information that is in the possession and control of Defendant.

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

Response

Cargill objects to this Interrogatory as being unduly burdensome, and would require Cargill to undertake a special study.

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 Cargills’ 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 You furnished and explain the basis for that amount.

Response

Cargill objects to this interrogatory as prematurely seeking information relating to damages. Subject to its objections, and subject to the protective order entered in this case, Cargill states that Union Pacific’s line haul rates should have been reduced by at least the amount of mileage allowances payable pursuant to EP 328.

RESPONSES TO DOCUMENT REQUESTS

Each and every response to Defendant's Document Request below is subject to the General Objections, Objections to Definitions and specific objections to Interrogatories set forth above

Document Request No. 1

Produce all documents identified in Your answers to the Interrogatories.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce documents as discussed in its responses to Defendant's Interrogatories to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Subject to its objections, and subject to the protective order entered in this case, Cargill does not have documents 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

Subject to its objections, and subject to the protective order entered in this case, Cargill does not have documents 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 Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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 Your furnishing tank cars.

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

Document Request No. 14

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

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents.

Document Request No. 15

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

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Cargill will produce documents containing this information, which will most likely consist of lease and sublease riders.

Document Request No. 17

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

Response

Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents, to the extent any exist.

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

Cargill objects to this Document Request as being unduly burdensome and overbroad, and because it prematurely seeks information related to damages.

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

Cargill objects to this Document Request as being unduly burdensome and overbroad, and because it prematurely seeks information related to damages.

Document Request No. 20

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

Response

Cargill objects to this Document Request as being unduly burdensome and overbroad, and because it prematurely seeks information related to damages.

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

Cargill objects to this document request as unduly burdensome and overbroad. Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents for the relevant time period, to the extent any exist.

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

Cargill objects to this document request as unduly burdensome and overbroad. Subject to its objections, and subject to the protective order entered in this case, Cargill will produce responsive documents for the relevant time period, to the extent any exist.

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 its objections, and subject to the protective order entered in this case, Cargill will produce responsive non-privileged documents for the relevant time period, to the extent any exist.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June 2015, I caused a copy of the foregoing document to be served by e-mail on counsel for Defendant:

/s/ Thomas W. Wilcox
Thomas W. Wilcox

EXHIBIT 7



THE FOUNDRY BUILDING

1055 THOMAS JEFFERSON STREET NW SUITE 500 WASHINGTON, DC 20007
TELEPHONE: 202/342-5200 FACSIMILE: 202/342-5219

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WRITER'S DIRECT E-MAIL ADDRESS
TWILCOX@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-5248

March 23, 2016

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:

Following up on our discussions and correspondence, this letter supplements and modifies some of the written discovery responses of POET Ethanol and POET Nutrition to Union Pacific Railroad Company's ("UP") First Set of Discovery Requests. These supplemental responses are made subject to the General Objections and specific objections set forth in POET Ethanol's and POET Nutrition's responses to UP's First Set of Discovery Requests.

Interrogatory No. 14 - *Identify each movement of an empty tank car owned or leased by You to or from a Repair Facility, and identify the Repair Facility to or from which the car moved and the work performed at the Facility.*

Response - Poet Nutrition further responds to this Interrogatory that it has no information responsive to this request. Poet Ethanol further responds to this Interrogatory by stating that it

does not possess all of the information sought by this request because the tank car owner/lessor determines which UP Repair Facility a car leased by them goes to. Subject to and without waiving its objections, Poet Ethanol will produce documents in its possession and control that are responsive to this Interrogatory.

Interrogatory No. 15 – *Identify each movement for which You have been assessed a charge under item 55-C and for which You are 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 - Poet Ethanol and Poet Nutrition supplement their respective initial responses to this request and state that, subject to and without waiving their objections, they will produce documents in their possession and control that are responsive to this Interrogatory.

Interrogatory No. 23 - *Describe all changes in Your practices related to sending tank cars to Repair Facilities that have resulted from Union Pacific's adoption of Item 55-C.*

Poet Ethanol and Poet Nutrition supplement their respective initial responses to this Interrogatory and state that, subject to and without waiving their objections, since the adoption of item 55-C they have not changed their prior practice of emphasizing the location of repair facilities relative to a car's location.

