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**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

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Office of Proceedings
August 19, 2016
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Public Record

**UNION PACIFIC’S MOTION TO COMPEL RESPONSES TO THIRD SET OF
DISCOVERY REQUESTS TO CARGILL INCORPORATED**

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August 19, 2016

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**UNION PACIFIC’S MOTION TO COMPEL RESPONSES TO THIRD SET OF
DISCOVERY REQUESTS TO CARGILL INCORPORATED**

Union Pacific Railroad Company hereby requests pursuant to 49 C.F.R. § 1114.31(a) that the Board issue an order compelling Cargill Incorporated to respond in full to three Requests for Admissions contained in Union Pacific’s Third Set of Discovery Requests.

In Count II of the Complaint, Cargill and the other Complainants claim that Union Pacific’s alleged “refusal to compensate” Cargill and other shippers for providing private tank cars used to transport their commodities “whether through mileages allowances or reduced line haul rates, constitutes an unreasonable practice.” Complaint ¶ 35.

The Board typically looks to industry practice when considering whether a challenged practice is “unreasonable.” *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.”);

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) (observing 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”).

Accordingly, Union Pacific served discovery, including Requests for Admissions, on Cargill and other shipper complainants to explore their dealings with Union Pacific and other railroads regarding mileage allowances and reduced line-haul rates.¹ However, Cargill, while responding to Requests for Admissions regarding its dealings with *Union Pacific*, refused to respond to our request to admit the truth of three matters regarding its dealing with *other railroads*. Specifically, Cargill refused to admit (or deny) that:

(1) Cargill has never asked other railroads to establish a rate for a movement in tank cars that included payment of mileage allowances (Request for Admission No. 2);

¹ Board rules allow a party to “serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of [discovery] set forth in the request.” 49 C.F.R. § 1114.27(a).

(2) Cargill has never asked other railroads to establish a reduced line-haul rate for a movement in tank cars to reflect Cargill's furnishing tank cars for the movement (Request for Admission No. 4); and,

(3) Cargill has never shipped tank cars on other railroads under rate documents that provided for payment of a mileage allowance (Request for Admission No. 5).²

The other shipper complainants in this case, Ethanol Products, LLC and Poet Nutrition Inc., responded to identical Requests for Admissions.³

Moreover, Cargill previously agreed to produce information regarding its dealings with other railroads in response to other discovery requests that cover similar ground. For example, Cargill agreed to produce documents that would "[i]dentify all communications between [Cargill] and a railroad other than Union Pacific in which [Cargill] asked the railroad to establish rates for movements in tank cars that included payment of a mileage allowance."⁴ Cargill also agreed to produce documents to "[i]dentify all communications between [Cargill] and a railroad other than Union Pacific in which [Cargill] asked the railroad to establish reduced line-haul rates to reflect [Cargill's] furnishing tank cars."⁵ Similarly, Cargill responded to our request to produce "any contract and/or rate document under which a mileage allowance was paid by a

² See Ex. 1, Union Pacific's Third Set of Discovery Requests to Cargill Incorporated (June 3, 2016); Ex. 2, Objections and Responses of Cargill Incorporated to Union Pacific's Third Set of Discovery Requests (June 20, 2016).

³ See Ex. 3, Responses and Objections of Ethanol Products, LLC d/b/a Poet Ethanol Products and Poet Nutrition Inc. to Union Pacific's Third Set of Discovery Requests (June 20, 2016) (Responses to Requests for Admission Nos. 2, 4, and 5). Poet Ethanol and Poet Nutrition designated their responses as "Confidential," so Exhibit 3 has been redacted from the public version of this motion.

⁴ Ex. 4, Responses and Objections of Cargill, Incorporated to Union Pacific's First Set of Discovery Requests (June 30, 2015) (Response to Interrogatory No. 25).

⁵ *Id.* (Response to Interrogatory No. 27).

railroad other than Union Pacific,” by stating that “it has no responsive documents.”⁶ The Requests for Admission at issue are, in large part, simply an effort to follow up on these requests, for which Cargill has not yet produced any responsive documents (or has indicated that no responsive documents exist).

