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SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE REGARDING DISCOVERY

Docket No. NOR 42144

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 v. UNION PACIFIC RAILROAD COMPANY

Decided: October 7, 2016

On May 25, 2016, Union Pacific Railroad Company (UP) filed a motion to compel discovery from the “Individual Complainants” in this case—Cargill Incorporated (Cargill), Ethanol Products, LLC d/b/a POET Ethanol Products (POET Ethanol), and POET Nutrition, Inc. (POET Nutrition). The Individual Complainants filed replies on June 14, 2016. On August 19, 2016, UP filed a second motion to compel discovery from Cargill. Cargill filed a reply on September 8, 2016.

Prior to oral argument, the parties met and conferred to narrow the issues in dispute, eliminating the need for an order regarding most of the discovery addressed in the motions to compel.

Remaining in dispute as to Cargill are UP’s Interrogatory Nos. 30-32 and 35 and Document Request Nos. 18-20, each of which requests various information and/or documents regarding tank car ownership and maintenance costs.

Remaining in dispute as to POET Ethanol and POET Nutrition are UP’s Interrogatory Nos. 31, 32, and 35 and Document Request Nos. 19-20, each of which requests various information and/or documents regarding tank car ownership and maintenance costs.

On September 29, 2016, an oral argument was held.

It is ordered:

1. Cargill will respond to UP’s Interrogatory Nos. 30-32 and 35 and Document Request Nos. 18-20 by producing existing management and accounting reports and analyses regarding Cargill’s tank car ownership and maintenance costs, as well as the more detailed tank car cost information it can extract from its fleet management database. Cargill will produce such tank car cost information to the extent it is available for the time period of 2007 to 2015. Cargill will not be required to produce car-by-car invoices or other similar transactional documents or

information regarding tank car ownership costs, except to the extent such documents or information are readily available from computerized databases.

2. POET Ethanol will respond to UP's Interrogatory Nos. 31-32 and 35 and Document Request Nos. 19-20 by producing summaries of POET Ethanol's tank car ownership and maintenance costs prepared in the normal course of business. POET Ethanol will produce this information for the time period of 2008 to 2015. POET Ethanol will not be required to produce car-by-car invoices or other similar transactional documents or information regarding tank car ownership costs.

3. POET Nutrition will respond to UP's Interrogatory Nos. 31-32 and 35 and Document Request Nos. 19-20 by producing all documents and information in its possession, custody, or control regarding tank car ownership and maintenance costs, except that POET Nutrition will not be required to produce car-by-car invoices, or other similar transactional documents or information regarding tank car ownership costs, except to the extent the car-by-car materials are readily available from computerized databases. POET Nutrition will produce this information for the time period of 2014 to 2015.

4. This decision is effective on its date of service.

By the Board, John P. Dring, Administrative Law Judge.