Interrogatory No. 28 - *Identify each movement for which You seek damages under Count II, the price document (i.e., contract, tariff, exempt quotation) under which the movement occurred, and state whether You paid the line-haul transportation charge and whether You were the Car Owner or leased the car from the Car Owner. If You did not pay the line-haul transportation charge, identify the Person that paid the charge.*

Response - Poet Ethanol and Poet Nutrition supplement their respective initial responses by stating that, subject to and without waiving their objections, they will produce documents in their possession and control that are responsive to this Interrogatory.

Interrogatory No. 34

Separately for each year from 1987 through 2014, state:

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

Michael Rosenthal

March 23, 2016

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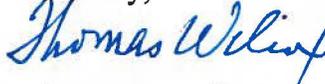
Response – Poet Ethanol and Poet Nutrition supplement their respective initial responses to this Interrogatory by stating that, subject to and without waiving their objections, in response to subparts (a)(i),(ii), and (iii), Poet Ethanol and Poet Nutrition affirm their initial responses that the answer is zero. In response to subpart (b)(i), Poet Ethanol and Poet Nutrition affirm that the answer is all of their tank car movements by UP. In response to subpart (b)(ii), they affirm their initial objections to this aspect of Interrogatory No. 34.

Document Request No. 19 *Separately for each year from 1987 to 2014, produce document sufficient to show Your costs of maintain 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 – Poet Ethanol and Poet Nutrition supplement their respective responses to this request, and, subject to and without waiving their objections, re-affirm that neither Poet Ethanol nor Poet Nutrition owns any tank cars. In addition, they state that neither entity subleases their railcars in the normal course. POET Nutrition occasionally “trip leases,” and POET Ethanol occasionally “trip leases” and subleases, cars to third parties on short-term bases. Subject to and without waiving their objections, they will produce responsive documents related to the referenced trip leases and short-term subleases.

Please do not hesitate to call me if you have any questions.

Sincerely,



Thomas W. Wilcox

cc: Lou Anne Rinn, Esq.

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)	NOR 42144
CARGILL INCORPORATED,)	
)	
Complainants,)	
)	
v.)	
)	
UNION PACIFIC RAILROAD COMPANY,)	
)	
Defendant.)	
)	

**SUPPLEMENTAL RESPONSES OF CARGILL INCORPORATED TO
UNION PACIFIC’S FIRST SET OF DISCOVERY REQUESTS**

Complainant Cargill, Incorporated (“Cargill”) hereby submits its Supplemental Responses to Defendant Union Pacific Railroad Company’s (“UP”) First Set of Discovery Requests (“First Discovery Requests”). Cargill’s supplemental responses to the First Discovery Requests are based on information presently known to Cargill. Because Cargill is continuing to investigate the facts and information relating to the issues in this case, Cargill reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

Cargill hereby incorporates by reference into these Supplemental Responses to the First Discovery Requests the General Objections, Objections to Definitions, and Objections to Instructions set forth in Cargill’s Responses and Objections to UP’s First Set of Discovery

Requests, served on June 30, 2015, and reasserts those objections to each of the discovery requests herein.

INTERROGATORIES

Interrogatory No. 14

Identify each movement of an empty tank car owned or leased by You 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 previously stated objections, Cargill provides the following supplemental response: Cargill will provide, for the period 2007 to the present, reasonably accessible information sufficient to show for each tank car owned or leased by Cargill, (a) the dates the tank car were located at a Repair Facility, and (b) the location of the Repair Facility.

Interrogatory No. 20

Separately by each car reporting mark assigned to You, state the amount You charged Persons leasing Your 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 previously stated objections, Cargill provides the following supplemental response: Cargill did not separately charge sub-lessees of its tank cars for movements of empty tank cars.

Interrogatory No. 23

Describe all changes in Your 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 previously stated objections, Cargill provides the following supplemental response: Cargill has not changed its prior practices related to sending tank cars to Repair Facilities as more fully described in Cargill's response to Interrogatory No. 37.

Interrogatory No. 28

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

Response

Subject to and without waiving its previously stated objections, Cargill provides the following supplemental response: Cargill seeks damages for all loaded tank car movements on UP during the applicable reparations period that utilized tank cars provided by Cargill. Based upon its investigation to date, Cargill believes that none of the referenced loaded tank car movements on UP for which it paid the line haul charge were subject to contract rates. Cargill paid the line haul rate for all of the referenced tank car movements, except for certain loaded movements of tank cars that Cargill subleased to other entities. The subleases Cargill has agreed

to produce for the applicable reparations time period will identify the persons that subleased tank cars from Cargill.