Cargill objects to each Request for Admission at issue as overbroad and unduly burdensome. Cargill proffered the same objections to the parallel Union Pacific-related requests, but it provided information “based upon a reasonable inquiry” of “current Cargill employee[s] with responsibility for railroad transportation in tank cars” for specified periods.⁷ Union Pacific informed Cargill that we would accept the same approach for the requests regarding other railroads.⁸ If Cargill can ask current employees about dealings with Union Pacific, surely it can ask them about dealings with other railroads. However, Cargill is apparently refusing to take this simple step on relevance grounds, despite Board precedent establishing the relevance of industry practices in unreasonable practice cases.

CONCLUSION

The Board should compel Cargill to provide a complete response to Union Pacific’s Requests for Admission Nos. 2, 4, and 5.

⁶ Ex. 5, Objections and Responses of Cargill Incorporated to Union Pacific’s Second Set of Discovery Requests (Mar. 30, 2016) (Response to Document Request No. 30).

⁷ See Ex. 2 (Response to Request for Admission Nos. 1, 3, and 5).

⁸ See Ex. 6, E-mail from Michael Rosenthal to Thomas W. Wilcox and David K. Monroe (June 28, 2016). We continued to pursue resolution of this dispute when Cargill did not respond to our initial inquiries. See *id.*, E-mail from Michael Rosenthal to Thomas W. Wilcox and David K. Monroe (July 7, 2016); E-mail from Michael Rosenthal to Thomas W. Wilcox and David K. Monroe (August 9, 2016).

Respectfully submitted,

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
KAVITA PILLAI
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850 Tenth Street, NW
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(202) 662-6000

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1400 Douglas Street
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(402) 544-3309

Attorneys for Union Pacific Railroad Company

August 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 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:

Thomas W. Wilcox, Esq.
David K. Monroe, Esq.
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(By Hand)

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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.

/s/Michael L. Rosenthal
Michael L. Rosenthal

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR)	
ASSOCIATION; AMERICAN FUEL &)	
PETROCHEMICALS MANUFACTURERS;)	
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**UNION PACIFIC’S THIRD SET OF DISCOVERY REQUESTS
TO CARGILL INCORPORATED**

Pursuant to 49 C.F.R. § 1114.27, Union Pacific Railroad Company requests that Cargill Incorporated serve responses to the following requests for admissions upon Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, no later than June 20, 2016.

DEFINITIONS AND INSTRUCTIONS

1. Unless a different time period is specified, these requests cover the period from January 1, 2001 to the time responses are served on Union Pacific.
2. Union Pacific hereby incorporates by reference into this Third Set of Discovery Requests the Definitions and Instructions included in Union Pacific’s First Set of Discovery Requests, served May 8, 2015, to the extent they do not conflict with the instruction above.

REQUESTS FOR ADMISSION

Request for Admission No. 1

Admit that You have never requested that Union Pacific establish a rate for a movement in tank cars that included payment of a mileage allowance. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the person to whom You made Your request, (c) the method You used to communicate Your request, (d) the product to be transported, (e) the origin and destination of the proposed movement, and (f) Union Pacific's response to Your request; and (ii) produce all documents relating to Your request and Union Pacific's response.

Request for Admission No. 2

Admit that You have never requested that a railroad other than Union Pacific establish a rate for a movement in tank cars that included payment of a mileage allowance. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the product to be transported, (c) the origin and destination of the proposed movement, and (d) the response to Your request; and (ii) produce all documents relating to Your request and the other railroad's response.

Request for Admission No. 3

Admit that You have never requested that Union Pacific establish a reduced line-haul rate for a movement in tank cars to reflect Your furnishing tank cars for the movement. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the person to whom You made Your request, (c) the method You used to communicate Your request, (d) the product to be transported, (e) the origin and destination of the proposed movement, and (f) Union Pacific's response to Your request; and (ii) produce all documents relating to Your request and Union Pacific's response.

Request for Admission No. 4

Admit that You have never requested that a railroad other than Union Pacific establish a reduced line-haul rate for a movement in tank cars to reflect Your furnishing tank cars for the movement. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the product to be transported, (c) the origin and destination of the proposed movement, and (d) the response to Your request; and (ii) produce all documents relating to Your request and the other railroad's response.

