

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
September 28, 2015
Part of
Public Record

**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

vs.

**UNION PACIFIC RAILROAD
COMPANY**

THIRD REPORT SUBMITTED PURSUANT TO 49 C.F.R. § 1111.10(a)

The Complainants in this proceeding, through counsel, hereby submit the following Third Report to the Board Pursuant to 49 C.F.R. § 1111.10(a)("Third Report"). The undersigned submit that counsel for Defendant Union Pacific Railroad Company ("UP") has authorized them to represent that UP concurs with the contents of this Third Report.

The parties have filed two previous reports to the Board pursuant to 49 C.F.R. § 1111.10(a) - on May 8, 2015 and July 20, 2015 respectively. These reports summarized how the parties have held two "meet and confer" sessions to discuss discovery issues and the possibility of jointly submitting a procedural schedule for the Board's consideration. As described in their July 20 report, during the second "meet and confer" session - a conference call held on July 10, 2015 - counsel for the parties identified several areas of potential dispute with

each other's initial discovery requests, and they agreed to attempt to mutually resolve the differences, or at least narrow and/or refine them, before seeking Board involvement. On July 30, August 24, and September 11, the parties exchanged several letters outlining their respective positions on discovery, and they intend to continue their efforts to resolve or narrow their differences.¹

Despite these attempts to resolve their discovery differences, there are several significant areas where the parties are not in agreement with each other's discovery requests that could require Board resolution. Complicating the resolution of these discovery disputes is the fact that the Board has yet to rule on UP's Motion to Dismiss Complaint or to Make Complaint More Definite, which has been pending since April 20, 2015. The foregoing uncertainties preclude the parties from jointly proposing a procedural schedule at this time.

Respectfully submitted



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¹ The parties also have exchanged a draft protective order which will be submitted to the Board for approval and adoption in due course.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 28th day of September, 2015, I have served a copy of the foregoing Third Report Submitted Pursuant to 49 C.F.R. § 1111.10(a) via electronic mail and regular mail to counsel for Defendant at the following addresses:

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