Interrogatory No. 30

With regard to each tank car owned by You, 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 You incurred, 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 previously stated objections, Cargill provides the following supplemental response: Cargill will provide reasonably accessible information responsive to subparts a., b., c., f., g., n., o., and s., for the period 2007 to the present for movements on UP.

Interrogatory No. 31

For each tank car You used 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 You incurred, separately for each year from 2005 through 2014
- e. Other maintenance costs You incurred, separately for each year from 2005 through 2014
- f. Costs for car cleaning You incurred, separately for each year from 2005 through 2014
- g. Repair costs You incurred, separately for each year from 2005 through 2014
- h. Storage costs You incurred, 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 You made to the lessor, separately for each year from 2005 through 2014
- l. Payments/credits You received from the lessor for maintenance and repair costs as reimbursement for costs You incurred, separately for each year from 2005 through 2014
- m. Payments You 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 previously stated objections, Cargill provides the following supplemental response: Cargill will provide reasonably accessible information responsive to subparts a., b., c., i., j., and n. for the period 2007 to the present for movements on UP.

Interrogatory No. 33

Separately for each year from 1987 through 2014, state for Cargill:

- 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 previously stated objections, Cargill provides the following supplemental response: The leases Cargill has agreed to produce for the period 2007 to the present contain the information sought in subpart a, and to the extent applicable, subpart b.

Respectfully submitted,

/s/ David K. Monroe

Thomas W. Wilcox

David K. Monroe

Svetlana Lyubchenko

GKG Law, P.C.

1055 Thomas Jefferson Street NW

Suite 500

Washington, DC 20007

(202) 342-5248

Counsel for Cargill Incorporated

Dated: April 14, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of April, 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/ David K. Monroe

EXHIBIT 9

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
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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 10

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

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(202) 662-6000

LOUISE A. RINN
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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 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.)	

**UNION PACIFIC’S SECOND SET OF DISCOVERY REQUESTS
TO CARGILL INCORPORATED**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Railroad Company requests that Cargill Incorporated (“Cargill”) 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 May 8, 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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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 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
CARGILL INCORPORATED,

Complainants,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

NOR 42144

**RESPONSES AND OBJECTIONS OF
POET ETHANOL PRODUCTS TO
UNION PACIFIC'S SECOND SET OF DISCOVERY REQUESTS**

Complainant, Ethanol Products, LLC d/b/a POET Ethanol Products ("POET Ethanol") hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("Union Pacific" or "UP") Second Set of Discovery Requests ("Second Discovery Requests"). POET Ethanol's responses to the Second Discovery Requests are based on information presently known. Because POET Ethanol continues to investigate the facts and information relating to the issues in this case, POET Ethanol reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

POET Ethanol hereby incorporates by reference into these Responses to Union Pacific's Second Discovery Requests the General Objections, Objections to Definitions, and Objections to

Instructions included in POET Ethanol's Responses to Union Pacific's First Set of Discovery Requests, served 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

POET Ethanol objects to this Interrogatory as seeking information that is irrelevant to the subject matter at issue in this proceeding and thus not reasonably calculated to lead to the discovery of admissible evidence. POET Ethanol also objects to the extent this Interrogatory asks POET Ethanol to list every factor it may utilize concerning selection of tank car repair facilities. POET Ethanol further objects to this Interrogatory as unduly burdensome because its temporal scope is unlimited. Subject to and without waiving its objections, POET Ethanol does not own any tank cars. Answering further, decisions on where POET Ethanol's leased tank cars transported by UP go to be repaired are typically made in the first instance by the owner of the tank car. Another factor is the extent to which a given tank car repair facility has available capacity or is backlogged with other cars. A third factor is the proximity of the repair facility to the location where the car was unloaded or to where the car will be loaded next.

