

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

ENTERED  
Office of Proceedings  
June 22, 2015  
Part of  
Public Record

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NORTH AMERICA FREIGHT CAR	)	
ASSOCIATION; AMERICAN FUEL &	)	
PETROCHEMICALS MANUFACTURERS;	)	
THE CHLORINE INSTITUTE; THE	)	
FERTILIZER INSTITUTE; AMERICAN	)	
CHEMISTRY COUNCIL; ETHANOL	)	
PRODUCTS, LLC D/B/A POET ETHANOL	)	
PRODUCTS; POET NUTRITION, INC.; and	)	NOR 42144
CARGILL INCORPORATED,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
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**MOTION TO DISMISS FIRST AMENDED COMPLAINT  
OR TO MAKE COMPLAINT MORE DEFINITE**

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June 22, 2015

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**MOTION TO DISMISS FIRST AMENDED COMPLAINT  
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Union Pacific Railroad Company moves to dismiss the First Amended Complaint or, alternatively, to make that Complaint more definite. The First Amended Complaint contains only one meaningful change from the original Complaint—the Association Complainants withdraw their request for reparations and damages on behalf of their members.<sup>1</sup> Accordingly, rather than

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<sup>1</sup> Complainants also amended Paragraph 26 of their original Complaint. Initially, Complainants alleged that prior to January 1, 2015, Union Pacific provided the transportation services covered by Tariff 6004, Item 55-C, “without charge.” Now they allege that Union Pacific provided the transportation services “without charging a line-haul rate for those services.”

We note simply that both the original and amended allegations are incorrect and also irrelevant. Prior to January 1, 2015, Union Pacific charged line-haul rates for most categories of services governed by Item 55-C. Union Pacific did not charge line-haul rates for certain categories of empty movements to and from repair facilities, relying instead on mileage equalization (continued...)

complicate the record by submitting a lengthy motion to dismiss the First Amended Complaint (or make it more definite), we incorporate by reference our Motion to Dismiss Complaint or to Make Complaint More Definite, filed April 20, 2015, except for Part III.C, the section that addressed the request for damages and reparations that the Association Complainants have now withdrawn.

Respectfully submitted,

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compensation provided through the Freight Tariff RIC 6007-Series. And Board precedent permits Union Pacific to adopt new tariff charges for moving empty cars to and from repair facilities. *Charges for Movement of Empty Cars, B&P RR, Inc.*, 7 I.C.C.2d 18 (1990); *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); *see also N. Am. Freight Car Assoc.–Protest & Petition for Investigation–Tariff Publications of the Burlington N. & Santa Fe Ry.*, NOR 42060, slip op. at 6 (STB served Aug. 13, 2004) (decisions permitting railroads to adopt separate tariff charges for empty repair moves “did not turn on whether a portion of the empty repair move charges might be recovered through allowances”).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of June, 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