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ALJ

SERVICE DATE – LATE RELEASE MAY 27, 2016

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE SCHEDULING DISCOVERY  
CONFERENCE

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: May 27, 2016

On June 2, 2015, North America Freight Car Association, American Fuel & Petrochemicals Manufacturers, The Chlorine Institute, Inc., The Fertilizer Institute, and American Chemistry Council, along with Ethanol Products, LLC d/b/a POET Ethanol Products, POET Nutrition, Inc., and Cargill Incorporated (Complainants), filed an amended complaint against Union Pacific Railroad Company (UP) pursuant to 49 U.S.C. §§ 10702, 11101, 11121, 11122, 11701, and 11704, and 49 C.F.R. pt. 1111. In Count I, Complainants challenge the reasonableness of UP Tariff 6004, Item 55-C (Item 55-C), which became effective on January 1, 2015. In Count II, Complainants allege that UP's refusal to compensate Complainants for the use of their tanks cars, whether through mileage allowances or reduced line haul rates, constitutes an unreasonable practice under 49 U.S.C. § 10702 and violates 49 U.S.C. §§ 11101, 11121, and 11122. On June 22, 2015, UP filed its answer to the amended complaint.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board.

By a decision served on February 10, 2016, the Board assigned and authorized Administrative Law Judge John P. Dring of the FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in this proceeding.

Notwithstanding the scheduling of the discovery conference ordered below, the parties are strongly encouraged to make intensive, good faith efforts to resolve outstanding discovery disputes without the need for judicial intervention, both prior to the conference and thereafter. Any questions pertaining to this discovery proceeding should be direct to Judge Dring's law clerk, Thomas C. Kirby, who may be contacted at (202) 502-8104 or [thomas.kirby@ferc.gov](mailto:thomas.kirby@ferc.gov).

It is ordered:

1. A two-day discovery conference on all outstanding discovery matters is scheduled for June 23 and June 24, 2016, beginning at 10:00 a.m. each day in a hearing room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. This conference will be held on the record. All parties to the discovery disputes are directed to attend.

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