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

POET Ethanol objects to this Interrogatory as seeking information that is 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, POET Ethanol responds that the persons with these responsibilities as related to UP's transportation of POET Ethanol's tank cars are:

(a), (b) and (d): Kyle Fox, Rail Operations Manager

(c) and (e): Phil Spieckermann, Vice President, Rail

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

POET Ethanol objects to this Interrogatory as premature because it requests that POET Ethanol formulate its position prior to completing discovery of UP. POET Ethanol also objects to the characterization "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

POET Ethanol incorporates by reference its general and specific objections to each Interrogatory. POET Ethanol also objects to this request as applied to Interrogatory No. 38 to the extent it seeks all documents related to the tasks set forth in subsections (a) through (e), as opposed to documents related to the persons sought to be identified. If the intent of the request is the former, then POET Ethanol further objects to the Request on the grounds that it is overbroad, unduly burdensome, and asks for information that is not relevant to the issues in this case and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, POET Ethanol responds that it will produce responsive documents in its possession and control.

Document Request No. 25

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

Response

POET Ethanol 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, POET Ethanol responds that it has no documents within its possession or control that are responsive to this request because it has no current plans or proposals to retrofit any of its 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.

Response

POET Ethanol 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. POET Ethanol objects to this Document Request as overbroad and unduly burdensome. Subject to and without waiving its objections, POET Ethanol states that it will produce documents responsive to this request which are in its possession, custody and control and which relate to the movement of its tank cars transported by UP to Repair Facilities during the time frame for which it is seeking reparations in this case, namely January 1, 2013 to the present.

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

POET Ethanol 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, POET Ethanol states that it 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

POET Ethanol 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, POET Ethanol 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

POET Ethanol 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. POET Ethanol further objects to this Document Request as unduly burdensome because it is unlimited as to temporal scope. Subject to and without waiving its objections, POET Ethanol will produce responsive documents in its possession, or control, if any.

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

POET Ethanol 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, POET Ethanol 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

POET Ethanol 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, POET Ethanol 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

POET Ethanol objects to this Document Request as vague and ambiguous to the point that POET Ethanol does not understand either its purpose or scope. Subject to and without waiving its objections, POET Ethanol states it has no documents within its possession or control

that are responsive to this request since the new regulations will not result in any revenues to POET Ethanol, but rather will result in increased costs of leasing tank cars and providing them to UP to transport POET Ethanol's products.

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

POET Ethanol 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. POET Ethanol also objects to this request to the extent it seeks documents dated prior to January 1, 2013. Subject to and without waiving its objections, POET Ethanol will produce 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

POET Ethanol 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. POET Ethanol also objects to this Document Request because it wrongly assumes that

POET Ethanol selects the Repair Facilities all of its cars are sent to. This request is also unduly burdensome because it is unlimited as to temporal scope. POET Ethanol also objects to this Document Request as duplicative of other Interrogatories and Document Requests. Subject to and without waiving its objections, POET Ethanol will produce responsive documents within its possession, custody, or control that are responsive to this request which relate to the movement of its tank cars transported by UP to Repair Facilities during the time frame for which it is seeking reparations in this case, namely January 1, 2013 to the present.

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

POET Ethanol 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. POET Ethanol also objects to this Document Request as unduly burdensome because it is unlimited as to temporal scope. POET Ethanol also objects to this Document Request as duplicative of other Interrogatories and Document Requests. Subject to and without waiving its objections, POET Ethanol has no documents responsive to this request to the extent it covers temporary storage, inspections, testing, repairs, replacements or retrofits. Further, POET Ethanol will produce responsive documents in its possession or control that are responsive to this request concerning car cleaning and relating to the movement of POET Ethanol tank cars transported by

UP during the time frame for which it is seeking reparations in this case, namely January 1, 2013 to the present.

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, POET Ethanol 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 Ethanol Products LLC d/b/a POET Ethanol Products,

Dated: March 23, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 23rd 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 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 CARGILL INCORPORATED,)	
)	
Complainants,)	
)	
v.)	
)	
UNION PACIFIC RAILROAD COMPANY,)	
)	
Defendant.)	
)	

NOR 42144

**RESPONSES AND OBJECTIONS OF
POET NUTRITION, INC.
UNION PACIFIC'S SECOND SET OF DISCOVERY REQUESTS**

Complainant, POET Nutrition, Inc. ("POET Nutrition") hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("Union Pacific" or "UP") Second Set of Discovery Requests ("Second Discovery Requests"). POET Nutrition's responses to the Second Discovery Requests are based on information presently known. Because POET Nutrition continues to investigate the facts and information relating to the issues in this case, POET Nutrition reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