Request for Admission No. 5

Admit that You have never shipped traffic in a tank car under a contract, tariff, or other rate document that provided for payment of a mileage allowance. If Your answer is anything other than an unqualified admission: (i) produce the rate document that provided for payment of a mileage allowance, and (ii) identify the shipment's origin and destination, the number of cars, and the product shipped.

Request for Admission No. 6

Admit that the contracts, tariffs, or other price documents governing rates Union Pacific has charged You for movements in tank cars state Union Pacific would not pay mileage allowances. If Your answer is anything other than an unqualified admission, identify all price documents that do not state Union Pacific would not pay mileage allowances.

Request for Admission No. 7

Admit that the agreements under which You lease tank cars from other persons provide that You are entitled to any mileage allowance payments or an equivalent credit toward Your lease payments with regard to transportation provided in those tank cars during the term of the

lease. If your answer is anything other than an unqualified admission, identify the agreements that do not entitle you to mileage allowance payments.

Request for Admission No. 8

Admit that prior to filing the Complaint, You never requested that Union Pacific pay You mileage allowances for movements in tank cars You furnished. If Your answer is anything other than an unqualified admission, (i) identify (a) the date of Your request, (b) the person to whom You made Your request, (c) the method You used to communicate Your request, (d) the product transported, (e) the origin and destination of the movement, and (f) Union Pacific's response to Your request; and (ii) produce all documents relating to Your request and Union Pacific's response.

LOUISE A. RINN
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(202) 662-6000

Attorneys for Union Pacific Railroad Company

June 3, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2016, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of service, on all of the parties of record in NOR 42144.



Michael L. Rosenthal

EXHIBIT 2

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.

REQUESTS FOR ADMISSION

Request for Admission No. 1

Admit that You have never requested that Union Pacific establish a rate for a movement in tank cars that included payment of a mileage allowance. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the person to whom You made Your request, (c) the method You used to communicate Your request, (d) the product to be transported, (e) the origin and destination of the proposed movement, and (f) Union Pacific's response to Your request; and (ii) produce all documents relating to Your request and Union Pacific's response.

Response: Cargill objects to this 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 Request on the grounds it is overbroad and unduly burdensome.

Subject to and without waiving its objections, Cargill states that it cannot admit or deny that it has never requested that UP establish a rate for a movement in tank cars that included payment of a mileage allowance due to insufficient knowledge and information. However, based upon a reasonable inquiry, Cargill states that no current Cargill employee with responsibility for railroad transportation in tank cars is aware of any such request for the period since 2001, and that such requests are not made in the ordinary course of business because UP generally offers only rates that do not include mileage allowances.

Request for Admission No. 2

Admit that You have never requested that a railroad other than Union Pacific establish a rate for a movement in tank cars that included payment of a mileage allowance. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the product to be transported, (c) the origin and destination of the proposed movement, and (d) the response to Your request; and (ii) produce all documents relating to Your request and the other railroad's response.

Response: Cargill objects to this Request on the grounds that the information it seeks regarding railroads other than UP 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 Request on the grounds it is overbroad and unduly burdensome.

Request for Admission No. 3

Admit that You have never requested that Union Pacific establish a reduced line-haul rate for a movement in tank cars to reflect Your furnishing tank cars for the movement. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the person to whom You made Your request, (c) the method You used to communicate Your request, (d) the product to be transported, (e) the origin and destination of the proposed movement, and (f) Union Pacific's response to Your request; and (ii) produce all documents relating to Your request and Union Pacific's response.

Response: Cargill objects to this 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 Request on the grounds it is overbroad and unduly burdensome. Cargill further objects to this Request on the

grounds that it is vague, ambiguous and seeks subjective information that Cargill cannot reasonably determine based upon a reasonable inquiry.

Subject to and without waiving its objections, Cargill states that it cannot admit or deny that it has never requested that UP establish a reduced line-haul rate for a movement in tank cars to reflect Cargill's furnishing tank cars for the specific movement, due to insufficient knowledge and information. However, based upon a reasonable inquiry, Cargill states that no current Cargill employee with responsibility for railroad transportation in tank cars is aware of any request that UP establish a reduced line-haul rate specifically in consideration for Cargill providing a tank car for the movement for the period since 2001, and that such requests are not made in the ordinary course of business.