POET Nutrition hereby incorporates by reference into these Responses to Union Pacific's Second Discovery Requests the General Objections, Objections to Definitions, and Objections to

Instructions included in POET Nutrition's Responses to Union Pacific's First Set of Discovery Requests, served 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

POET Nutrition objects to this Interrogatory as seeking information that is irrelevant to the subject matter at issue in this proceeding and thus not reasonably calculated to lead to the discovery of admissible evidence. POET Nutrition also objects to the extent this Interrogatory asks POET Nutrition to list every factor it may utilize concerning selection of tank car repair facilities. POET Nutrition further objects to this Interrogatory as unduly burdensome because its temporal scope is unlimited. Subject to and without waiving its objections, POET Nutrition does not own any tank cars. Answering further, decisions on where POET Nutrition's leased tank cars transported by UP go to be repaired are typically made in the first instance by the owner of the tank car. Another factor is the extent to which a given tank car repair facility has available capacity or is backlogged with other cars. A third factor is the proximity of the repair facility to the location where the car was unloaded or to where the car will be loaded next.

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

POET Nutrition objects to this Interrogatory as seeking information that is 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, POET Nutrition responds that the persons with these responsibilities as related to UP's transportation of POET Nutrition's tank cars are:

(a) and (b) – James Bennett, Rail Transportation Manager

(c), (d) and (e) – Jeff Siebrecht, Senior Rail Distribution Manager

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

POET Nutrition objects to this Interrogatory as premature because it requests that POET Nutrition formulate its position prior to completing discovery of UP. POET Nutrition also objects to the characterization “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

POET Nutrition incorporates by reference its general and specific objections to each Interrogatory. POET Nutrition also objects to this request as applied to Interrogatory No. 38 to the extent it seeks all documents related to the tasks set forth in subsections (a) through (e), as opposed to documents related to the persons sought to be identified. If the intent of the request is the former, then POET Nutrition further objects to the Request on the grounds that it is overbroad, unduly burdensome, and asks for information that is not relevant to the issues in this case and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, POET Nutrition responds that it will produce responsive documents in its possession and control.

Document Request No. 25

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

Response

POET Nutrition 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, POET Nutrition responds that it has no documents within its possession or control that are responsive to this request because it has no current plans or proposals to retrofit any of its 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.

Response

POET Nutrition 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. POET Nutrition objects to this Document Request as overbroad and unduly burdensome. Subject to and without waiving its objections, POET Nutrition states that it will produce documents responsive to this request which are in its possession, custody and control and which relate to the movement of its tank cars transported by UP to Repair Facilities during the time frame for which it is seeking reparations in this case, namely January 1, 2013 to the present.

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

POET Nutrition 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, POET Nutrition states that it 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

POET Nutrition 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, POET Nutrition 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

POET Nutrition 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. POET Nutrition further objects to this Document Request as unduly burdensome because it is unlimited as to temporal scope. Subject to and without waiving its objections, POET Nutrition will produce responsive documents in its possession or control, if any.

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

POET Nutrition 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, POET Nutrition 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

POET Nutrition 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, POET Nutrition 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

POET Nutrition objects to this Document Request as vague and ambiguous to the point that POET Nutrition does not understand either its purpose or scope. Subject to and without waiving its objections, POET Nutrition states it has no documents within its possession or

control that are responsive to this request, since the new regulations will not result in any revenues to POET Nutrition, but rather will result in increased costs of leasing tank cars and providing them to UP to transport POET Nutrition's products.

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

POET Nutrition 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. POET Nutrition also objects to this request to the extent it seeks documents dated prior to January 1, 2013. Subject to and without waiving its objections, POET Nutrition will produce 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

POET Nutrition 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. POET Nutrition also objects to this Document Request because it wrongly assumes

that POET Nutrition selects the Repair Facilities all of its cars are sent to. This request is also unduly burdensome because it is unlimited as to temporal scope. POET Nutrition also objects to this Document Request as duplicative of other Interrogatories and Document Requests. Subject to and without waiving its objections, POET Nutrition will produce responsive documents within its possession, custody, or control that are responsive to this request which relate to the movement of its tank cars transported by UP to Repair Facilities during the time frame for which it is seeking reparations in this case, namely January 1, 2013 to the present.

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

POET Nutrition 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. POET Nutrition also objects to this Document Request as unduly burdensome because it is unlimited as to temporal scope. POET Nutrition also objects to this Document Request as duplicative of other Interrogatories and Document Requests. Subject to and without waiving its objections, POET Nutrition has no documents responsive to this request to the extent it covers temporary storage, inspections, testing, repairs, replacements or retrofits. Further, POET Nutrition will produce responsive documents in its possession or control that are responsive to this request concerning car cleaning and relating to the movement of POET Nutrition tank cars

transported by UP during the time frame for which it is seeking reparations in this case, namely January 1, 2013 to the present.

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, POET Nutrition 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 POET Nutrition, Inc.

Dated: March 23, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 23rd 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 14

**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.)	
)	

**OBJECTIONS AND RESPONSES OF CARGILL INCORPORATED TO UNION
PACIFIC’S SECOND SET OF DISCOVERY REQUESTS**

Complainant Cargill, Incorporated (“Cargill”) hereby submits its Objections and Responses to Defendant Union Pacific Railroad Company’s (“UP”) Second Set of Discovery Requests (“Second Discovery Requests”). Cargill’s objections and responses to the Second Discovery Requests are based on information presently known to Cargill. Because Cargill is continuing to investigate the facts and information relating to the issues in this case, Cargill reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

Cargill hereby incorporates by reference into these Objections and Responses to the Second Discovery Requests the General Objections, Objections to Definitions, and Objections to Instructions set forth in Cargill’s Responses and Objections to UP’s First Set of Discovery

Requests, served on June 30, 2015, and reasserts those objections to each of the discovery requests herein.

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

Cargill objects to this Interrogatory on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill states that it considers a variety of factors and circumstances in deciding which Repair Facility to use for particular tanks cars, including the type and scope of repair work required, the qualifications of the Repair Facility, the current car location, and the logistics of transporting the car to the 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.

Response

Cargill objects to this Interrogatory on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill provides the following responses:

(a) The primary persons responsible for deciding which Repair Facility will be used are Cargill employee Jeff Agan (since July 2015), retired Cargill employee Paul Jasper (prior to July 2015), and representatives of AllTranstek LLC.

(b) Once the need for repair is identified, the primary persons responsible for deciding when tank cars are sent to a Repair Facility are Cargill employees Jeff Agan and Peter Cleary, and representatives of AllTranstek LLC.

(c) Peter Cleary

(d) Various persons in the Cargill Transportation and Logistics Rail Fleet Audit and Payment Group.

(e) Brad Hildebrand

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

Cargill objects to this Interrogatory on the grounds that it is premature, vague and ambiguous, and does not accurately characterize Cargill's position.

DOCUMENT REQUESTS

Document Request No. 24

Produce all Documents You relied on in responding to Interrogatory Nos. 37-39 above.

Response

Cargill renews and repeats its objections to Interrogatories Nos. 37-39. Subject to and without waiving its objections, Cargill will produce responsive documents within its possession, custody or control, if any, for the period January 1, 2013 to the present.

Document Request No. 25

Produce all Documents that contain, reflect, or otherwise refer or relate to plans or proposals for retrofitting tank cars.

Response

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill will produce responsive documents within its possession, custody or control, if any, for the period January 1, 2013 to the present.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period.

Document Request No. 28

Produce all contracts with Repair Facilities to which You have directed, since 2001, tank cars You own or lease.

Response

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad and unduly burdensome. Subject to and without waiving its objections,

Cargill will produce responsive documents within its possession, custody or control, if any, for the period January 1, 2013 to the present.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill has agreed to produce its leases and subleases in response to prior discovery requests for the period January 1, 2013 to the present.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill states that it has no responsive documents within its possession, custody or control, relating to tank cars.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill will produce responsive documents within its possession, custody or control, if any, for the period January 1, 2013 to the present.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is vague, ambiguous and unintelligible, overbroad and unduly burdensome. Subject to and without waiving its objections, Cargill states that it has no responsive documents within its possession, custody or control.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and seeks documents dated prior to January 1, 2013. Subject to and without waiving its objections, Cargill has agreed to produce its leases and subleases in response to prior discovery requests for the period January 1, 2013 to 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.