Request for Admission No. 4

Admit that You have never requested that a railroad other than Union Pacific establish a reduced line-haul rate for a movement in tank cars to reflect Your furnishing tank cars for the movement. If Your answer is anything other than an unqualified admission: (i) identify (a) the date of Your request, (b) the product to be transported, (c) the origin and destination of the proposed movement, and (d) the response to Your request; and (ii) produce all documents relating to Your request and the other railroad's response.

Response: Cargill objects to this Request on the grounds that the information it seeks regarding railroads other than UP 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 Request on the grounds it is overbroad and unduly burdensome.

Request for Admission No. 5

Admit that You have never shipped traffic in a tank car under a contract, tariff, or other rate document that provided for payment of a mileage allowance. If Your answer is anything other than an unqualified admission: (i) produce the rate document that provided for payment of a mileage allowance, and (ii) identify the shipment's origin and destination, the number of cars, and the product shipped.

Response: Cargill objects to this Request on the grounds that the information it seeks relating to railroads other than UP 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 Request on the grounds it is overbroad and unduly burdensome.

Subject to and without waiving its objections, Cargill states that its cannot admit or deny that it has never shipped traffic in a tank car under a contract, tariff, or other rate document that provided for payment of a mileage allowance for the period since 2001, due to insufficient knowledge and information. However, based upon a reasonable inquiry, Cargill states that no current Cargill employee with responsibility for railroad transportation in tank cars is aware of any traffic shipped on UP in a tank car under a contract, tariff, or other rate document that provided for payment of a mileage allowance for the period since 2007.

Request for Admission No. 6

Admit that the contracts, tariffs, or other price documents governing rates Union Pacific has charged You for movements in tank cars state Union Pacific would not pay mileage allowances. If Your answer is anything other than an unqualified admission, identify all price documents that do not state Union Pacific would not pay mileage allowances.

Response: Cargill objects to this 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 Request on the grounds it is overbroad and unduly burdensome.

Subject to and without waiving its objections, Cargill states that its cannot admit or deny that all of the contracts, tariffs, or other price documents governing rates UP has charged Cargill for movements in tank cars since 2001 state UP will not pay mileage allowances due to insufficient knowledge or information. However, based upon a reasonable inquiry, Cargill states that no current Cargill employee with responsibility for railroad transportation in tank cars is aware of any UP contract, tariff, or other price document governing rates UP has charged Cargill for movements in tank cars that do not state that UP will not pay mileage allowances.

Request for Admission No. 7

Admit that the agreements under which You lease tank cars from other persons provide that You are entitled to any mileage allowance payments or an equivalent credit toward Your lease payments with regard to transportation provided in those tank cars during the term of the lease. If your answer is anything other than an unqualified admission, identify the agreements that do not entitle you to mileage allowance payments.

Response: Cargill objects to this 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 Request on the grounds it is overbroad and unduly burdensome.

Subject to and without waiving its objections, Cargill states that its cannot admit or deny that all of the contracts, tariffs, or other price documents governing rates UP has charged Cargill

for movements in tank cars since 2001 state UP will not pay mileage allowances due to insufficient knowledge or information. However, based upon a reasonable inquiry, Cargill states that no current Cargill employee with responsibility for railroad transportation in tank cars is aware of any tank car lease from other persons that does not provide that Cargill is entitled to receive mileage allowances or an equivalent credit up to the value of the lease payment for transportation provided in the leased tank cars during the term of the lease.

Request for Admission No. 8

Admit that prior to filing the Complaint, You never requested that Union Pacific pay You mileage allowances for movements in tank cars You furnished. If Your answer is anything other than an unqualified admission, (i) identify (a) the date of Your request, (b) the person to whom You made Your request, (c) the method You used to communicate Your request, (d) the product transported, (e) the origin and destination of the movement, and (f) Union Pacific's response to Your request; and (ii) produce all documents relating to Your request and Union Pacific's response.

Response: Cargill objects to this 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 Request on the grounds it is overbroad and unduly burdensome.