Response

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period.

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

Cargill objects to this Document Request on the grounds that the information it seeks is neither relevant to the subject matter at issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this interrogatory on the grounds it is overbroad, unduly burdensome, and fails to identify an applicable time period. Subject to and without waiving its objections, Cargill will produce responsive documents within its possession, custody or control, if any.

Respectfully submitted,

/s/ David K. Monroe
Thomas W. Wilcox
David K. Monroe
Svetlana Lyubchenko
GKG Law, P.C.
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248

Counsel for Cargill Incorporated

Dated: March 30, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 30th 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/ David K. Monroe _____

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)
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.

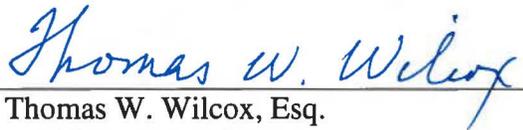
13. Produce all documents that Identify, refer or relate to the factors and methods that UP uses to establish line-haul rates for movements in tank cars, including but not limited to all cost factors that UP considers.

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 16

From: [Thomas Wilcox](#)
To: [Rosenthal, Michael](#)
Cc: [larinn@up.com](#); [David Monroe](#); [Pillai, Kavita](#)
Subject: NOR 42144 - POET Discovery follow-up
Date: Tuesday, May 17, 2016 3:55:15 PM

Mike -

This email follows up our meeting in your offices on May 4 where we discussed the discovery responses of POET and Cargill. It addresses several discovery requests where you had questions and/or asked for some follow up as to POET's discovery responses:

Interrogatory No. 18 - You asked whether either of the POET entities had any information that would be responsive to this request, despite their objections to this request for the reasons set out in their written responses. We have confirmed that the two POET entities have some, but not complete information that would be responsive to this Interrogatory dating back to 2007, which consists of data on loaded and empty miles for their leased tank cars provided by car owners.

Interrogatories 24-27 - You raised the suggestion that the POET entities could agree to stipulations at the end of discovery that there is no information responsive to these interrogatories. We are amenable to such stipulations.

Interrogatory No. 32 - You asked whether either of the POET entities had any information that would be responsive to this request, despite their objections to this request for the reasons set out in their written responses. We have confirmed that the two POET entities have information that could be responsive to subparts (g)(insurance payments) and (j)(market value of material inventory used for repair, cleaning, or maintenance of tank cars).

Interrogatory No. 33(b) - You asked whether either of the POET entities had any information that would be responsive to this request, despite their objections to this request for the reasons set out in their written responses. We have confirmed that neither of the two POET entities have any information responsive to this interrogatory's subpart.

Interrogatory No. 34 - We have confirmed that neither of the POET entities has been or is being paid mileage allowances by any other railroad.

Document Request No. 26 and 34 - You questioned the use of the phrase "transported by UP to Repair Facilities" in the responses of the POET entities to these document requests. We have reviewed the responses and have decided to clarify these responses per your request. Specifically, in each case, the relevant language should refer to the movement of tank cars by UP in revenue service that were transported to a repair facility located on UP's system during the time frame for which the POET entities are seeking reparations in this case. It was not the intent of the responses to limit the responsive documents to only those instances where UP itself transported tank cars to a Repair Facility.

Thanks, and please call me or email me with any further questions.

Thomas Wilcox
Principal



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EXHIBIT 17

From: [Rosenthal, Michael](#)
To: [Thomas W. Wilcox \(twilcox@gkglaw.com\)](#); [David K. Monroe \(dmonroe@gkglaw.com\)](#)
Cc: [Pillai, Kavita](#)
Subject: NOR 42144 - Cargill contracts
Date: Friday, April 29, 2016 11:03:27 AM

David,

At our meeting yesterday afternoon, in connection with our discussion of Cargill's response to UP's Interrogatory No. 28, I committed to providing you with an example of a Cargill contract with Union Pacific governing movements in tank cars. A good example is UPC 54454. I'm told that the contract has recently been extended through February 2018. It covers a mix of commodities, some of which do not move in tank cars, but UP's data show that a fair amount of traffic moving under the contract has moved in tank cars.

Regards,

Mike