Subject to and without waiving its objections, Cargill states that its cannot admit or deny that it has never requested that UP pay Cargill mileage allowances for movements in tank cars Cargill furnished due to insufficient knowledge or information. However, based upon a reasonable inquiry, Cargill states that no current Cargill employee with responsibility for railroad transportation in tank cars is aware of any such request for the period since 2001, and that such

requests are not made in the ordinary course of business because UP generally offers only rates that do not include mileage allowances.

Respectfully submitted,

/s/ David K. Monroe
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Counsel for Cargill, Incorporated

Dated: June 20, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 20th day of June, 2016, I have served a copy of the foregoing via electronic mail and regular mail to counsel for Defendant at the following addresses:

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Jeffrey O. Moreno
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Craig Richardson
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Jeremy M. Berman
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/s/ David K. Monroe

EXHIBIT 3

REDACTED

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,)	
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v.)	
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UNION PACIFIC RAILROAD COMPANY,)	
)	
Defendant.)	
)	

Docket No. NOR 42144

**RESPONSES AND OBJECTIONS OF CARGILL, INCORPORATED
TO
UNION PACIFIC'S FIRST SET OF DISCOVERY REQUESTS**

Complainant Cargill, Incorporated ("Cargill") hereby submits its Responses and Objections to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests ("Discovery Requests"). Cargill's responses to the Discovery Requests are based on information presently known. Because Cargill continues 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.

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 5

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 6

Rosenthal, Michael

From: Rosenthal, Michael
Sent: Tuesday, August 09, 2016 10:24 AM
To: David Monroe
Cc: Thomas Wilcox
Subject: RE: Objections and Responses of Cargill, Incorporated to UP's Third Set of Discovery Requests

Categories: Yellow Category

David,

I do not believe you ever responded to my question about the RFAs.

Regards,

Mike

From: David Monroe [<mailto:dmonroe@gkglaw.com>]
Sent: Thursday, July 07, 2016 4:44 PM
To: Rosenthal, Michael
Cc: Thomas Wilcox
Subject: Re: Objections and Responses of Cargill, Incorporated to UP's Third Set of Discovery Requests

Mike,

My apologies for not getting back to you sooner.

Our in-house litigation contact at Cargill has been out of the office and is not due back until Monday. I thought I had sent you an email last week to that effect, but it appears that I did not.

I will provide a status update on Cargill's production early next week (and similarly will respond to your request regarding Cargill's responses to UP's RFAs).

Best regards,

David

On Jul 7, 2016, at 3:24 PM, Rosenthal, Michael wrote:

Tom and David,

I don't believe I've seen a response to this email regarding Cargill's responses to Union Pacific's Requests for Admissions.

Regards,

Mike

From: Rosenthal, Michael
Sent: Tuesday, June 28, 2016 6:26 PM
To: Thomas W. Wilcox (twilcox@gkglaw.com); David K. Monroe (dmonroe@gkglaw.com)
Subject: FW: Objections and Responses of Cargill, Incorporated to UP's Third Set of Discovery Requests

Tom and David,

Is there any chance of convincing Cargill to respond to the requests for admission with respect to railroads other than Union Pacific, without our having to file another motion to compel? Given Cargill's demonstrated ability to make reasonable inquiries about the same questions with regard to Union Pacific, I don't think the burden arguments will carry much weight with the ALJ. And combining the minimal burden with the ALJ's self-described predisposition not to deprive the Board of information it might find relevant, I think everyone might be best served if we could resolve this ourselves.

Regards,

Mike

From: Elise Schaengold [<mailto:eschaengold@gkglaw.com>]
Sent: Monday, June 20, 2016 4:43 PM
To: Rosenthal, Michael; jeff.moreno@ThompsonHine.com; l rinn@up.com; paul.donovan@laroe.com; houston.staner@hoganlovells.com
Cc: David Monroe; Thomas Wilcox
Subject: Objections and Responses of Cargill, Incorporated to UP's Third Set of Discovery Requests

Please find attached the Objections and Responses of Cargill, Incorporated to UP's Third Set of Discovery Requests.

Thank you.

Elise M. Schaengold
Legal Assistant
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Suite 500
Washington, DC 20007
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<image001.jpg>

David K. Monroe
Principal



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